



## **REPORT**

**FROM:** Truth and Reconciliation Commission Calls to Action Advisory Committee  
**TO:** Federation Executive  
**DATE:** May 13, 2020  
**SUBJECT:** Recommendations for Responding to the TRC

### **AT A GLANCE:**

### **FOR INFORMATION**

The Truth and Reconciliation Commission Calls to Action Advisory Committee has developed a series of recommendations in response to the Calls to Action for consideration by the Council of the Federation. The recommendations address actions by the Federation and the law societies.

## **BACKGROUND**

1. In December 2016 Council of the Federation approved a motion to establish a special committee comprised of Indigenous and non-Indigenous representatives to develop recommendations on how to respond to the Truth and Reconciliation Commission's ("TRC") Calls to Action. The TRC Calls to Action Advisory Committee (the "Advisory Committee") was established in 2017. It was given a broad mandate to develop a response to the Calls to Action beginning with Calls to Action 27 and 28 given their urgency and relevance to the legal profession.

2. The Advisory Committee is composed of eight members representing law societies, the legal academy and Indigenous organizations:

- Karen Wilford (Co-Chair)
- Tuma Young (Co-Chair)
- Dianne Corbiere
- Dr. Val Napoleon
- Paul Okalik
- Dean Lawton
- Stephanie Lisa Roberts
- Stuart Wuttke

3. It is supported by Frederica Wilson and Kiara Paylor of the Federation, and by Andrea Hilland, Policy Counsel at the Law Society of British Columbia.

4. In accordance with its mandate, the Advisory Committee has considered Calls to Action 27 and 28, and the overall goals of the TRC. Call to Action 27 speaks to the competency of legal professionals in serving Indigenous peoples:

*We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism.*

5. While the language of Call to Action 27 specifically references the Federation, it is understood that individual law societies are directly responsible for training and education of future legal professionals. The Advisory Committee's mandate (see **Appendix A**) specifies that its work complement, and not duplicate, those efforts. As a result, the committee gathered information about how law societies have been responding to the TRC and considered how it may support or guide the provincial and territorial approaches. It also considered the role and responsibilities of the Federation in responding to the TRC.

6. Call to Action 28 speaks to the need for law schools to ensure students are educated about Indigenous peoples and the law. It mirrors the knowledge and skills referred to in Call to Action 27. The Federation's interest in Call to Action 28 is tied to its oversight of the National Requirement<sup>1</sup> and its concern for strengthening the continuum of education that exists between law school and legal practice.

7. The recommendations put forward in this report reflect a broad interpretation of the goals of the TRC Calls to Action. They also suggest an expanded role for the Federation and legal regulators in advancing reconciliation with Indigenous peoples across Canada.

## **RATIONALE**

8. The Advisory Committee recommends a path to reconciliation that emphasizes enhancing knowledge, sharing information, encouraging ongoing dialogue and relationship-building, and promoting reflection on individual and institutional levels. The Advisory Committee recognizes that cultivating an understanding of the fact that Canada is a multi-juridical country in which Indigenous legal orders, the common law and the civil law all have an important place is integral to transforming the relationship between the legal profession and Indigenous peoples in Canada.

9. “[L]awmakers, judges and lawyers are the gatekeepers to the justice system. Until they understand the truth of our history and their role in making change, our country will not be able

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<sup>1</sup> The National Requirement was developed by the Federation in consultation with law societies and came into force in 2015. It is the national standard for common law programs across Canada and specifies the competencies that all graduates must have to be eligible to enter the bar admission programs of law societies in common law jurisdictions. The National Requirement also outlines the learning resources that law schools must provide to their student body. It was developed to harmonize the requirements for entry to bar admission programs and also applies to internationally trained candidates going through the National Committee on Accreditation.

to move forward.”<sup>2</sup> These are the words of Senator Murray Sinclair, former Chair of the TRC, from an opinion piece for the Globe and Mail on November 14, 2019. His statement follows his observation that few lawyers he speaks with across the country have read the TRC Report. His words underscore the important role that law societies and law schools have to play in educating current and future legal professionals. In the same piece Senator Sinclair also speaks of the progress that has been made and the work that lies ahead. The Advisory Committee’s recommendations provide a path forward, building on the work that has already been done.

10. The Advisory Committee’s recommendations set out below and summarized in **Appendix B** are responsive to its mandate, which takes into consideration the Federation’s role, its unique relationship with law societies and the legal academy, and their shared responsibility for responding to the TRC. The Advisory Committee also considered the public’s perception of the legal profession’s progress in responding to the TRC, and how the Federation could promote greater accountability and transparency.

## **PART 1: RECOMMENDATIONS FOR THE FEDERATION**

11. The Advisory Committee proposes that the Federation adopt a framework that would apply to all aspects of the Federation’s work. It would be rooted in recognition of the significance of Indigenous legal orders, legal principles, perspectives and experiences of Indigenous peoples in Canada’s legal fabric.

### ***Adopt a Formal Statement of Commitment***

12. At the heart of the framework, the Advisory Committee recommends the development of a formal statement of commitment to reconciliation addressing the Federation’s role and fostering this commitment in all aspects of its work. In developing such a statement, the Federation should consult with national Indigenous organizations to ensure its thoroughness. The Advisory Committee recommends the statement be made publicly available to ensure both transparency and accountability, in line with what other public organizations have done<sup>3</sup>.

13. The Advisory Committee has also identified specific actions the Federation could take to fulfill its commitment, which are outlined below. These actions are intended to form the beginnings of a journey towards reconciliation that will evolve over time. The Federation is encouraged to reflect on and review these actions regularly to assess whether they are achieving the intended goals and to consider what other actions may be taken.

### ***Adopt Guiding Principles***

14. The Advisory Committee recommends the adoption of Guiding Principles to inform and apply to all aspects of the Federation’s existing and future work. A proposed set of broadly drafted Guiding Principles is attached in **Appendix C**. The principles reflect the Advisory Committee’s discussions about what it considers necessary to promote reconciliation to the

<sup>2</sup> Globe and Mail (November 14, 2019) <https://www.theglobeandmail.com/business/commentary/article-the-legal-industry-needs-to-understand-the-truth-of-canadas/>

<sup>3</sup> In 2016, the Government of Ontario released a formal commitment to reconciliation with Indigenous peoples (see their [website](#)), and in 2018 the University of Regina released a formal [commitment](#) and accompanying [guide](#).

fullest extent. They are broad in nature to allow flexibility in their interpretation and application to the Federation's work.

15. The following is a non-exhaustive list of how the principles might apply:
- a) Guiding the work of Federation committees (for example the Standing Committee on the Model Code, the Standing Committee on National Discipline Standards, the Public Affairs and Government Relations Committee) and any others where appropriate.
  - b) Informing existing or future Federation policies and business practices.
  - c) Influencing the training needs of staff and/or Federation leadership.
  - d) Fostering, assisting and guiding the cultivation of essential stakeholder relationships.
  - e) Inspiring the creation of new Federation initiatives.

16. This approach was inspired, in part, by the decision of some law societies<sup>4</sup> to develop strategic plans or frameworks aimed at embedding the spirit of reconciliation in their organizational structures. The Advisory Committee considers this approach to be appropriate for the Federation given its role as the national coordinating body of Canada's law societies.

***Become a National Information Hub for Sharing TRC-related Initiatives***

17. The Advisory Committee recommends that the Federation position itself as a national, public hub for information about what law societies are doing in response to Call to Action 27. This recommendation aligns with the Federation's current strategic objective of information sharing, and mirrors the approach being applied to other significant national initiatives (e.g. anti-money laundering and terrorist financing). The Federation may wish to extend an offer to the legal academy to host information about law school initiatives as well if no initiative yet exists for Call to Action 28.

18. A national information hub would help law societies stay informed of each other's work and facilitate the sharing of resources. It would also provide a convenient source of information for the public on the many activities in which law societies are engaged, demonstrating the progress being made. In developing a national hub, the Federation will want to consider formal mechanisms for gathering this information to ensure its currency and accuracy.

19. The Advisory Committee recognizes that the Federation is already engaging in information sharing on the activities of law societies, law schools and other justice system participants through a designated Reconciliation page on its internal Intranet. The Committee considers it important for these initiatives to be shared publicly and recommends that the Federation Council consider what information is made available to the public.

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<sup>4</sup> See the Law Society of Ontario's [Indigenous Framework](#), the Law Society of British Columbia's [Truth and Reconciliation Action Plan](#), the Law Society of New Brunswick's [Pathway to Reconciliation Policy](#), and the Law Society of Manitoba's [Road Map for Increasing Cultural Competency](#).



### ***Build Relationships with Indigenous Stakeholders***

20. The Advisory Committee recommends the Federation explore and promote opportunities for building relationships with national Indigenous organizations. The Federation actively engages with stakeholders on a variety of issues, and it advocates on behalf of law societies when the situation warrants it. The Federation's ongoing engagement with the Canadian Bar Association ("CBA") and the federal Department of Justice are examples of such relationships. Building relationships with national Indigenous organizations is a necessary addition to the Federation's activities.

21. The Advisory Committee recognizes that this relationship building has already begun; in the fall of 2019, then President Ross Earnshaw accepted an invitation to attend the Indigenous Bar Association's ("IBA") annual conference. The Advisory Committee urges the Federation to build on its relationship with the IBA, and to explore other opportunities for dialogue, relationship-building and/or collaboration with national Indigenous organizations or groups that may be appropriate. Networking at a national level is a necessary and valuable complement to any engagement, relationship-building or collaboration occurring among provincial and territorial law societies and their local stakeholders.

22. As part of this recommendation the Federation Council will want to consider the types of engagement activities or collaborative opportunities that could form part of this commitment.

#### Recommendation 1:

That the Federation make a formal statement of commitment to reconciliation with Indigenous peoples in Canada as part of its framework for responding to the Truth and Reconciliation Commission of Canada, and that it share that commitment publicly.

To demonstrate this commitment, it is recommended that the Federation:

- Adopt and implement the Guiding Principles attached as Appendix C to inform all aspects of the Federation's work and operations.
- Become the national hub for gathering and sharing up-to-date information about what law societies and law schools are doing in response to the TRC.
- Explore and promote opportunities for building stronger relationships with the Indigenous Bar Association, its representatives and any other national Indigenous organizations it considers appropriate.

## **PART 2: RECOMMENDATIONS FOR LAW SOCIETIES**

23. The Advisory Committee acknowledges and commends the diversity of approaches to reconciliation, particularly Call to Action 27, that law societies across Canada are developing and implementing. Many law societies have advisory committees that are already actively working on reconciliation initiatives, including providing guidance on educational activities for both the profession at large and law society staff and leaders. The Advisory Committee supports



this diversity and recognizes the importance of each law society's response reflecting the historical, social, geographical and legal realities of the Indigenous peoples within their borders.

24. At the same time, the Advisory Committee suggests some level of national cohesiveness would be appropriate in light of the shared public interest mandate of the law societies and the national mobility of lawyers. The recommendations below seek to strike a balance between respecting jurisdictional diversity and striving for some level of cohesion. It is the hope of the Advisory Committee that for some law societies these recommendations will represent a guidepost for developing a response; while for others they may reinforce efforts already underway. Ultimately the Advisory Committee seeks to advance the national dialogue on responding to the TRC and foster greater coordination and supports.

### ***Develop a Formal Commitment and Framework***

25. Some law societies have already demonstrated their commitment to reconciliation by releasing formal statements, amending their strategic plans, and/or adopting policies or frameworks to guide their regulatory responses. The Law Society of Manitoba developed a [Roadmap](#) to realise the commitments to reconciliation set out in its strategic plan, and to guide its efforts in increasing cultural competency in the delivery of legal services province-wide. The Law Society of New Brunswick adopted a [Pathway to Reconciliation policy](#) that specifies both its commitment to reconciliation and its actions in responding to the TRC. The law societies in British Columbia and Ontario have taken similar action. These initiatives provide evidence of the seriousness with which these law societies take their role in working towards reconciliation and provide a model that other law societies might consider. In that vein, the Advisory Committee recommends that the Federation urge those law societies that have not already done so to make a formal commitment to reconciliation.

26. Law societies are also encouraged to consider what concrete steps they can take to put their commitment into action if they have not done so already, such as adopting a framework or plan that outlines the changes they intend to implement. To that end, law societies that have not already done something similar are encouraged to adopt the Guiding Principles attached as Appendix C as a framework to guide their work on reconciliation.

#### **Recommendation 2:**

That the Federation urge all law societies to make a formal commitment to reconciliation and develop a framework or steps for putting that commitment into action. Law societies may consider adopting the Guiding Principles in Appendix C, if they do not yet have a framework in place, to guide their work on reconciliation.

### ***Adopt a Broad Approach to Reconciliation***

27. Call to Action 27 speaks to enhancing the cultural competency of members of the legal profession. As discussed above, several law societies have taken a broader approach to responding to the Calls to Action. The Advisory Committee endorses this approach. Law societies are encouraged to consider the following recommendations as part of their efforts to foster reconciliation.

### ***Critically Review Regulatory Processes from Indigenous Perspectives***

28. The Advisory Committee encourages law societies to engage in a critical review of all aspects of their regulatory practices from Indigenous perspectives. Doing so will foster an environment of inclusivity, understanding and respect towards Indigenous peoples and may result in significant policy and operational changes. It may also set an example for legal professionals by reinforcing the importance of making space for Indigenous legal orders, traditions and perspectives in the practice of law.

29. Some law societies have already conducted such reviews. For example, the Law Society of Ontario examined how its disciplinary tribunal addresses complaints involving Indigenous persons. The 2018 report of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples (“Keshen Review”)<sup>5</sup> included a number of recommendations for improvement. These recommendations now form part of the LSO’s broader Indigenous Framework.

#### **Recommendation 3:**

That the Federation urge law societies to critically examine their regulatory processes and structures to consider how they may be more inclusive of the needs and perspectives of Indigenous peoples, as well as how they may adversely impact Indigenous peoples.

### ***Enhance the Competency of Law Society Staff and Leadership***

30. The Advisory Committee encourages law societies to lead by example by raising their own level of competence in serving Indigenous peoples. One way to do this is by ensuring law society leadership and staff are provided with opportunities for ongoing learning and dialogue. For example, following a work plan developed by its Indigenous Initiatives Liaison, the Law Society of Alberta made staff and leader education a priority. Staff and benchers were provided with opportunities to participate in blanket exercises and other forms of cultural awareness training, weekly lunch-and-learn events, and cultural learning opportunities (e.g. beadwork). Enhancing knowledge, awareness and understanding within the law societies could improve their service delivery to the public.

#### **Recommendation 4:**

That the Federation urge law societies to provide ongoing opportunities for competency and awareness training for law society leadership and staff.

<sup>5</sup> The review arose from concerns over the handling of a series of complaints against a lawyer acting for Indigenous clients involved in the Residential Schools Settlement agreement. See *Law Society of Upper Canada v Keshen* [2017 ONSLTH 90](#)

### ***Invest in Building Relationships with Local Organizations***

31. The phrase “nothing about us, without us” widely used by Indigenous groups across Canada in different contexts is applicable to any initiatives law societies take on in relation to the TRC.

32. Law societies are urged to build relationships with, and seek guidance from, local Indigenous organizations and Indigenous members of the bar. Many law societies are already taking these steps. the Advisory Committee encourages all law societies to find opportunities for including local Indigenous groups in their reconciliation work.

33. Fostering trust and establishing connections with local groups that are also involved in the process of reconciliation is essential to any meaningful action taken by law societies. To complement and support the Federation’s engagement with the legal academy, the Advisory Committee encourages law societies to consider adding discussions about Indigenous cultural competency training to any ongoing or proposed engagement with law schools in their jurisdictions.

#### **Recommendation 5:**

That the Federation urge law societies to continue to build relationships with local Indigenous organizations, the Indigenous bar, and other appropriate groups, including the legal academy, through formal and informal opportunities for collaboration.

### ***Explore Additional Supports for Indigenous Lawyers and Students***

34. Some law societies are identifying ways to increase professional and financial supports for Indigenous members of the bar and incoming Indigenous students. For example, the Law Society of Alberta created an Indigenous Law Student Summer Employment Program to assist students of First Nation, Metis or Inuit descent in finding jobs in local firms, to create a support network for Indigenous lawyers, and increase the visibility of the students. The Barreau du Québec has implemented a mentorship and bursary program for Indigenous students entering the École du Barreau. The Law Society of British Columbia also has scholarships for Indigenous students.

35. Some law societies, including the Law Society of Alberta and the Nova Scotia Barristers’ Society, have also launched initiatives to identify ways to support Indigenous lawyers.

36. Law societies are urged to engage with their local Indigenous bars, if they have not done so already, to gain insight into any challenges they are facing as members and how law societies might better support them. Exploring these opportunities also complements the Advisory Committee’s recommendation to continue to build relationships with local Indigenous organizations.



**Recommendation 6:**

That the Federation urge law societies to collaborate with Indigenous organizations, members of the bar and law students to explore opportunities for providing additional supports to Indigenous students and members of the bar.

***Ensure Access to a Wide Array of Professional Development Resources***

37. The TRC Calls to Action, particularly Calls 27 and 28, highlight the need for all legal professionals to raise their awareness and competence as it relates to Indigenous peoples. With law schools adding to their curriculum, many recent graduates may be entering the profession with a greater understanding of Indigenous peoples, the existence of Indigenous legal orders and the history of colonization. However, a generational gap in knowledge and awareness may exist for lawyers who graduated prior to the release of the TRC report.

38. In December 2019 the Law Society of British Columbia became the first regulator to require Indigenous cultural competency training as part of continuing legal education. In February 2020 benchers of the Law Society of Alberta passed a resolution to create a new CPD program that would include mandatory Indigenous cultural competency training for all lawyers across the province starting in 2021. Other law societies, including the Nova Scotia Barristers' Society are also considering this approach. The Advisory Committee is of the view that, at a minimum, members of the legal profession in every jurisdiction should be encouraged to undertake training that will enhance their knowledge and understanding of Indigenous peoples and legal orders.

39. The Advisory Committee considered what it means to be “competent” and what type of training would enhance one’s competence. It agreed that given the range of practice areas a one-size-fits-all approach would not make sense. While all members of the legal profession need a baseline knowledge of the issues outlined in Call to Action 27, including the existence of Indigenous legal orders, some – for example those working in the criminal justice system or on child welfare matters – require expanded knowledge and understanding.

40. Adopting an approach to Indigenous cultural competency that recognizes a continuum of knowledge would be consistent with the ethical obligations of legal professionals. The Model Code of Professional Conduct defines a “competent lawyer” as one who recognizes their limitations in handling a matter and takes the necessary steps to ensure that their client is appropriately served.<sup>6</sup> To assist legal professionals in meeting their professional obligations towards Indigenous peoples, law societies are strongly encouraged to ensure that a spectrum of resources are available that will promote knowledge and competence-building at all levels.

41. The Advisory Committee notes that it is generally recognized that competence requires more than a single course or workshop. Some observers suggest that approaching reconciliation in this way could undermine its importance and lead to a perception of legal professionals “ticking a checkbox”. Some academic literature also suggests that focusing on individual obligations ignores the systemic inequalities that may be embedded within today’s

<sup>6</sup> See section 3.1-1(h)

professional legal culture and institutions.<sup>7</sup> For these reasons, the Advisory Committee encourages law societies to interpret Call to Action 27 broadly.

42. The Advisory Committee acknowledges there is already an array of TRC learning resources, practical tools and training available across the country, which could be shared more broadly if the Federation were to become a national information hub. Facilitated sharing would support law societies with fewer resources or capability to develop their own materials. The Guiding Principles developed for the Federation may also provide some guidance for developing materials.

43. The Advisory Committee thinks it essential that training be developed in consultation with local Indigenous organizations. The *Bimickaway* curriculum offered by the Ontario Ministry of the Attorney General to Public Service employees since 2017 is an example of this approach. The curriculum was borne out of meetings between Indigenous communities and the *Debewewin* Implementation Committee responsible for responding to the independent 2013 report *First Nations Representation on Ontario Juries* by the Honorable Frank Iacobucci. The Ministry established an Elders Council to review the information collected and advise on how it could be used as a teaching tool. The result was a five-module course that is taught using an Indigenous Methodology (i.e. delivered by ministry staff with Elders, use of story-telling and circle discussions). The Ministry has also partnered with other legal organizations to deliver the training, including with the Law Society of Ontario.

44. The approach of the Ontario Attorney General highlights the importance of the involvement of Indigenous peoples in the development and delivery of cultural competency training. The Advisory Committee recommends law societies follow this approach.

#### Recommendation 7:

That the Federation urge law societies to

- Consider mandatory Indigenous cultural competency training.
- Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders.
- Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction.
- Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations.

### ***Bar Admission Courses and Materials***

45. In 2016 law societies and law schools came together at the Federation's annual conference to discuss the continuum of legal education from law school to practice. That

<sup>7</sup> See for example *Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence*, *Canadian Bar Review* Vol. 97 Jan 2020; <https://cbr.cba.org/index.php/cbr/article/view/4558/4465>

continuum is especially relevant to educating legal professionals about the Calls to Action and how to competently serve Indigenous clients.

46. Despite curricular innovations over the past five years, there is merit in law societies providing supplementary education through the licensing process. This is especially important given the diversity of approaches taken by law schools to Call to Action 28 and education on Indigenous legal orders, colonization and its ongoing legacy. It is also important to note that the National Committee on Accreditation, which assess the credentials of internationally trained lawyers and students, produces the largest number of applicants to common law bar admission programs per year. Although these candidates must demonstrate competency in the same substantive law subjects as graduates of Canadian law school programs, their education and experience relating to Indigenous peoples, Indigenous legal orders, and current legal issues impacting Indigenous people are likely to be limited.

47. The Advisory Committee recommends that law societies be encouraged to review their admissions curriculum and licensing requirements and make modifications to ensure candidates receive the training called for by the TRC, including education about Indigenous legal issues and legal orders. This recommendation is one way to ensure all members of the profession have at least a baseline knowledge when they enter practice.

48. The Advisory Committee encourages law societies to consult local Indigenous lawyers, and the academy to identify areas in their bar admissions programming needing modification, and the additional tools or training that would supplement student learning.

**Recommendation 8:**

That the Federation urge law societies to review their admissions curriculum and licensing requirements and make necessary modifications to reflect the spirit and intent of the TRC Calls to Action.

**PART 3: RECOMMENDATIONS FOR THE FEDERATION'S RELATIONSHIP WITH THE LEGAL ACADEMY**

49. The Advisory Committee recognizes and supports the creative responses to Call to Action 28 the legal academy is implementing across the country. The legal academy has demonstrated leadership in this area, and the Advisory Committee has benefitted from learning about its progress.

***The National Requirement***

50. The Federation's interest in Call to Action 28 was initially grounded in its oversight of the National Requirement. The Advisory Committee engaged the legal academy early on to learn how law schools were responding to the Call to Action and were impressed to discover a diverse array of learning opportunities and supports. In 2018 the Advisory Committee developed a proposal for engaging with the legal academy about how to collaborate nationally and how to support their efforts in responding to Call to Action 28. The proposal also called for an

amendment to the National Requirement that would formalize law schools' commitment within a five-year time span. A special Working Group comprising members of the Advisory Committee, the Common Law Program Approval Committee ("Approval Committee") and the (now disbanded) National Requirement Review Committee engaged members of the Canadian Council of Law Deans ("CCLD") in a series of discussions about the proposal between 2018 and 2019. It became evident that while the academy encourages collaboration, it had serious concerns about amending the National Requirement.

51. Members of the Federation's Approval Committee, responsible for evaluating law program compliance with the National Requirement, also raised concerns about whether that committee would be able to effectively evaluate whether a law school's initiative(s) were meeting a TRC-specific requirement.

52. The Advisory Committee does not recommend that the Federation pursue an amendment to the National Requirement.

### ***Focus on Collaboration***

53. The Advisory Committee sees great value in exploring other opportunities for engagement and collaboration with the legal academy in relation to the TRC. Discussions with the CCLD reinforced the importance of, and need for, information sharing among law schools, something with which the Federation might assist. It was suggested, for example, that the Federation and the legal academy might collaborate on organizing a national conference of Indigenous academics to discuss approaches to including Indigenous curriculum in law school.

54. The legal academy is especially interested in learning about the progress law societies are making in relation to Call to Action 27 and emphasized the importance of information sharing between law societies and law schools. The CCLD suggested establishing a joint working group of representatives of the legal academy and the Federation to discuss educational initiatives in response to the Calls to Action. In addition to sharing information, a joint working group may provide an informal opportunity to monitor the progress of both the legal academy and law societies, encourage responsiveness, and identify other supports that might aid in their progress. The Advisory Committee encourages an ongoing collaborative approach with the academy in advancing Calls to Action 27 and 28.

### **Recommendation 9:**

That the Federation not pursue an amendment to the National Requirement, focusing instead on:

- facilitating ongoing dialogue and collaboration with the legal academy,
- identifying effective methods for sharing information about law school initiatives and resources among law schools, and between law schools and law societies, and
- considering other opportunities for collaboration (e.g. national conference) that may be appropriate

**CONCLUSION**

55. The recommendations outlined in this report reflect the views of the Advisory Committee on the actions the Federation and the law societies should take to respond to the TRC Calls to Action 27 and 28 to make meaningful contributions to reconciliation. The Advisory Committee recommends that Council be asked to approve the recommendations. The members of the Advisory Committee remain ready to assist with implementation of the recommendations as may be requested.



**Terms of Reference**

1. The Federation of Law Societies of Canada (the “Federation”) establishes the Truth and Reconciliation Commission Calls to Action Advisory Committee (“the Advisory Committee”).

Mandate and Process

2. The Advisory Committee is established with a mandate to make recommendations to the Council of the Federation (“Council”) on a response to the Truth and Reconciliation Commission of Canada’s Calls to Action (“Calls to Action”). In developing recommendations for consideration by the Council of the Federation, the Advisory Committee will take into account the role of the individual law societies in responding to the Calls to Action and the value in complementing any activities the law societies may undertake. In particular, the Advisory Committee will
  - a) Facilitate the exchange of information to the law societies about law society initiatives related to the Calls to Action and the initiatives of other stakeholders
  - b) Develop recommendations on a response to Calls to Action 27 and 28 as its first priority given their urgency and relevance to the regulation of the legal profession;
  - c) Work with the National Requirement Review Committee to consider whether the National Requirement should be amended to add a requirement that graduates receive cultural competency training and education on the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations as recommended in Call to Action 28;
  - d) Consider actions the Federation can take to support the establishment of Indigenous Law Institutes; and
  - e) Review other relevant Calls to Action and make such recommendations to the Council in relation to them as the Advisory Committee considers appropriate.
3. The Advisory Committee will provide a report in advance of each meeting of the Council, with the first report being submitted for the March 2017 Council meeting.

Advisory Committee Structure

4. The Advisory Committee membership should reflect a diversity of experiences and knowledge relevant to the issues under consideration, including knowledge of the history, cultures and rights of Indigenous peoples, Indigenous law, the Canadian justice system, legal education, and regulation of the legal profession.

5. The Advisory Committee will be broadly regionally representative and will be comprised of not more than eleven members as follows:
  - a) Five members drawn from the Council, past or present law society leadership or law society senior staff, one representing each of the five regions across Canada (Atlantic, Quebec, Ontario, West and North).
  - b) One to two members with experience in the legal academy in Canada.
  - c) Three to four members representing First Nation, Métis and Inuit communities or organizations.
6. The following qualifications will be represented on the Advisory Committee, although it is not necessary that each member possess all the qualifications:
  - a) Institutional knowledge of law societies and the Federation and an understanding of regulation of the legal profession and law society mandates.
  - b) Experience with and/or knowledge of the history and legacy of residential schools.
  - c) Familiarity with and an understanding of Indigenous law.
  - d) Familiarity with and an understanding of Constitutional law as it relates to Aboriginal Peoples.
  - e) Familiarity with and an understanding of Indigenous cultures.
  - f) Familiarity with and an understanding of broader justice issues impacting First Nation, Métis or Inuit people.
  - g) Experience in the legal academy.
  - h) Experience in engaging with a diversity of stakeholders.
7. The Advisory Committee will have two co-chairs, one chosen from the Council or law society representatives, the other chosen from the representatives of Indigenous communities or organizations.

#### Outside Participation

8. To fulfill its mandate, the Advisory Committee may seek the assistance of and engage with outside parties including representatives of national Indigenous organizations and communities, law societies, the legal academy, the legal profession, other Federation committees (such as the Law Societies Equity Network) and other justice-system stakeholders as it considers appropriate.

#### Resources

9. To ensure that the Advisory Committee is able to carry out its mandate effectively, it should receive appropriate staff and financial resources.

### Summary of TRC Calls to Action Advisory Committee Recommendations

#### Recommendation 1:

That the Federation make a formal statement of commitment to reconciliation with Indigenous peoples in Canada as part of its framework for responding to the Truth and Reconciliation Commission of Canada, and that it share that commitment publicly.

To demonstrate this commitment, it is recommended that the Federation:

- Adopt and implement the Guiding Principles attached as Appendix C to inform all aspects of the Federation's work and operations.
- Become the national hub for gathering and sharing up-to-date information about what law societies and law schools are doing in response to the TRC.
- Explore and promote opportunities for building stronger relationships with the Indigenous Bar Association, its representatives and any other national Indigenous organizations it considers appropriate.

#### Recommendation 2:

That the Federation urge all law societies to make a formal commitment to reconciliation and develop a framework or steps for putting that commitment into action. Law societies may consider adopting the Guiding Principles in Appendix C, if they do not yet have a framework in place, to guide their work on reconciliation.

#### Recommendation 3:

That the Federation urge law societies to critically examine their regulatory processes and structures to consider how they may be more inclusive of the needs and perspectives of Indigenous peoples, as well as how they may adversely impact Indigenous peoples.

#### Recommendation 4:

That the Federation urge law societies to provide ongoing opportunities for competency and awareness training for law society leadership and staff.

#### Recommendation 5:

That the Federation urge law societies to continue to build relationships with local Indigenous organizations, the Indigenous bar, and other appropriate groups, including the legal academy, through formal and informal opportunities for collaboration.

#### Recommendation 6:

That the Federation urge law societies to collaborate with Indigenous organizations, members of the bar and law students to explore opportunities for providing additional supports to Indigenous students and members of the bar.



#### Recommendation 7:

That the Federation urge law societies to

- Consider mandatory Indigenous cultural competency training.
- Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders.
- Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction.
- Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations.

#### Recommendation 8:

That the Federation urge law societies to review their admissions curriculum and licensing requirements and make necessary modifications to reflect the spirit and intent of the TRC Calls to Action.

#### Recommendation 9:

That the Federation not pursue an amendment to the National Requirement, focusing instead on:

- facilitating ongoing dialogue and collaboration with the legal academy,
- identifying effective methods for sharing information about law school initiatives and resources among law schools, and between law schools and law societies, and
- considering other opportunities for collaboration (e.g. national conference) that may be appropriate

### Guiding Principles for Fostering Reconciliation

#### 1. Actively promote reconciliation

- a) Reconciliation is, among other things, a commitment to build trust. Trust encourages an open and full exchange of ideas, including disagreement, which is an essential part of any resolution or decision-making journey.
- b) Reconciliation requires genuine and ongoing dialogue, and active exploration of engagement opportunities with all relevant stakeholders. Ongoing dialogue and engagement are essential for building relationships and demonstrating inclusivity and respect for all participants.
- c) Reconciliation requires action at both the institutional and the individual levels.

#### 2. Respect and make space for Indigenous legal orders

- a) Reconciliation requires that we acknowledge, respect and understand that Indigenous legal orders existed prior to the establishment of European systems of law in Canada.
- b) Reconciliation requires that we make space for Indigenous legal orders, processes and traditions as part of Canada's legal landscape, and recognize how such traditions connect to, or diverge from, the common and civil law systems.
- c) A legal system that fails to recognize and make space for Indigenous legal orders and the experiences of Indigenous peoples fails to properly serve Indigenous peoples.
- d) Like all living legal traditions, Indigenous legal principles are not fixed in time; they must be understood as evolving and changing.

#### 3. Ensure institutional transparency and accountability

- a) There are many reasons for Indigenous peoples to distrust the justice system and its participants, including lawyers and legal education providers. Any work in this area must be transparent and demonstrate that meaningful action is taking place.
- b) There must be mechanisms for ensuring the accountability of legal regulators and legal educators in:
  - o improving the knowledge and competency of legal professionals and students
  - o implementing necessary policy, procedural and/or structural changes to better reflect and serve Indigenous peoples
  - o making space for Indigenous legal orders in the practice of law
  - o demonstrating active leadership and an ongoing commitment to reconciliation with Indigenous peoples in Canada

#### **4. Respect diversity and jurisdictional differences**

- a) Reconciliation requires respect for the diversity of Indigenous peoples, experiences, and legal orders in Canada.
- b) It is essential to recognize the unique experiences of Indigenous women, including both historical and contemporary harms caused by colonization.
- c) The Truth and Reconciliation Commission Calls to Action should be interpreted broadly to encourage a diversity of responses from legal and justice system stakeholders.
- d) Reconciliation activities should complement, support and encourage the variety of responses already occurring within law societies and law schools.

#### **5. Encourage individual and systemic responsibility for reconciliation**

- a) Reconciliation requires thoughtful reflection and change at both a systemic and an individual level, including reflection on how one's own experiences, biases, and perspectives contribute to the process of colonization.
- b) Individual members of the legal profession have a responsibility to expand their knowledge and understanding of Indigenous perspectives and experiences and to take steps to ensure they are not contributing to the harms their Indigenous clients experience when engaging with the justice system.

#### **6. View Competence through Indigenous perspectives**

- a) Indigenous cultural competency requires an appreciation of the existence and intersectionality of:
  - Indigenous worldviews, perspectives, legal systems, laws, etc.
  - The unique legal context of Indigenous peoples in Canada
  - The history of colonization of Indigenous peoples in Canada
  - Systematic discrimination and unconscious bias against Indigenous peoples
  - Racism experienced by Indigenous individuals
  - The international legal principles that apply to Indigenous peoples in Canada
  - Diversity amongst Indigenous populations
  - Regionally significant information and events
- b) The depth of knowledge and understanding required to be competent varies depending on the context. Staff and leaders of justice system organizations and all members of the legal profession require at least a general level of knowledge and understanding. Those working in certain areas, including criminal justice and child protection, require a deeper understanding and awareness.
- c) General intercultural competence training or awareness does not sufficiently address the realities, experiences and needs of Indigenous peoples. Indigenous-specific cultural competency or awareness training is required.
- d) Becoming culturally competent requires ongoing learning.