

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Ad Hoc Committee on Approval of New Canadian Law Degree Programs

Report on an Application by:

Université de Montréal

January 2012



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INTRODUCTION

1. In Canada, each provincial and territorial law society determines whether the holder of a Canadian law degree is entitled to apply for admission to its bar admission or licensing program.

2. In the early 1990s, the law societies delegated to the Federation of Law Societies of Canada (the “Federation”) the authority to review and make recommendations with respect to new Canadian law degree programs leading to the conferral of common law degrees (“Law School Programs”).

3. In 2007, the Federation established the Task Force on the Canadian Common Law Degree (the “Task Force”) to recommend to law societies, for the first time, national academic requirements for a Canadian law degree for purposes of entry into bar admission or licensing programs.

4. Included among the factors motivating the Federation to undertake this initiative was the interest a number of Canadian universities and private degree-granting institutions expressed beginning in 2007 to offer new Law School Programs.

5. The Task Force said this at page 20 of its Final Report (the “Task Force Report”):

New law schools will want to ensure that their graduates are eligible to enter bar admission programs in any common law jurisdiction in Canada. The adequacy and portability of their law degree for this purpose will be as essential to them and their students as it is to the already established law faculties. A clearly articulated national requirement is necessary to ensure that new Canadian law schools know what they must do to enable their graduates to enter bar admission programs.

6. As part of its work, the Task Force considered the long-term manner in which proposals for new law schools should be evaluated and by whom.

7. At the same time, however, given two applicants seeking a decision about their potential programs, prior to the conclusion of the Task Force’s work, the Federation Council recognized the need for a temporary mechanism to consider requests for approval of new Law School Programs.

8. In March 2009, the Federation Council established the Ad Hoc Committee on Approval of New Canadian Law Degree Programs (the “Committee”). Its original mandate was to evaluate applications for new Law School Programs on the basis of standards set by the Law Society of Upper Canada (last reviewed in 1969) as they may be applicable today.

9. The Task Force Report was issued in October 2009 and its recommendations for national academic requirements for a Canadian law degree for purposes of entry into bar admission or licensing programs (the “National Requirements”) were approved by Canada’s law societies in March 2010, with implementation of the National Requirements to be the subject of a further Federation process. The National Requirements are appended to this report as Appendix A.

10. In March 2010, the Federation Council revisited the Committee’s terms of reference and determined that applications for new Law School Programs should be considered in light of the National Requirements, pending the implementation of the recommendations of the Task Force Report.



11. In February 2011, the Federation Council approved the recommendations of the Committee regarding the new law degree program applications from Lakehead University and Thompson Rivers University. Each Canadian common law law society subsequently approved these new law degree programs.

COMMITTEE MEMBERSHIP AND TERMS OF REFERENCE

12. The following individuals are members of the Committee:

- (a) **Ronald J. MacDonald, Q.C., Chair.** Mr. MacDonald is Director of Nova Scotia's Serious Incident Response Team. He was the President of the Nova Scotia Barristers' Society and is the Past President of the Federation;
- (b) **Marilyn Billinkoff.** Ms. Billinkoff is the Deputy Chief Executive Officer of the Law Society of Manitoba;
- (c) **Philip Bryden.** Mr Bryden is the Dean of the Faculty of Law at the University of Alberta and was the Dean of the Faculty of Law at the University of New Brunswick;
- (d) **Tom Conway.** Mr. Conway is a partner at Cavanagh Williams Conway Baxter LLP, a Bencher of the Law Society of Upper Canada, a Federation Vice President and the Federation Council member representing the Law Society of Upper Canada;
- (e) **Graeme Mitchell, Q.C.** Mr. Mitchell is Director of the Constitutional Law Branch of the Saskatchewan Department of Justice, was a Bencher of the Law Society of Saskatchewan and is the Federation Council member representing the Law Society of Saskatchewan; and
- (f) **Stephanie L. Newell, Q.C.** Ms. Newell is a partner at O'Dea Earle Law Offices, Past President of the Law Society of Newfoundland and Labrador and served as the Federation Council member representing the Law Society of Newfoundland and Labrador.

13. The work of the Committee is supported by Deborah Wolfe, P.Eng. Ms. Wolfe is the Managing Director of the National Committee on Accreditation.

14. The Committee's terms of reference, as approved by the Federation Council in March 2010 (the "Terms of Reference"), are as follows:

The Federation of Law Societies of Canada (the "Federation") establishes the Ad Hoc Committee on Approval of New Canadian Law Degree Programs (the "Committee") whose mandate shall be to make recommendations to the Council of the Federation in respect of applications by Canadian universities (the "Applications") for approval by the Federation of new academic programs leading to the conferral of a common law law degree which would entitle its holders to apply for admission to Canadian law societies ("Law School Programs"). In particular, and until such time as a successor body has been established by the Federation pursuant to the implementation of the Final Report of the Task Force on the Canadian Common Law Degree (the "Task Force Report"), the Committee shall:

- (a) Consider any Application in light of the national requirements set forth in the Task Force Report (the “National Requirements”) and determine on what conditions, if any, an Application should be approved.
- (b) Invite each applicant to make submissions to the Committee with respect to how the proposed Law School Program would meet the National Requirements.
- (c) Determine in its discretion whether submissions by applicants shall be made orally, in writing or both.
- (d) Determine in its discretion whether and in what manner it wishes to entertain submissions from persons, organizations or institutions other than applicants in respect of Applications.
- (e) In Consultation with the senior staff of the Federation, submit for the Federation Executive’s approval a budget in respect of the Committee’s consideration of an Application.
- (f) Endeavour to make recommendations to the Council of the Federation regarding an Application no later than three (3) months following receipt of submissions from an applicant including with respect to whether its Application meets the National Requirements, and if so, the conditions upon which such Application is approved, if any.

15. The Committee is mindful that the scope of its mandate does not extend to consideration of policy issues including whether it is desirable to increase the number of law graduates in Canada and if so, whether and how this might best be accomplished, whether by the expansion of existing programs or the creation of new ones. The Committee believes that these questions are best left to universities which seek approval of new programs and the provincial education authorities charged with approving such programs.

16. The Committee also appreciates the distinction between the mandate which has been conferred upon it, namely, to evaluate whether applications for new Law School Programs, if implemented, would meet the National Requirements, and the evaluation of whether existing programs meet the National Requirements. It acknowledges that the monitoring of whether new programs continue to meet the National Requirements on an ongoing basis would be the subject of a different process.

APPLICATION FOR APPROVAL OF NEW LAW SCHOOL PROGRAMS

23. Université de Montréal (“Montréal”), made a formal application to the Federation for approval of a new common law program. The Committee was seized with the application in 2011.

Background

24. In 2010, Montréal established a one year program of study at the Faculty of Law leading to a Juris Doctor (J.D.) specializing in North American law. The program accommodates approximately 50 students annually. The J.D. follows the existing LL.B. program at the Université de Montréal. Applicants who have not taken a Montréal LL.B. will need to demonstrate that they have competence in all required areas of a Montréal LL.B. before being accepted. Montréal does not plan to accept non-Canadian civil law graduates into this program.

25. Montréal reports that the program's objectives are:

- To provide students with an understanding of the institutions and history of the Canadian and United States Common Law systems;
- To enable students to proceed to comparative analyses of common law and civil law systems;
- To provide students with comparative skills in Anglo-Canadian and American law in the main areas of law;
- To enable students to develop a critical approach and outlook on Quebec, Canadian and American law;
- To impart students with the ability to use different legal systems to bring innovative solutions to complex problems; and
- To offer students holding a bachelor recognized by the Quebec Bar a training that gives them the opportunity to be admitted to the Bars of common law provinces or other common law jurisdictions.

26. In April 2011, in accordance with the Terms of Reference, Montréal submitted an application to the Committee with respect to how its J.D. would meet the National Requirements.

27. The Committee's findings with respect to whether and in what manner Montréal's proposed Law School Program would, when fully implemented as described, meet the National Requirements, are set forth in the table appended to this report as Appendix B-1.

Committee Evaluation Process for Montréal

28. On April 29, 2011, the Committee received submissions from Montréal. They are appended to this report as Appendix B-2.

29. On June 3, 2011, the Committee met by conference call to consider Montréal's submission. As a result of its deliberations, the Committee sought additional information from Montréal by letter dated July 11, 2011. A copy of the letter is appended to this report as Appendix B-3.

30. On October 14, 2011, the Committee received supplementary submissions from Montréal. They are appended to this report as Appendix B-4.

31. On November 22, 2011, the Committee met by teleconference to consider Montréal's supplementary submissions.

CONCLUSION

32. After due consideration of the application before it, the Committee makes the following recommendations to the Council of the Federation:

- (a) That the Federation accept the application by Université de Montréal for approval of a new academic program leading to the conferral of a J.D. in North American Law which would entitle its holders to apply for admission to Canadian law societies (the "Montréal J.D."), such approval being granted on the following conditions:

- (i) full implementation to the satisfaction of the Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Committee as set forth in Appendix B; and
- (ii) ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Université de Montréal Common Law Degree Program continues to meet the National Requirements.



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APPENDIX A

Task Force Recommendations

THE TASK FORCE'S RECOMMENDATIONS

1. The Task Force recommends that the law societies in common law jurisdictions in Canada adopt forthwith a uniform national requirement for entry to their bar admission programs ("national requirement").
2. The Task Force recommends that the National Committee on Accreditation ("NCA") apply this national requirement in assessing the credentials of applicants educated outside Canada.
3. The Task Force recommends that this national requirement be applied in considering applications for new Canadian law schools.
4. The Task Force recommends that the following constitute the national requirement:

A. Statement of Standard

1. Definitions

In this standard,

- a. "bar admission program" refers to any bar admission program or licensing process operated under the auspices of a provincial or territorial law society leading to admission as a lawyer in a Canadian common law jurisdiction;*
- b. "competency requirements" refers to the competency requirements, more fully described in section B, that each student must possess for entry to a bar admission program; and*
- c. "law school" refers to any educational institution in Canada that has been granted the power to award an LL.B. or J.D. degree by the appropriate provincial or territorial educational authority.*

2. General Standard

An applicant for entry to a bar admission program ("the applicant") must satisfy the competency requirements by either,

- a. successful completion of an LL.B. or J.D. degree that has been accepted by the Federation of Law Societies of Canada ("the Federation"); or*

- b. *possessing a Certificate of Qualification from the Federation's National Committee on Accreditation.*

B. Competency Requirements

1. Skills Competencies

The applicant must have demonstrated the following competencies:

1.1 Problem-Solving

In solving legal problems, the applicant must have demonstrated the ability to,

- a. *identify relevant facts;*
- b. *identify legal, practical, and policy issues and conduct the necessary research arising from those issues;*
- c. *analyze the results of research;*
- d. *apply the law to the facts; and*
- e. *identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.*

1.2 Legal Research

The applicant must have demonstrated the ability to,

- a. *identify legal issues;*
- b. *select sources and methods and conduct legal research relevant to Canadian law;*
- c. *use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;*
- d. *identify, interpret and apply results of research; and*
- e. *effectively communicate the results of research.*

1.3 Oral and Written Legal Communication

The applicant must have demonstrated the ability to,

- a. *communicate clearly in the English or French language;*

- b. identify the purpose of the proposed communication;*
- c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and*
- d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.*

2. Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;*
- b. the ability to identify and address ethical dilemmas in a legal context;*
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,*
 - i. circumstances that give rise to ethical problems;*
 - ii. the fiduciary nature of the lawyer's relationship with the client;*
 - iii. conflicts of interest;*
 - iv. duties to the administration of justice;*
 - v. duties relating to confidentiality and disclosure;*
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and*
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.*

3. Substantive Legal Knowledge

The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of

the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and*
- b. legal and fiduciary concepts in commercial relationships.*

C. Approved Canadian Law Degree

The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic

and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:

1. *Academic Program:*
 - 1.1 *The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.*
 - 1.2 *The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.*
 - 1.3 *Holders of the degree have met the competency requirements.*
 - 1.4 *The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.*
 - 1.5 *Subject to special circumstances, the admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.*
 2. *Learning Resources:*
 - 2.1 *The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.*
 - 2.2 *The law school has adequate physical resources for both faculty and students to permit effective student learning.*
 - 2.3 *The law school has adequate information and communication technology to support its academic program.*
 - 2.4 *The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.*
5. The Task Force recommends that the compliance mechanism for law schools be a standardized annual report that each law school Dean completes and submits to the

Federation or the body it designates to perform this function. In the annual report the Dean will confirm that the law school has conformed to the academic program and learning resources requirements and will explain how the program of study ensures that each graduate of the law school has met the competency requirements.

6. The Task Force recommends that the Federation, or the body it designates to consider proposals for new Canadian law schools, be entitled to approve a proposal with such conditions as it thinks appropriate, relevant to the national requirement.
7. The Task Force recommends that by no later than 2015, and thereafter, all applicants seeking entry to a bar admission program must meet the national requirement.
8. The Task Force recommends that the Federation establish a committee to implement the Task Force's recommendations.



APPENDIX B-1

Université de Montréal

Summary of Applicant Submissions
and their Alignment with
National Requirements

Applicant Submissions and their Alignment with the National Requirements – Summary Université de Montréal

(References are to the Appendices in this Report)

National Requirements	Submission	Committee Evaluation of Proposal, if Implemented
A. COMPETENCY REQUIREMENTS		
1. Skills Competencies <i>The applicant must have demonstrated the following competencies:</i>		
1.1 <u>Problem Solving</u> <i>In solving legal problems, the applicant must have demonstrated the ability to,</i> <i>a. identify relevant facts;</i> <i>b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues;</i> <i>c. analyze the results of research;</i> <i>d. apply the law to the facts; and</i> <i>e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute.</i>	Will be assessed in DRT 6464, Integration Workshop, in the J.D. program and as a standard teaching method in most courses during the LL.B. and J.D. programs. Appendix B-2, Section 2.2.1 and Table 2.	✓
1.2 <u>Legal Research</u> <i>The applicant must have demonstrated the ability to,</i> <i>a. identify legal issues;</i> <i>b. select sources and methods and conduct legal research relevant to Canadian law;</i> <i>c. use techniques of legal</i>	Will be assessed in DRT 1901, Development of Skills Competencies 1, during the LL.B. program. Appendix B-2, Section	✓

<p><i>reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues;</i></p> <p><i>d. identify, interpret and apply results of research; and</i></p> <p><i>e. effectively communicate the results of research.</i></p>	<p>2.2.1 and Table 2.</p>	
<p>1.3 <u>Oral and Written Legal Communication</u></p> <p><i>The applicant must have demonstrated the ability to,</i></p> <p><i>a. communicate clearly in the English or French language;</i></p> <p><i>b. identify the purpose of the proposed communication;</i></p> <p><i>c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and</i></p> <p><i>d. effectively formulate and present well reasoned and accurate legal argument, analysis, advice or submissions.</i></p>	<p>Oral and written legal communication will be woven through the core LL.B. curriculum. In addition, oral competencies will be further developed in DRT 6464, Integration Workshop, in the J.D. program.</p> <p>Appendix B-2, Section 2.2.1 and Table 2.</p>	
<p>2. Ethics and Professionalism</p>		
<p>2. <u>Ethics and Professionalism</u></p> <p><i>The applicant must have demonstrated an awareness and understanding of the ethical requirements for the practice of law in Canada, including,</i></p> <p><i>a. the duty to communicate with civility;</i></p> <p><i>b. the ability to identify and address ethical dilemmas in a legal context;</i></p> <p><i>c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to,</i></p> <p><i>i. circumstances that give rise to ethical problems;</i></p> <p><i>ii. the fiduciary nature of the</i></p>	<p>A new course will be introduced in 2011-2012 in the J.D. program that will comply with the National Requirement.</p> <p>Appendix B-2, Section 2.2.1 and Tables 2 and 3.</p>	

<p>lawyer's relationship with the client;</p> <p>iii. conflicts of interest;</p> <p>iv. duties to the administration of justice;</p> <p>v. duties relating to confidentiality and disclosure;</p> <p>vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and</p> <p>vii. the importance and value of serving and promoting the public interest in the administration of justice.</p>		
<p>3. Substantive Legal Knowledge</p> <p><i>The applicant must have undertaken a sufficiently comprehensive program of study to obtain an understanding of the complexity of the law and the interrelationship between different areas of legal knowledge. In the course of this program of study the applicant must have demonstrated a general understanding of the core legal concepts applicable to the practice of law in Canada, including as a minimum the following areas:</i></p>		
<p>3.1 <u>Foundations of Law</u></p> <p><i>The applicant must have an understanding of the foundations of law, including,</i></p> <p><i>a. principles of common law and equity;</i></p> <p><i>b. the process of statutory construction and analysis; and</i></p> <p><i>c. the administration of the law in Canada.</i></p>	<p>Competencies will be taught in six mandatory LL.B. courses and two mandatory J.D. courses.</p> <p>Appendix B-2, Section 2.1.1 and Table 2.</p>	<p style="text-align: center;">✓</p>
<p>3.2 <u>Public Law of Canada</u></p> <p><i>The applicant must have an understanding of the core principles of public law in Canada, including,</i></p> <p><i>a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;</i></p> <p><i>b. Canadian criminal law; and</i></p>	<p>Competencies will be taught in five mandatory courses in the LL.B. program.</p> <p>Appendix B-2, Section 2.1.1 and Table 2.</p>	<p style="text-align: center;">✓</p>

<i>c. the principles of Canadian administrative law.</i>		
<p>3.3 Private Law Principles</p> <p><i>The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,</i></p> <p><i>a. contracts, torts and property law; and</i></p> <p><i>b. legal and fiduciary concepts in commercial relationships.</i></p>	<p>Competencies will be taught in two mandatory courses in the LL.B. program and seven mandatory courses in the J.D. program.</p> <p>Appendix B-2, Section 2.1.1, 2.2.1 and Table 2.</p>	✓
B. APPROVED CANADIAN LAW DEGREE		
<p><i>The Federation will accept an LL.B. or J.D. degree from a Canadian law school as meeting the competency requirements if the law school offers an academic and professional legal education that will prepare the student for entry to a bar admission program and the law school meets the following criteria:</i></p>		
1. Academic Program		
<p>1.1 <i>The law school's academic program for the study of law consists of three academic years or its equivalent in course credits.</i></p>	<p>Most students will have completed 133 credits during the LL.B. and J.D. programs over four academic years.</p> <p>Appendix B-2, Section 2.3 and Table 3.</p>	✓
<p>1.2 <i>The course of study consists primarily of in-person instruction and learning and/or instruction and learning that involves direct interaction between instructor and students.</i></p>	<p>Teaching at the Faculty combines traditional pedagogy, such as lectures and tutorials; practical work, including legal clinics and internships; technopedagogy, such as cyber-tribunal and WebCT; and, social media, more specifically videos, social networks and blogs.</p> <p>Appendix B-2, Section 1.6.2 and Table 3.</p>	✓

<p>1.3 <i> Holders of the degree have met the competency requirements.</i></p>	<p>A variety of mechanisms, including external evaluations, are used to ensure the quality of the program.</p> <p>Appendix B-2, Section 2.3 and Table 3.</p>	<p style="text-align: center;">✓</p>
<p>1.4 <i> The academic program includes instruction in ethics and professionalism in a course dedicated to those subjects and addressing the required competencies.</i></p>	<p>A new course will be introduced in 2011-2012 in the J.D. program that will comply with the National Requirement.</p> <p>Appendix B-2, Section 2.2.1 and Tables 2 and 3.</p>	<p style="text-align: center;">✓</p>
<p>1.5 <i> Subject to special, circumstances, The admission requirements for the law school include, at a minimum, successful completion of two years of postsecondary education at a recognized university or CEGEP.</i></p>	<p>Completion of the LL.B. program is required for admission to the J.D. program.</p> <p>Appendix B-2, Sections 2.1.2 and 2.2.2, and Table 3.</p>	<p style="text-align: center;">✓</p>
<p>2. Learning Resources:</p>		
<p>2.1 <i> The law school is adequately resourced to enable it to meet its objectives, and in particular, has appropriate numbers of properly qualified academic staff to meet the needs of the academic program.</i></p>	<p>Plans have been developed to ensure that any additional human and physical resources required to offer the J.D. are in place.</p> <p>Appendix B-2, Section 1.2 and Table 3. Appendix B-4, Section 2.1.</p>	<p style="text-align: center;">✓</p>
<p>2.2 <i> The law school has adequate physical resources</i></p>	<p>All required facilities are in place.</p>	<p style="text-align: center;">✓</p>

<p><i>for both faculty and students to permit effective student learning.</i></p>	<p>Appendix B-2, Section 1.6.2 and Table 3. Appendix B-4, Section 2.2.</p>	
<p><i>2.3 The law school has adequate information and communication technology to support its academic program.</i></p>	<p>All required facilities are in place.</p> <p>Appendix B-2, Section 1.6.2 and Table 3. Appendix B-4, Section 2.3.</p>	<p style="text-align: center;">✓</p>
<p><i>2.4 The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives.</i></p>	<p>All required facilities are in place.</p> <p>Appendix B-2, Section 1.6.1 and Table 3. Appendix B-4, Section 2.4.</p>	<p style="text-align: center;">✓</p>