

November 30, 2022

TO: National Requirement Review Committee (NRRC)
Federation of Law Societies of Canada (FLSC)

Sent via email: smackenzie@flsc.ca

Dear NRRC members,

**RE: NRRC call for preliminary comment
ACCLE submission**

The Association for Canadian Clinical Legal Education (ACCLE) wishes to thank your Committee for inviting our input as your stakeholders, partners, and allies in the shared task of ensuring that new Canadian lawyers have received the training and attained the competencies worthy of a profession that serves a just society.

ACCLE brings together lawyers and other staff primarily working and teaching in legal clinics hosted by or affiliated with law schools, as well as the professional and academic staff supporting other experiential education programs, with law students and justice sector allies. Our preliminary submission is that, in its current form, the National Requirement could do far more to ensure that accredited Canadian common law degree programs prepare law students for professional practice in a manner that

- (a) adequately centres the public interest, access to justice, and reconciliation with indigenous communities,
- (b) reflects available research on best practices for professional education, and
- (c) compares to the rigour and consistency of accreditation standards in other jurisdictions and/or regulated professions.

This perspective is particularly informed by our members' work creating and continuing clinical programs that prepare law students for practice while modelling reflective practice, creating spaces where students' professional identities are informed by direct client experiences of poverty, racism, colonialism, ableism, sexism, and trauma, often while providing substantial public benefit in the form of free legal services to populations whose needs the profession has largely failed to serve (or on balance, has harmed).

In many cases, our members do so in the context of institutions who view, treat, and/or speak of these clinics as extracurricular, optional, non-academic, expensive, and peripheral. No part of the accreditation process to date appears to have led law schools

to approach clinical legal education as necessary, academic, worthwhile, or central to professional legal education.

Who is law school accreditation for?

While we understand the FLSC has determined that its draft competency profile development as part of the National Committee on Accreditation (NCA) review will remain separate and distinct from the NRRC's work, we nevertheless refer your Committee to ACCLE's correspondence of February 28, 2022 and CALT's correspondence of December 23, 2021. These submissions outline a more fundamental question at the heart of law school accreditation. Some have asserted that the purpose of law school is to teach students to think about the law, and that learning to practice should be left to bar admissions, articling, and presumably to any optional pursuits that future lawyers may have chosen by way of summer employment, mooting, clinics, etc.

To borrow a frequently-cited example: the purpose of medical school is not merely to teach students to think about medicine, but to practice it. Are future doctors required to complete additional phases of professional education after medical school? Yes. However, Canadian medical school accreditation ensures that experiential education and clinical rotations begin within a university-based medical degree program, so that by the time each student receives their M.D. degree, they have already interacted with patients to provide medical care under the supervision of licensed physicians.

Universities are already quite capable of offering unaccredited degree programs, at both the graduate and undergraduate levels, whose aims are restricted to enhanced thinking about the law and which are aimed at students who do not wish to become practicing lawyers. However, students who intend to become lawyers ought to be the focus and priority of accreditors from the profession they seek to join. Accreditors must focus on the overwhelming public interest in the baseline competency of all licensees, and the further public interest in a profession that embraces equality, reconciliation, access, and accountability to diverse communities.

With the greatest respect, developing an adequate accreditation standard requires some measure of agreement on the basic point of the exercise. Persistent appeals to academic freedom, the educational pursuits of non-lawyers, and the alleged cost of experiential education bring us no closer to answering the key questions of (a) which tasks, concepts, and roles new licensees are required to perform, understand, and fulfill, and (b) what evidence-based form and content of education and training will get them

there – and beyond.

Specifying “how”

One of the first impressions one receives when comparing the five-page National Requirement to the professional accreditation standards for American law degrees, medical degrees, and those of other degree programs leading to professional licensure is how much more detail is given to the requirements set by other accreditors. We submit that the examples of other accreditors underscore a greater role for the description of what an adequate Canadian law school must look like.

The current National Requirement gives a relatively brief overview of basic competency in problem solving, legal research, communication, professional ethics, and substantive law (in such a way as to outline the first year course offerings of most common law degree programs, plus administrative law). It then declares that somehow, through 90 course credits of primarily in-person learning spread over three years, degree holders must have “met the competency requirements”. Given that many Canadian law students generally select whatever courses they wish in second and third year, the “competency requirements” are presumably met when students pass their first year courses.

No detail is provided as to what might constitute “appropriate numbers of properly qualified academic staff”, “adequate physical resources”, or “adequate information and communication technology”. In a single closing sentence, the current National Requirement requires that each law school maintain a law library. In contrast, chapter 6 of the American Bar Association accreditation standards sets out how a law library must be administered, who must staff library, who must lead the library and the degree of security they must enjoy within the overall law school, what services the library must provide and what collection it must maintain.

The ABA standards also require the “substantial opportunities to students” for clinics, field placements, and participation *pro bono* services. The Committee on Accreditation of Canadian Medical Schools (CACMS) goes even further in its 2023-2024 Standards and Elements document, requiring that “The faculty of a medical school ensure that the medical curriculum includes clinical experiences in both outpatient and inpatient settings,” mandating that every single medical student have at least one required clinical learning experience with supervised patient interactions.

Both the ABA and CACMS standards further require that clinical supervision of students in accredited degree programs be accomplished by faculty members (or staff with

equivalent tenure, freedom, and governance rights to faculty members). These types of standards ensure that degree-granting institutions take full responsibility for clinical education as a core curricular pursuit, rather than treating it as an optional appendage.

American law schools and Canadian medical schools are not inherently less trustworthy than Canadian law schools, nor are the legal vulnerabilities of the Canadian public less worthy of protection. As between these two sample approaches to clinical education, the ABA requirement that law schools ensure sufficient clinical “opportunities” may be a more appropriate model at this time.

However, the CAMCS embrace of mandatory clinical rotations for every student should be identified as an eventual goal. Many Canadian law schools first need an opportunity not only to ensure sufficient clinical spaces, but to consider how their curriculum and other supports can sufficiently prepare their students for success in clinical placements. Accreditation standards can ensure this process takes place in each law school.

In either case, regulators can specify (in part) what those clinical legal education programs look like, as well as how they must be resourced and protected. And just as the ABA no doubt relies upon law librarians to continually develop and reconsider its library standards, so too can the FLSC engage in a continuous dialogue with ACCLE as to the appropriate minimum standards and best practices for clinical and experiential legal education programs.

Toward a competency framework

These comments are preliminary in nature, and are intended to highlight what we view as some of the most basic issues for your committee’s initial consideration.

We wish to conclude by underscoring our view that Canadian law school accreditation should be connected to the larger project of better integrating our profession and academy’s approaches to admissions, tuition and financial aid, curricular design, licensing and articling, continuing professional development, and professional regulation. Clinics and seminars can mutually and intentionally reinforce deep conceptual learning; simulations and externships can prepare students for licensing, articling, and practice. Collaboration between educators in each of these spaces is vital to inform the development of standards and best practices.



Promoting clinical legal education in Canadian law schools



Promouvoir l'enseignement clinique du droit dans les facultés de droit canadiennes

Your committee is well-placed to lead these conversations, and we look forward to supporting and participating in them.

Sincerely,

Benjamin Ries, President
Association for Canadian Clinical Legal Education