



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

March 2, 2018

Via email: dwolfe@flsc.ca

Deborah Wolfe
Executive Director, National Committee on
Accreditation and Law School Programs
Federation of Law Societies of Canada
World Exchange Plaza
45 O'Connor St., Suite 1810
Ottawa, ON K1P 1A4

Dear Ms. Wolfe,

Re: Training Law Students and Lawyers in Alternative Dispute Resolution

I am writing on behalf of the Canadian Bar Association's Alternative Dispute Resolution Section (CBA Section) to ask for your support in communicating to the legal profession the need for all law students and young lawyers to be knowledgeable about alternative dispute resolution. The CBA is a national association of over 36,000 lawyers, law students, notaries and academics. The CBA's mandate includes seeking improvements in the law and the administration of justice. Members of the CBA Section have diverse practices across Canada, but share a particular focus on how different approaches to resolving disputes, such as negotiation, mediation, collaborative law, facilitation, and arbitration, interface with important public policy goals like improving access to justice.

In recent years, access to justice has become an issue of increasing concern to all stakeholders in our legal system – governments, courts, law societies, the CBA, and of course the general public. Alternative dispute resolution options are a recognized means to mitigate against some of the barriers to access to justice in our traditional justice system. New generations of lawyers must be fully prepared to operate effectively within this evolving environment.

In 2016, the CBA called on law societies and law schools across Canada to recognize the necessity of providing effective training in alternative dispute resolution.¹ Being knowledgeable

¹ CBA Resolution 16-04-M, [on line](http://bit.ly/2FLF6iK) (<http://bit.ly/2FLF6iK>).

in alternative dispute resolution is foundational to being an effective lawyer, largely because most litigation cases in Canada now settle before heading to trial.²

Alternative dispute resolution has become an essential part of lawyers' daily practices and an important professional competency, yet training in this area varies significantly across Canada. The CBA Section seeks your support to promulgate and publicize the message of the resolution in all jurisdictions. Our members would be glad to meet with respective law societies to discuss ways we might collaborate to advance this goal, or to respond to any questions raised.

We look forward to hearing from you, and thank you for your consideration of this request.

Yours truly,

(original letter signed by Gaylene Schellenberg for Johanna Price)

Johanna Price
Chair, CBA Alternative Dispute Resolution Section

Encl.

² For example, in Ontario, over 96% of civil cases in Ontario settle prior to trial. See, Speech by the Honourable Warren K Winkler, former Chief Justice of Ontario (12 September, 2007) at the University of Ottawa Faculty of Law, [on line](http://bit.ly/2HXiGf1) (<http://bit.ly/2HXiGf1>).

Training Lawyers to Resolve Everyday Legal Disputes

WHEREAS about 95% of court cases in Canada settle before trial and most legal matters never proceed to court, making dispute resolution the norm for most lawyers' daily practices;

WHEREAS lawyers need dispute resolution skills that are often distinct from litigation skills, and knowledge of specific dispute resolution options that may be appropriate for their clients beyond the formal judicial processes;

WHEREAS the Canadian Bar Association adopted the recommendations of the Systems of Civil Justice Task Force report in 1997, including that education and training on conflict management and dispute resolution options and on the means for integrating those options into legal practice should be mandatory for all law students and in bar admission courses;

Former les juristes quant au règlement de différends communs

ATTENDU QU'environ 95 % des poursuites judiciaires au Canada sont réglées avant le procès et que la plupart des différends ne se rendent pas devant les tribunaux, et ainsi, le règlement extrajudiciaire des différends fait partie intégrante du travail quotidien de la plupart des juristes;

ATTENDU QU'il est nécessaire pour les juristes d'acquérir des compétences en matière de règlement des différends, qui diffèrent souvent des compétences en matière de litige, et de connaître les options précises qui s'offrent en dehors des voies traditionnelles du système judiciaire, qui pourraient convenir à leurs clients.

ATTENDU QUE l'Association du Barreau canadien a adopté les recommandations du rapport de 1997 du Groupe de travail sur les systèmes de justice civile, y compris celles voulant que l'enseignement et la formation à l'égard de la gestion de conflits et des options en matière de règlement des différends ainsi que sur les moyens d'intégrer ces options à la pratique du droit soient obligatoires pour tous les étudiants et étudiantes en droit, ainsi que dans le cadre des cours de préparation au barreau;

WHEREAS dispute resolution courses are often still optional in law school and bar admissions curriculums, and secondary to teaching litigation skills;

BE IT RESOLVED THAT the Canadian Bar Association urge law societies and law schools to recognize dispute resolution skills as a foundation of being an effective advocate, so that all graduating law students and bar admission students receive training in those skills, and be taught the spectrum of dispute resolution options and the ethical and legislative requirements to raise those options with clients.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Mid-Winter Meeting held in Ottawa, ON, February 20-21, 2016.

ATTENDU QU'encore bien souvent, il n'est pas obligatoire de suivre des cours sur le règlement des différends lors des études en droit et des cours de préparation au barreau, et que de tels cours sont secondaires par rapport à l'enseignement de compétences en matière de litige;

QU'IL SOIT RÉSOLU QUE l'Association du Barreau canadien exhorte les barreaux et les facultés de droit à reconnaître que les compétences en matière de résolution extrajudiciaire des différends sont une composante essentielle pour que tout juriste soit efficace, de sorte que tous les étudiants et étudiantes acquièrent une formation en la matière et soient au fait, au terme de leurs études en droit et cours de préparation au barreau, des différentes options de règlement des différends et des exigences d'ordre éthique ou législatif relatives à la présentation de ces options à leurs clients.

Copie certifiée d'une résolution adoptée par le Conseil de l'Association du Barreau canadien, lors de l'Assemblée de la mi-hiver, à Ottawa (ON), du 20 au 21 février 2016.

**John D.V. Hoyles
Chief Executive Officer/Chef de la direction**