

**REVIEW OF THE ACCREDITATION PROCESS
CONDUCTED BY THE
NATIONAL COMMITTEE ON ACCREDITATION**

(Accreditation Consultation Report)

Report prepared by the

Accreditation Review Committee

of the Federation of Law Societies of Canada

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Introduction

This consultation report is intended for circulation to all those with an interest in the role and function of the National Committee on Accreditation (NCA), a standing committee of the Federation of Law Societies of Canada (Federation). The report is the work of the Accreditation Review Committee (ARC) set up by the Federation to review the role and function of the NCA. The members of the ARC are described in Appendix A.

The report first describes the NCA, and then describes the genesis of this report (the MacKenzie report from Ontario), and the five issues identified by the ARC. Each of these is discussed in turn, and recommendations are made concerning each issue. The current membership of the NCA, and details about the recommendations of the MacKenzie report are found in Appendices B and C.

A. Background to Federation's Accreditation Report

The National Committee on Accreditation

The common law jurisdictions in Canada generally require that applicants hold a Canadian common-law degree or its equivalent. Until 1977 each jurisdiction made equivalency decisions on its own. The National Committee on Accreditation ("NCA") was originally struck in 1977 as the Joint Committee on Accreditation. Its role was, and continues to be, to apply a uniform standard of accreditation on a national basis. A creature of the Federation of Law Societies, it was established through the joint efforts of the Council of Canadian Law Deans and the Federation to evaluate credentials of persons applying from outside Canada or from the province of Quebec for admission to the bar of a Canadian common law jurisdiction. Since its inception, it has served the needs of the common law provinces other than Alberta, and has replaced local evaluation of non-Canadian credentials.

The NCA establishes educational and practice experience standards that must be met before an applicant will be considered to hold the equivalent of a Canadian common-law degree. It is administered through the office of its Executive Director, Professor Vern Krishna, Q.C., at the Common Law Section of the University of Ottawa Law School. Over 900 inquiries resulting in approximately 300 applications are processed each year by the NCA. The NCA is self-financing, relying on application fees for its income.

The NCA has available to it a number of mechanisms by which applicants can obtain an equivalence, ranging from an examination of the applicant's knowledge in practise, the taking of exams in up to eight subject areas, and in some situations attending a Canadian law school for up to two years. Although attendance at a Canadian law school was for some time a commonly used mechanism, in the last few years the NCA has increased the use of examinations by which applicants can demonstrate their knowledge. This change has been a response, in part, to the difficulty applicants had in obtaining spaces in Canadian law schools.

The MacKenzie Report

In June 1997 the Benchers of the Law Society of Upper Canada (LSUC) accepted the recommendations in the *Report to the Admissions and Equity Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education (MacKenzie Report)*. The MacKenzie Report outlined 11 recommendations, many dealing with the work of the NCA. A summary of those recommendations, the way in which they were dealt with by LSUC, and in which we propose to deal with them, is contained in Appendix C.

Process of Review of the Accreditation Review Committee

In August 1997, the delegates at the Federation's annual meeting directed the Federation to establish a committee to consider the process by which to undertake a review of the MacKenzie Report.

In February 1998, the delegates at the mid-winter meeting of the Federation adopted a report which provided the following scope of review by the ARC:

1. Identify and analyze the issues raised by the MacKenzie Report;
2. Recommend to the Federation what guidelines or directions, if any, the Federation should give to the NCA with respect to the issues raised in the MacKenzie Report; and
3. Report to the Federation on the implications of the Committee's recommendations for Quebec civil-law-trained applicants moving to common-law jurisdictions.

At the February 1998 meeting the delegates also agreed to the following process of review:

1. The Working Group of the Committee will consider the substantive merits of the MacKenzie Report recommendations and will prepare discussion memos on all or substantially all of the issues raised, which will be circulated for comment to all of the members of the Committee, each of the Law Societies, the Canadian Council of Law Deans, the NCA and any other body or bodies that the Working Group considers appropriate.
2. The Working Group will consult with the Executive Director of the NCA about the current policies and practices of the NCA, as and when required, and will seek comments from the Executive Director of the NCA on any other matters related to the Scope of Review.
3. The Working Group will prepare a preliminary report by June 1998 for the Committee, and the Committee will use this to prepare a report for the Directors and the delegates at the annual meeting in August 1998. The NCA and the Canadian Council of Law Deans will be invited to provide to the Working Group their own responses to the preliminary report. The Committee Report will identify which of its recommendations are acceptable to the groups consulted and should be implemented at that time (or in accordance with a schedule

developed with the NCA) and which ones require further study and consideration.

B. Report of the Accreditation Review Committee

The ARC has considered and analysed the recommendations of the MacKenzie Report, and other issues related to the mandate, operation and composition of the NCA. As part of our deliberations we are consulting with various parties interested in the evaluation/accreditation process for foreign-educated applicants in Canada, including the NCA, the Canadian Council of Law Deans, and the law societies.

In this report we are recommending some changes to the operation of the NCA. We note that the NCA has made its own changes over the years to increase access to the legal profession in Canada's common law jurisdictions for lawyers who have acquired their legal education and qualifications elsewhere. We support and endorse the NCA's important work. The NCA has gathered a considerable store of information about the educational standards of law schools in other countries, and recognizes the need to continue to expand its database of information. Its own guidelines are objective and systematic, and consider both formal education and knowledge gained through experiential learning. Our recommendations are therefore proposed as enhancements to what we regard as a successful program.

Discussion Issues

After consideration of the MacKenzie report, and discussion among the working group and among the committee participants from across the country, we identified five issues for consideration:

- 1. the decision-making process**
- 2. transparency**
- 3. the composition of NCA**
- 4. competency-based assessments**
- 5. Quebec applicants to the NCA**

This document is intended to set out our ideas in the form of draft recommendations. Through this document we hope to promote discussion with all of the interested groups.

Issue 1. The Decision-Making Process

Decisions on each applicant to the NCA have historically been made by the Committee itself at one of its three or four meetings each year. Over the years the Committee has developed a system by which applicants are rated on a number of factors, including the nature of their post-secondary education, their academic performance, the status of the institutions they have attended, whether they have been called to a bar, and whether and how much they have practised.

This decision making process has raised a number of issues, including:

- although the NCA has taken very positive steps to make its process easily understood, there is a clear expectation that the process should be as transparent as possible. We deal with this issue in the section that follows.
- concern has been expressed from a number of quarters that there ought to be an appeal process.
- because the NCA meets only three or four times a year, there is considerable delay in decisions being made.

We concluded that the process might readily be changed in a manner which would address these concerns, and at the same time make the process generally faster for applicants.

There are a number of settings in which similar kinds of decisions are made by staff, leaving to committee structures decisions about general policy issues, the clarification of matters in which the application or extension of existing policy may not be clear, and deciding appeals from decisions made by staff. We believe this model can be fruitfully employed by the NCA. Because of the NCA's well developed system for assessing applicants, this does not amount to a significant departure from the way in which decisions are made under the current scheme.

Recommendations

- 1.1 The Committee should set the standards required of applicants, and establish the process for the consideration of applications, including the establishment of a process for the appeal of decisions respecting particular applicants.
- 1.2 In the first instance, the Executive Director should make the decisions respecting particular applicants.
- 1.3 There should be an appeal to the committee from a decision of the Executive Director with respect to a particular applicant.

Issue 2. Transparency

Expectations of transparency in decision making have been raised over time, and the expectations of the NCA have followed this general trend. By transparency, we mean that the standards or policies used in making decisions are communicated, as are the application of those standards in a particular application. The kinds of factors taken into account, and the likely outcomes for many classes of applicants have been published by the NCA for a number of years. We believe it is now possible and desirable to move to a still greater level of transparency by publishing those factors, and the way in which they are applied in general and in particular decisions.

Recommendations

- 2.1 Once developed, the standards and the appeal process established by the committee should be published and made available on the internet, perhaps on the Federation's website, in the same manner as the NCA's information is now available.
- 2.2 Decisions with respect to the basis for decisions about a particular applicant should be made as clearly and specifically as possible, perhaps with the use of a scoresheet or some similar device, and provided to the applicant.

Issue 3. Composition of the NCA

The NCA has been well served by its members, who represent the law societies and academia. Ontario and British Columbia, to whom most NCA applicants apply for admission, currently have representation on the NCA. The Executive director also sits as a member.

We believe it will be useful to be clear about who is represented on the NCA, and we believe that representation should come as it now does from law societies and academia.

We carefully considered the MacKenzie Report's recommendation that there be a representative of the community of foreign-educated lawyers who is a member of an ethnocultural minority group. We agree that representation from outside the Canadian legal profession is appropriate. However, keeping in mind the important rationale of this recommendation, but also considering the immense diversity among foreign trained lawyers in Canada, we instead recommend the inclusion of one member who is a current or former lay bencher of one of the Law Societies. The NCA's function is to protect the public interest in seeing that applicants for admission to law societies meet appropriate academic qualifications. That interest is, in our view, best served by public representation on the committee.

Although Alberta has been the only common law province to maintain its own regime for accrediting non-Canadian law degrees, they are very interested in participating in the NCA and using it as a replacement for their own accreditation mechanism. Having been the only non-participant, there is some understandable reluctance to turn over decision making to a body in which they would not directly participate. We believe this situation can be accommodated by

giving Alberta a seat on the NCA for a limited period of time, and we suggest this be for a one time five year appointment.

In keeping with the earlier recommendations concerning the decision making process, we consider it is no longer appropriate for the Executive Director to sit as a member of the NCA. We would expect the Executive Director will continue, as now, to attend all meetings.

The earlier recommendations deal with the issue of transparency. We think it is important for all law societies who use the NCA to have complete confidence in its operation. While it is not feasible for each law society to have a representative committee member, each law society should be at liberty to send a representative to any meeting of the committee. Observers would be bound by the same confidentiality limitations as committee members, would not have a vote, and would not be able to advocate concerning any applicant.

So far as we have been able to determine, there is no term of appointment for committee members. The NCA has benefited from the experience of many of its present members. On the other hand, there has been little turnover, and thus very few people have been able to participate in the NCA's work. We think these interests will be balanced by appointments of staggered 5 year terms, renewable for one term (that is, to a maximum of 10 years). In order to stagger the terms, the initial appointments will have to be made for shorter terms.

Recommendations

3.1 The NCA be composed of:

Three members representing the interests of the law societies who are users of the services of the NCA, to be appointed by the Board of Directors of the Federation of Law Societies in consultation with those law societies;

Two members representing the interests of and appointed by, the Canadian Council of Law Deans;

One member, who is not a lawyer, appointed from current or past lay benchers of law societies, appointed by the Board of Directors of the Federation of Law Societies; and

An additional member, appointed by the Law Society of Alberta for the initial five year period.

3.2 The Executive Director attend all meetings of the committee, but not be a member.

3.3 Appointments be for five years renewable once. Initially there should be one appointment for each of 1, 2, 3, 4, and 5 years in order to establish continuity.

3.4 That any law society, at its own expense, be entitled to send an observer to attend any meeting of the NCA.

3.5 The Chair of the NCA be chosen annually by and from its members.

Issue 4. Competency-based assessments

We have had some preliminary discussion of whether it is possible to design a somewhat different approach to the issues to be assessed by the NCA. There is a general trend in some circles to what is referred to as *competency based assessment*. In this method the assessment agency first articulates the competencies necessary, and then assesses the extent to which a particular applicant meets the required standard for each competency. This method is used by some post secondary institutions, particularly for applicants who have had job-related or other applicable experience which might be substituted for more traditional academic credentials. Competency based assessment is also the conceptual foundation for a number of international and intra-national protocols for the transportability of trade and professional credentials. Specifically, it is an important and integral part of the Agreement on Internal Trade, entered into by all the provinces in 1994.

We believe this is important work for the future of the NCA. However, it also raises some complex and problematic issues which require more study. The MacKenzie Report recommends that specialized expertise be sought to deal with this issue, and we believe that might ultimately be necessary. Accordingly, we believe the ARC should be mandated to continue its consideration of the issue with a view to reporting to the 1999 Annual General Meeting of the Federation of Law Societies.

Recommendation

4.1 The Accreditation Review Committee continue its consideration of competency-based assessment, with a view to reporting to the 1999 Annual General Meeting of the Federation of Law Societies

Issue 5. Quebec Civil Law Degree Holders

Some common law provinces require transfer applicants from Quebec who do not hold a Canadian common law degree to obtain an NCA certificate as a precondition to their transfer application. They then go on to write provincial transfer examinations. This has been a source of concern to the Barreau and, to a lesser extent, to the Chambre des Notaires. Recent changes to the Quebec regulatory regime have created a reciprocal scheme, which may create additional barriers for applicants who wish to transfer from one of the common-law provinces to Quebec.

We have had some preliminary discussion about this issue. We note that some provinces require a Canadian common-law degree or NCA certificate of every transfer applicant, whether from Quebec or any other jurisdiction. There has also been some discussion in the context of the Interjurisdictional Practice Protocol of the Federation.

The resolution of this issue may have an impact on the standard required by the NCA. Accordingly, we recommend that the Accreditation Review Committee be mandated to continue

its consideration of the standard required of Canadian lawyers who do not have Canadian common-law degrees and wish to transfer to common-law jurisdictions, with a view to reporting to the 1999 Annual General Meeting of the Federation of Law Societies.

Recommendation

- 5.1 The Accreditation Review Committee continue its consideration of the standard required of Canadian lawyers who do not have Canadian common-law degrees and wish to transfer to common-law jurisdictions, with a view to reporting to the 1999 Annual General Meeting of the Federation of Law Societies

Brian J. Wallace, Q.C.
Chair, Accreditation Review Committee

Appendix A - Membership of the Accreditation Review Committee

Federation of Law Societies of Canada	Brian J. Wallace, Q.C., Chair, ARC
The Law Society of British Columbia	Donald F. Thompson
The Law Society of Alberta	Francine Swanson, Q.C.
The Law Society of Saskatchewan	Dean Peter MacKinnon, Q.C.
The Law Society of Manitoba	Sheila Redel
The Law Society of Upper Canada	Nancy Backhouse
	Alan Treleaven
Barreau du Québec	Gilles Bachand
Chambre des notaires du Québec	Josée Deschênes
The Law Society of New Brunswick	Michel Carrier
Nova Scotia Barristers' Society	Michael J. Wood
The Law Society of Newfoundland	Aiden Beresford

The following are members of the Working Group of the Committee:

Brian J. Wallace, Q.C.: for the Federation. Mr. Wallace, a member of the Federation Board, acts as chair of the Working Group.

Donald F. Thompson: for The Law Society of British Columbia. The LSBC is one of the main users of the services offered by the National Committee on Accreditation ("NCA").

Francine Swanson, Q.C.: for The Law Society of Alberta. The LSA has advised the Federation that their society is considering using the services of the NCA.

Alan Treleaven: for The Law Society of Upper Canada. The LSUC is the main user of the services offered by the NCA.

Gilles Bachand: for the Barreau du Québec. Members of the Barreau du Quebec wishing to transfer to another province sometimes must apply to the NCA for an evaluation of their credentials.

Dean Peter MacKinnon, Q.C.: for the Law Society of Saskatchewan and the Canadian Council of Law Deans.

Appendix B - Current Membership of the National Committee on Accreditation

Chair

Kenneth Jarvis, Q.C.
Toronto, Ontario

Members

Dawn Russell
Dean - Faculty of Law
Dalhousie University
Halifax, Nova Scotia

Michael Wylie
Dean - Faculty of Law
University of Calgary
Calgary, Alberta

Hamish C. Cameron
Bull, Housser & Tupper
Vancouver, British Columbia

Richard F. Tinsley
Secretary
The Law Society of Upper Canada
Toronto, Ontario

Executive Director

Vern Krishna, Q.C.
Professor, Faculty of Law
University of Ottawa
Ottawa, Ontario

Appendix C - Summary of Recommendations from the MacKenzie Report

No.	MacKenzie Report Recommendation	LSUC Resolution	ARC Recommendation
1	The Law Society of Upper Canada should continue to support the NCA.	Support the Recommendation	This issue is only for the LSUC
2	A person with expertise in comparative education and prior learning assessment should be retained to review the NCA's guidelines and the application of those guidelines to determine how (if at all) the guidelines as applied in practice might be amended to ensure (i) that to be given advanced standing applicants meet the necessary level of competence, and (ii) that applicants are treated equitably.	Support the Recommendation to the FLS when it considers the report	(i) is dealt with in the continued consideration of competency based assessment (Issue 4) (ii) is dealt with in the transparency recommendation (Issue 2)
3	The NCA's guidelines should be amended to permit applicants who have experience working as law clerks in Canada under the supervision of one or more Canadian lawyers to be given appropriate credit based upon an individual assessment of the extent to which (if at all) the experience they have gained has contributed to their state of preparedness to practise law in Canada. The expert referred to in 2 should be consulted to assist in the formulation of guidelines designed to implement this recommendation.	Support the Recommendation to the FLS when it considers the report	This will be dealt with in the consideration of competency based assessment (Issue 4)
4	Members of the NCA should continue to be drawn from legal academia, those involved in the regulation of the profession, and the practising bar. The committee should also, however, include a representative of the community of foreign-educated lawyers who is a member of an ethnocultural minority group, a designate of the Law Society of British Columbia and the Executive Director of Education of the Law Society of Upper Canada, for the reasons discussed in section 21 above. Members of the NCA who serve as the committee's chair should hold the position for a period of two or three years. The Executive Director of the NCA should not also be a voting member of the committee.	Support the Recommendation to the FLS when it considers the report	These issues are dealt with in Issue 3
5	The NCA should continually endeavour to improve its communication of the basis of its assessments with a view to making the process more transparent generally.	Support the Recommendation to the FLS when it considers the report	We believe the NCA has continually improved its communications. Further developments in transparency are contained in Issue 2.

No.	MacKenzie Report Recommendation	LSUC Resolution	ARC Recommendation
6	The NCA should make applicants aware of clinical legal education opportunities available at law schools, and should reduce the number of required courses applicants who are interested in pursuing clinical alternatives are required to take where to do so would not detract from the applicants' need to satisfy substantive law requirements.	Support the Recommendation to the FLS when it considers the report	We do not think it is the role of the NCA to inform applicants of law school curricula. The NCA has significantly changed its requirements so that fewer applicants have to attend law school. Those that do usually must take first and second year, which leaves to the law schools and students the question of attendance at clinical programs.
7	The NCA, in conjunction with the law schools, should arrange for the development of a language test that is designed to assess candidates with specific reference to the language proficiency required to perform competently as lawyers.	Recommend that the FLS investigate the advisability of this recommendation	This will be addressed in the continuing consideration of competency based assessment (Issue 4)
8	Canadian citizens who obtain their legal education in other countries and who meet the requirements established by those countries for admission to the bar should continue to be assessed in accordance with the standards applicable to all NCA candidates.	Support the Recommendation to the FLS when it considers the report	We understand this to be the situation
9	For the reasons developed in section 15 above, the Law Society should pursue discussions with the University of Toronto Law School with respect to the issues of fees and services to NCA candidates with a view to facilitating an appropriate solution to these issues.	Support the recommendation	This is a matter for the LSUC
10	An orientation program for NCA candidates who have been admitted to Ontario law schools should be offered shortly before law school classes begin for the year, so that NCA candidates will have the benefit of an introduction to the study of Canadian law.	Support the Recommendation to the FLS when it considers the report The Law Society should, within Ontario, encourage law schools to create an orientation program	This is not a matter for the NCA

No.	MacKenzie Report Recommendation	LSUC Resolution	ARC Recommendation
11	<p>Finally, in the longer term, the NCA, with the assistance of a counsellor with the expertise referred to in recommendation 2, should move toward a system of individualized assessments of what foreign-educated (and Quebec non-common law) lawyers require to become qualified to practise law in common law jurisdictions in Canada, with the expectation that taking law school courses and writing challenge examinations would be only two among a number of possible alternatives.</p>	<p>Support the Recommendation to the FLS when it considers the report, subject to further investigation on the extent to which further individualized assessments are feasible</p>	<p>The scheme that will underlie individualized assessments will be addressed in the continuing consideration of competency based assessment (Item 4). Our preliminary discussion has identified objectivity, availability of alternative assessment methods, and resources as important issues.</p>