



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

57 Louis Pasteur
Ottawa ON K1N 5N5
www.cclc-cdfdc.ca

June 29, 2009

Mr. John Hunter, Q.C.
Hunter Voith
1040 West Georgia Street
Suite 2100
Vancouver, B.C.
V6E 4H1

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 to follow up on my previous letter of June 3, 2009 in order to provide, as promised, the CCLD's perspective on the Approved Common Law Degree described as "Institutional Requirements" in the March 2009 Interim Report by the Task Force. We have tried to respond to the Task Force's "Institutional Requirements" questions as presented in the Interim Report, but have also added a few comments on some aspects of Canadian law schools' present commitment to our 'institutional infrastructure' that we urge the Task Force to incorporate into its final report.

In general terms, CCLD is of the view that the current situation, where Canadian law schools enjoy a margin of manoeuvre to set those requirements, subject to the general policies of their universities, produces satisfactory results. While the requirements imposed by each law school are broadly similar, we note that the liberty they currently enjoy is used to tailor their programs to specific situations or to implement initiatives that are designed to respond to the increasingly diverse needs of the legal profession. There is no evidence that this flexibility threatens the protection of the public in any way. Accordingly, we would urge the Task Force not to recommend the adoption of any stringent standards with respect to those issues.

1. Entry Requirements

The Task Force Interim Report asks whether the current entry requirement of two years of university education should be maintained or whether the "*de facto* requirement of an undergraduate university degree" should be adopted.

We think it is inaccurate to speak of a "*de facto* requirement" of a prior university degree. While it is true that a large number of law school entrants do hold such a degree, and sometimes even a masters or a doctorate, some Canadian law schools have, in circumstances including but not limited to mature students and Aboriginal students, felt entitled to admit students with less than a university degree.

Moreover, it is well-known that at McGill University about 15%-20% of the first year students arrive directly from CEGEP (*i.e.*, a two-year, post-secondary, pre-university program of study). McGill has decided that the level of achievement of this small group of CEGEP candidates is so outstanding that these students deserve admission. As a matter of fact, this group regularly produces some of McGill's best students: gold medalists, Supreme Court clerks, Trudeau Foundation scholars. Many of them go on to careers of high achievement as lawyers in Canada or elsewhere around the world. There is every reason to believe that these students are no less equipped to practice law than others. Moreover, Québec universities, including McGill, cannot require more than a CEGEP degree for entry into any undergraduate degree, including law.

There are other programs for the joint study of the civil law and the common law, including the University of Ottawa's National Program and Programme de droit canadien, the exchange programs between Université de Montréal and Osgoode Hall Law School and between Université Laval and the University of Western Ontario, and the graduate common law programs at Université de Montréal and Université de Sherbrooke, and finally the Université de Sherbrooke and Queen's University program. A number of graduates from those programs entered law school directly from CEGEP. Again, there is no reason to believe that they are less equipped to practice law. To take the University of Ottawa's National Program as an example, evidence has shown that outstanding CEGEP students perform equally well in law school as students who hold a prior university degree, and graduates of the National Program have led successful careers throughout Canada.

We would also point out that Canadian law schools participate in a number of joint programs where law is studied concurrently with another discipline. In some circumstances, this may result in a student beginning to study law before completing the requirements of the other degree. Yet, those students are held to the same standards for their law courses and there is no evidence to suggest that they perform differently than students who completed their undergraduate degree before the commencement of their law degree.

Therefore, in the absence of cogent evidence that the current situation is problematic in terms of the protection of the public, we would recommend that the flexibility currently enjoyed by each law school with respect to entry requirements be maintained.

2. Duration of the Program

We believe that it is more appropriate, and more in line with university practice, to express the duration of university studies in terms of credits rather than years. Increasingly, universities are recognizing that teaching takes place during summers, on exchange with other universities, through internships, on a part-time basis and subject to other temporal modalities. These days, it is more reliable to speak about the academic program by reference to credit requirements.

In this regard, the usual duration of a common law degree is 90 credits. This amounts to three years of study, excluding summer terms. However, we would suggest that this need not be a strict requirement, in order to take into account situations including, but not limited to courses followed in other faculties, exchange programs abroad, joint common law and civil law degrees, a common law degree undertaken after a Canadian civil law degree and joint degrees involving law and another discipline.

3. Methods of Delivery

The Task Force asks whether "in-person" learning should be a requirement for all or part of the common law degree, or whether other delivery systems should be taken into account. We understand the expression "in person" to mean direct interaction with an instructor.

Canadian law schools employ a variety of learning methods, including “in-class” lectures, seminars, independent research, exchange programs, internships, clinical education, and so forth. Some of those methods may not constitute “in-person” learning strictly speaking. The benefits of employing a variety of learning methods within a curriculum are widely acknowledged. Law professors retain a substantial discretion over the choice of learning methods, and CCLD members recognize the value of academic freedom in this regard. On the whole, Canadian law schools have strived to provide their students with the best learning methods.

Canadian law schools have begun to explore the possibilities offered by technological advances to embrace new methods of learning that would enrich the students’ learning experience. We would point out that technology allows forms of direct interaction between student and instructor that may be as beneficial as classical “in-person” interaction. To some extent, technology may help to make legal education more accessible to persons with disabilities, or to persons living in remote areas.

CCLD is of the view that it is too early in the adaptation of law teaching to technology to set precise standards concerning learning methods. We are concerned that precise standards could stifle creativity and prevent law schools and law professors from embracing technological advances to improve their students’ learning experience. Nevertheless, we do believe in the value of currently employed learning methods that may loosely be described as “in-person” and we do not support their replacement with technology-based learning. We believe that substantial “in-person” learning, with the opportunities for significant formal and informal engagement between the students and the instructor, and among the students themselves, provides important learning opportunities that are not able to be achieved in other ways.

4. Joint Degrees

Joint degrees, involving the study of law and another discipline, are common among Canadian law schools and are increasingly popular. These programs are designed to train professionals who will be able to successfully integrate another discipline in their legal practice. Law schools have been uniformly vigilant about preserving the law-specific character of their degrees so that the interdisciplinary experience complements legal training rather than acts as a substitute for the law. There is no indication that graduates of these programs fail to meet the regulatory standard of protecting the public.

CCLD is of the view that joint programs do not require a monitoring procedure distinct from the one envisaged for the regular common law degree.

5. Research and Scholarship

The importance of research and scholarship was not raised in the most recent Interim Report of the Task Force. Nevertheless, it is one of the features of Canadian legal education that has introduced into Canadian law schools a degree of vibrancy and relevance unparalleled in prior generations. We are strongly of the view that a law school without a commitment to research and scholarship is doing a disservice to its students, to the law, to the legal profession and to society itself. While we appreciate that the legal profession is not directly mandated to promote legal research and scholarship, we think it would be a serious mistake to fail to appreciate the ways in which faculty members committed to the scholarly enterprise of legal education, enrich the learning experience for students and prepare them for professional careers. The work of law teachers who are also legal scholars gives students the tools to see the law in imaginative ways, to give them the confidence to search for new perspectives in law, to approach legal problems and issues in a new light and to search out innovative solutions for their clients. This contribution to legal education is one of the most dynamic features of Canadian law schools, and contributes to an enriching legal education for students. In our view a commitment to research and scholarship is a critical ‘institutional feature’ of a modern, high quality law school.

6. Institutional Infrastructure

Though the Task Force did not identify the following institutional requirements of a modern, high quality law school in Canada in its most recent Interim Report, we wish to emphasize that other features of Canadian law school infrastructure are critical to the maintenance of quality. We urge you to address in your final report the essential nature of a well equipped law library, of appropriate faculty-student ratios, of law school investments in financial aid for students to ensure access to legal education, and related features of a legal education that have helped to maintain and improve the quality of Canadian law schools to date. Absent a recognition of these requirements, the Task Force risks inviting a minimal framework for the establishment of law schools in Canada and invites a 'race to the bottom' regarding legal education in Canada. This is surely in direct opposition to the mandate of the Task Force, is a set of potential outcomes that the Task Force itself would oppose and, most importantly, is the opposite of what Canadians rightfully expect of a high quality of legal education intended to protect and advance the public interest.

We appreciate the opportunity to share these perspectives with you and your Task Force, and welcome the opportunity to continue the dialogue on legal education with you and your colleagues.

Sincerely,

A handwritten signature in black ink that reads "Brent Cotter". The signature is written in a cursive, flowing style.

W. Brent Cotter, Q.C.
Professor and Dean
College of Law
University of Saskatchewan

President
Council of Canadian Law Deans