

# Topic 3

## Licensing Examinations: Assessment of Entry-level Competence



Dialogue on Licensing

Dialogue sur l'accès  
à la profession



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

# Dialogue on Licensing

- The Law Society is undertaking a comprehensive analysis of the lawyer licensing process
- The goal of this analysis is to formulate long-term recommendations for an appropriate and sustainable licensing system for lawyers
- To support this analysis, the Law Society is committed to engaging directly with the profession and other stakeholders

# Dialogue on Licensing

- Discussion groups are being held in seven cities across Ontario
- Each discussion group focusses on one of the following four topics:
  1. The Need For Change
  2. Market Dynamics and the Lawyer Profession
  3. Licensing Examinations: Assessment of Entry-level Competence
  4. Transitional Training

# Reference Materials - Licensing Examinations: Assessment of Entry-level Competence

- Overview of the Lawyer Licensing Process in Ontario
- Primer on the Purpose of Licensure
- Licensing Examinations Best Practices and the Ontario Assessment Model
- Lawyer Licensing Examination Outcomes in Ontario
- The Evolution of Lawyer Licensing Examinations in Ontario
- Licensing Examination Frameworks in Other Professions
- Licensing Process Statistics

# Focus of Today's Discussion

1. Gain a better understanding of how the Barrister and Solicitor Examinations are developed
2. Review key attributes of effective licensing examinations
3. Discuss future options that support assessment of entry-level competence that are valid, reliable and defensible

# Objectives of Licensing

1. Fair, transparent and valid
2. Assuring entry-level competence
3. Sustainable (realistic and acceptable)
4. In the public interest

# History

- Increasing number of candidates
- Bar Admission Course duplicative of law school course work
- Concerns about costs, traveling and potential relocation
- Challenges administering and marking examinations

# Formative vs Summative

**Formative:** designed to monitor learning and provide ongoing developmental feedback

**Summative:** designed to measure the candidate's level of success by comparing it against a defined standard



# History

The changes to the examination process were premised on:

- Enhancing the validity of licensing standards
- Standardizing results
- Improving equity and access to admission to licensing
- Reducing costs to candidates

# Key Attributes for Effective Licensing Examinations

- **Valid:** the examination accurately measures what it is supposed to measure
- **Reliable:** the examination is consistent and stable in measuring what it is intended to measure
- **Defensible:** the examination measures the degree to which a candidate possesses entry level competence and distinguishes between those candidates who do not possess entry level competence

# Competencies

- **Competency:** knowledge, skill, ability, attitude or judgment required for practice
- The examinations are designed to test competencies that:
  - ✓ Are required for entry-level practice
  - ✓ Have the most direct impact on the protection of the public, and
  - ✓ Influence an effective and ethical practice

# The Barrister and Solicitor Competencies

- Developed by the Law Society and hundreds of practitioners using practice analysis
- Rated by 4000 randomly chosen practising lawyers
- Determined to be the most critical and frequently performed
- Reflect the minimum requirements of barristers and solicitors entering the profession

# The Barrister and Solicitor Examinations

The examinations are:

- Open-book format
- ~ 240 multiple choice questions
- Seven hours in length
- Comprised of two parts of 3.5 hours, with Part 1 in the morning and Part 2 in the afternoon
- Administered 3 times a year
- Can be written in English or French

# Barrister Examination

- Application of law and procedure
- Issue identification, analysis and assessment
- Litigation process and alternative dispute resolution
- Ethics, professional responsibility and practice management in:
  - Civil litigation
  - Family law
  - Public law
  - Criminal law

# Sample Question on Barrister Examination

Webster, a litigation lawyer, is representing a plaintiff, Blair, in an action against Evan, who is unrepresented. Blair tells Webster that he thinks that Evan cannot afford his own lawyer. After Evan serves and files his statement of defence, he calls Webster to discuss settlement. Evan states that he is considering paying the claim in full and asks Webster what he thinks. Webster knows that Evan has partial defences to the claims advanced. Webster tells Evan that he only represents Blair and cannot protect Evan's interests in the litigation. Has Webster complied with his professional obligations?

# Sample Question on Barrister Examination

- A. Yes, he has confirmed who his client is and that he cannot protect other interests.
- B. Yes, because he has obtained information from Evan that will further his client's interests.
- C. No, he had a duty to provide *pro bono* legal services to Evan.
- D. No, he breached his duty to the administration of justice by not advising the unrepresented party of available defences.



# Sample Question on Solicitor Examination

William, a real estate lawyer, is involved with a property sale that has a closing date in 2 days. William gets a call from another lawyer indicating William's client has now discharged him and he is faxing William a direction to transfer the file. William still has a substantial unpaid account and does not want to lose his leverage to get paid. What should William do next?

# Sample Question on Solicitor Examination

- A. Hold the file until his account is paid.
- B. Contact the Law Society to report the other lawyer.
- C. Close the file and obtain a personal undertaking from the other lawyer to pay his account.
- D. Confirm he has been discharged and forward the file.

# Test Specifications or “Blueprint”

- Ensures same categories of competencies are being assessed, to the same standard, in every administration of the examination
- Provides consistency between each sitting of the examination
- Enhances the reliability, validity, fairness and defensibility of the examination from one licensing cycle to the next

# Test Question Development

- **Item:** individual questions on the examination
- Directly aligned with the competencies
- Written by practitioners representing different practice areas and contexts
- Extensive review and validation protocols

# The Barrister and Solicitor Examinations

The items on the examinations assess three levels of cognitive abilities:

1. Knowledge/Comprehension – recollection of facts, policies, procedures and standards
2. Application- application of knowledge in a straight forward applied situation
2. Critical Thinking – application of knowledge in complex applied situations

# Standard Setting

- **Advisory Groups** (exemplary practitioners, representing a cross-section of relevant practice areas, contexts and firm sizes) approve items that will appear on each examination
- And set and approve the minimal passing score, or **passing mark**, for that examination using the standard of a minimally competent, entry level lawyer

# Criterion-Referenced vs Norm-Referenced

**Criterion-Referenced:** Candidates are assessed against a fixed standard

**Norm-Referenced:** Candidates are assessed in comparison to the performance of other candidates

# Scoring and Reporting

- Computerized scoring devices scan and score all answer sheets
- Sheets that fall below the passing mark or within a certain percentage are manually marked
- All candidates who “fail” receive a **Licensing Examination Profile** to focus their study efforts and have access to tutoring



# Lawyer Licensing Examination Outcomes

- An indication of readiness for licensure
- First attempt passing rates differ across candidates from different education paths and experiential training streams
- The examination is only one of the assessments of capacity to practise during the licensing process

# Any Questions?

**What changes in approach or focus would you propose for the licensing examinations?**

# Objectives of Licensing

1. Fair, transparent and valid
2. Assuring entry-level competence
3. Sustainable (realistic and acceptable)
4. In the public interest

# Next Topic for Discussion

## Topic 4: Transitional Training

- Sudbury on Monday, June 12 at 6:00 pm – 8:00 pm
- Thunder Bay on Thursday, June 15 at 6:00 pm – 8:00 pm
- Hamilton on Tuesday, June 20 at 12:00 pm – 2:00 pm
- London on Tuesday, June 20 at 6:00 pm – 8:00 pm
- Ottawa on Thursday, June 22 at 6:00 -8:00 pm
- Toronto on Tuesday, June 27 at 6:00 -8:00 pm

# Thank you for participating

Register to participate in upcoming discussion groups near you at [lsucdialogue.ca](http://lsucdialogue.ca)

Submit written input online at [lsucdialogue.ca](http://lsucdialogue.ca)

Mail written input to:

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