



December 13, 2022

Via email: smackenzie@flsc.ca

Jacqueline Horvat
Chair, National Requirement Review Committee
Federation of Law Societies of Canada
World Exchange Plaza
Suite 1810, 45 O'Connor Street
Ottawa, ON K1P 1A4

Dear Ms. Horvat:

Re: Federation of Law Societies review of the National Requirement

I write on behalf of the Canadian Bar Association in response to the National Requirement Review Committee's communiqué of September 23, 2022. We appreciate the opportunity to offer our input at the early stages of your review.

The CBA is a national association of 37,000 lawyers, law students, notaries and law teachers. Among our primary objectives are improvements in the law and the administration of justice and promoting the rule of law.

Our initial comments are in two parts:

1. proposal from the CBA Family Law Section on an addition to the National Requirement
2. feedback from lawyers recently called to the bar and individuals now pursuing the requirements to be called to the bar, on whether the skills and competencies needed to become a lawyer are reflected in the National Requirement.

1. CBA Family Law Section Proposal

The CBA Family Law Section, with members across Canada, addresses substantive and practice issues in family law and promotes the fair, effective and efficient resolution of family matters.

Family law cases account for one third of all civil court cases in Canada.¹ This statistic does not include people who have a family law issue but do not engage the court process. Many lawyers know little about family law, yet are often asked by their colleagues, family and friends for advice.

¹ Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, [Profile of family law cases in Canada, 2019/2020](#).

Mandatory education in family law, including family violence, the effects of family breakup and the voice of children in family law cases has been excluded from the National Requirement. We propose the following addition to article 3.3, Private Law Principles:

Family law, including family violence, the effects of family breakup on children, and the voice of children in family law cases.

Why?

- Family law impacts every Canadian.
- Between 50-80% of litigants in civil/family actions are self-represented.² Not enough lawyers practice family law or make family law services accessible to the average Canadian.
- Family violence is experienced by more than four in ten women and children in Canada³ and has been identified as a shadow pandemic.⁴ The number of youth at risk is increasing and many risk factors are linked to a family law issue.⁵
- Lawyers who practice in areas other than family law need a working knowledge of family law issues that affect corporate and commercial law, fertility law, criminal law, wills and estates, human rights, crown law, real property, tax law, immigration, Indigenous law. Family members and children are affected by the work of these lawyers and the intersection will not be appreciated unless family law is a core competency.⁶

The 2013 report of the Action Committee on Access to Justice in Civil and Family Matters recommends that, “Law society regulation of family lawyers should explicitly address and support the non-traditional knowledge, skills, abilities, traits and attitudes required by lawyers optimally to manage family law files.”⁷

2. Feedback from Recently Called Lawyers and Law Students

At the request of the Federation, we sought the views of those most closely touched by the National Requirement: recently called lawyers and law students. Through ThoughtExchange, a collective intelligence tool, we asked the following question:

Are the skills and competencies you need to become a lawyer reflected in the National Requirement, are any missing, or should any be revised or eliminated?

How the ThoughtExchange Worked

An invitation to participate in the Exchange was sent to all CBA members recently called to the bar, articling students, law students and scholars. A copy was sent to the Federation for distribution to NCA candidates. Information was available in English and French, and participation could be in either language.

² Justice Canada, Just Facts, [Self-Represented Litigants in Family Law](#) (2016)

³ Statistics Canada, The Daily, [Family Violence in Canada: A statistical profile, 2019](#); Canadian Women’s Foundation, [The Facts about Gender-Based Violence](#).

⁴ Government of Canada, [The shadow pandemic: combatting violence against women and girls in the COVID-19 crisis](#)

⁵ Public Safety Canada, [A Statistical Snapshot of Youth at Risk and Youth Offending in Canada](#) (2012)

⁶ Action Committee on Access to Justice in Civil and Family Matters, [Access to Civil & Family Justice a Roadmap for change](#) (2013)

⁷ *Ibid*, Recommendation 4.4, p 18.

Participants were given the following background about the National Requirement review:

The CBA asks what skills you need to become a good lawyer.

The Federation of Law Societies of Canada is reviewing its National Requirement – the competencies and skills that graduates of Canadian law schools and internationally trained graduates and lawyers must have to enter the law society admission programs in the Canadian common law jurisdictions. As part of the CBA’s input for the review, we want to know what young lawyers and law students think about those skills and competencies.

The current [National Requirement](#) includes:

- skills like problem-solving, legal research, oral and written legal communication
- knowledge and skills relating to ethics and professionalism
- substantive legal knowledge on the foundations of law, public law of Canada and private law principles.

You can read the [Federation communiqué](#) for more information about the review. At this preliminary stage, your thoughts are welcome on:

- specific issues to consider in the review of the National Requirement
- skills or knowledge competencies or other requirements that are missing
- aspects of the National Requirement that should be revised or eliminated.

Participants confidentially shared comments and rated each other’s comments – 261 participated.

Results

The key comments (thoughts) and ratings are presented in the attached Exchange Summary report. The report shows a breakdown of who participated,⁸ the top-rated comments, the emerging themes, and key comments in each theme.

The top-rated themes all addressed practical issues rather than substantive areas of law. The themes were ranked (star scores) in the following order: law practice management; office culture and politics; practical skills (procedure, drafting and technology); client interaction and soft skills; EDI and cultural competency; training and exam process; Indigenous issues; areas of practice and good as-is.

Notably, the Exchange generated many comments on the training and examination process, in law school, articling and the NCA process.

We trust that these comments will help to inform the Review Committee’s deliberations about the National Requirement. The CBA looks forward to participating in more detailed consultations as your work progresses.

Yours truly,

(original letter signed by Tamra L. Thomson for Thomas. E. Ullyett)

Thomas. E. Ullyett
Chair, Policy Committee

⁸ Fifteen participants described themselves as « other » than the listed categories. All would fall within one of the listed categories, but added detail to their description.