



Council of Canadian Law Deans  
Conseil des doyens et  
des doyennes des facultés  
de droit du Canada

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**June 1, 2009**

Mr. John Hunter, Q.C.  
Hunter Voith  
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Suite 2100  
Vancouver, B.C.  
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Dear John:

**Re: Federation of Law Societies of Canada  
Task Force on Accreditation of the Common Law Degree**

I am writing on behalf of the Council of Canadian Law Deans (CCLD) to offer our perspective on the March 2009 Interim Report of the Task Force on the Canadian Common Law Degree. We note the Task Force's plans for continued engagement with the legal education community regarding its work, and we believe it helpful to share with you our most recent thinking regarding the Task Force's Interim Report.

As I am sure you appreciate, the CCLD has come to regard the Task Force's mandate and activities as one of the most significant developments in many years in relation to legal education in Canada. We have given the issues extensive consideration in our law schools and within our own Council, virtually from the time of our first meeting with you in November of 2007. We have also carefully considered the Reports from the Task Force and the views of others in their submissions to the Task Force. We have appreciated having had this material shared with us.

In this letter we wish to communicate two perspectives or positions related to the Task Force's work. One relates to "competencies". The other relates to "compliance". (We are also preparing a separate response on "Institutional Requirements", which I will send to you in the coming few weeks.). We think that the perspectives we share in this letter are important to the work of the Task Force, and also of long term importance to legal education in Canada, the legal profession and the public that lawyers serve.

We advance them in the context of what we understand to be two acknowledged realities of your work. The first reality is that the legal profession in Canada presently faces the challenge of i) ensuring that a system is in place to ensure that fair consideration is given to foreign-trained lawyers who seek to become qualified to practice law in Canada, and ii) ensuring that a sound process, with sound criteria, is in place to assess applications for new law schools in Canada. The Canadian law deans see this reality as an acknowledgment that there is a growing need for opportunities to be made available so that more people may take up the study and practice of law in Canada. We fully support this objective.

The second reality is that it is critical that these objectives - captured in the Task Force's mandate - be achieved in ways that do not diminish the quality of legal education presently provided in Canada. Our understanding is that this reality is widely shared within the Canadian legal profession and within the Task Force itself. We note with appreciation the Task Force's recognition of this in the Introduction in your March 2009 Interim Report:

"In varying degrees the submissions raise, directly or indirectly, the question of whether the Task Force intends some fundamental change to Canadian law schools. That is neither our intention nor what we consider to be our mandate. The Task Force fully appreciates the richness of legal education offered in Canadian law schools and the importance to the law schools of preserving their ability to deliver a rich and diverse legal education to students. "

We agree with this observation. It is in this spirit that we express the following perspectives.

With respect to the Task Force's work on the delineation of "competencies", we welcome the acknowledgment that "competencies" does not mean "courses", and that it is within the purview and mandate of a law school to identify the most suitable ways to satisfy "competencies" requirements of its students. We have given careful consideration to the Task Force's perspective on "competencies", as well as the suggestions and proposals of other commentators on this question. It is our considered judgment that if the Task Force continues to contemplate a "competencies" approach, the recommendations of the Law Society of Upper Canada (see attached) in this regard should be adopted by the Task Force. We are of the opinion that they reflect a modernized, relevant and contextual approach to legal education in Canada and that they meet the legal profession's expectations and requirements. Given that the issues leading to the formation of the Task Force are liable to have the greatest influence in Ontario, we are of the view that the Law Society of Upper Canada's perspectives on this question should be given special consideration in your deliberations. It is a framework that the law deans, including the law deans from Ontario, could accept.

Our second perspective is associated with the Task Force's expressed confidence in the quality of legal education in Canada at the present time. It is our view that the Task Force should recommend only those requirements for law school compliance that are necessary for fulfillment of law societies' mandated public interest responsibilities. Indeed these articulated standards are not only met, but exceeded, by our law schools today. It would be unfortunate in the extreme and contrary to the best interests of legal education, the legal profession and the public interest if substantial resources were required to be dedicated to compliance in circumstances where less intrusive alternatives are available to confirm that a high quality of legal education continues to be delivered at our law schools.

As you may know, Deans Monahan and Kasirer are leaving their positions in the near future. The CCLD intends to continue the Working Group of Law Deans, as a liaison group to your Task Force, but with the addition of Dean William Flanagan of Queen's Law School and Interim Dean Daniel Jutras of McGill University, along with myself. We would be pleased to continue our engagement with the Task Force, either through the Working Group or through the CCLD as a whole, to address any issues related to your work or related to our submissions to the Task Force. We would be available to meet at your convenience.

Sincerely,

W. Brent Cotter  
President  
Council of Canadian Law Deans

## APPENDIX

LAW SOCIETY OF UPPER CANADA  
SUBMISSION  
TO  
THE FEDERATION OF LAW SOCIETIES OF CANADA  
TASK FORCE ON THE APPROVED COMMON LAW DEGREE  
(NOVEMBER 2008)  
EXCERPT (p.6-7)

The Law Society [of Upper Canada] suggest the following as the competences that should be required for entry to law society bar admission/licensing programs in common law jurisdictions in Canada:

- a. Foundations of Canadian common law, including,
  - the doctrines, principles and sources of the common law, how it is made and developed and the institutions within which law is administered in Canada;
  - Contracts, torts and property law; and
  - Criminal Law
- b. The constitutional law of Canada, including principles of human rights and Charter values and Canadian law as it applies to Aboriginal peoples.
- c. Principles of statutory analysis.
- d. Principles of Canadian administrative law.
- e. Legal research skills.
- f. Oral and written communication skills specific to law.
- g. Professionalism and ethical principles.

In listing these competencies the Law Society,

- supports the Federation Task Force's views that these are *competencies*, not *courses*, and that law students should be able to satisfy them in a number of ways that may differ from competency to competency and law school to law school;
- has deleted civil procedure as a required competency. It is important for law students to understand the principles that govern the resolution of disputes in the Canadian common law system; it is not essential for them to learn specific practice rules in law school. Students should be exposed to the principles while learning the foundations of common law;
- has specified which competencies should be acquired in the Canadian legal context, rather than requiring this of every competency;
- has expanded the competency related to constitutional law principles to include specific mention of Canadian law as it is applied to Aboriginal peoples;
- emphasizes "principles" of administrative law to ensure that there is no confusion that a course is being required. It also suggests that the word "regulatory" is unnecessary;
- has substituted the term "professionalism and ethical principles" for the Federation Task Force's "professional responsibility".