



Topic 3

Licensing Examinations: Assessment of Entry-level Competence Discussion Group Summary Report

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Dialogue on Licensing

What: Comprehensive analysis of the lawyer licensing process

Goal: To formulate long-term recommendations for an appropriate and sustainable licensing system for lawyers

When: Spring 2017

Where: Held in seven cities across Ontario

Purpose of the Dialogue on Licensing: Engage directly with the legal profession and other stakeholders (lead by a professional facilitator who is not a lawyer and has no vested interest in the outcome).

Reference Materials: To facilitate a more robust and fact-based dialogue, reference materials were provided on a microsite, accessible to all attendees and individuals wishing to contribute to the dialogue: <https://lsucdialogue.ca/>

Topics: The topics of the four dialogue sessions are as follows:

Topic 1: The Need For Change

Topic 2: Market Dynamics and the Lawyer Profession

Topic 3: Licensing Examinations: Assessment of Entry-level Competence (webcast)

Topic 4: Transitional Training

Topic 3 Webcast: A two-hour interactive webcast about the Barrister and Solicitor Licensing Examinations was held on June 5.

Objectives for discussion about Licensing Examinations: Assessment of Entry-level Competence

- To gain a better understanding of how the Barrister and Solicitor Examinations are developed
- To review key attributes of effective licensing examinations
- To discuss future options that support assessment of entry-level competence that are valid, reliable and defensible.

Registration and Attendance for the Webcast

Format	Registered	Walked-In	No Show	Attended	Attended versus Registered
In Person	124	3	100	27	- 97 (22%)
By Webcast	120	N/A	78	42	- 78 (35%)
Total	224	3	178	69	- 155 (31%)

Webcast Participants

69 individuals attended the webcast either in person or by webcast.

- 52 lawyers (75%)
- 4 paralegal (6%)
- 9 neither a lawyer nor a paralegal (13%)
- 1 law student (2%)
- 3 unknown (4%)

Organizations and Associations Represented at the Webcast

Of those who participated in the webcast, 17 indicated that they were representing one of the following 14 organizations and associations:

- A2Justice (A2J)
- Association des juristes d'expression française de l'Ontario – AJEFO (2)
- County of Carleton Law Association (2)
- Federation of Ontario Law Associations
- Temiskaming Law Association
- LLP Ryerson (2)
- LPP Candidates Association
- Ministry of the Attorney General of Ontario
- Osgoode Professional Development
- Thunder Bay Law Association, FOLA
- Toronto Lawyers Association
- University of Ottawa, Faculty of Law
- University of Toronto Faculty of Law (2)
- University of Toronto, Faculty of Law, Career Development Office

Webcast Participants by License Date

Time-frame	Participants (%)
Licensed pre-1990	18 (28%)
Licensed 1990-1999	7 (11%)
Licensed 2000-2009	12 (18%)
Licensed 2010-2017	19 (29%)
Not licensed	9 (14%)

Webcast Participants by Work Setting

Work Setting	Participants (%)
Education	12 (19%)
Sole practice	11 (18%)
Medium law firm (6 – 199 lawyers)	7 (11%)
Large law firm (200+ lawyers)	7 (11%)
Small law firm (2- 5 lawyers)	7 (11%)
Government or public agency	7 (11%)
Other	5 (8%)
In-house counsel for a private corporation	3 (5%)
Non-governmental organization (NGO)	3 (5%)
Legal clinic	0
Crown's office	0
Total	62 ¹ (100%)

¹ Work setting for 7 participants is unknown.

Webcast Participants by Region

Region	Participants (%)
<i>Toronto (GTA)</i>	42 (66%)
<i>East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)</i>	12 (19%)
<i>Northwest, including Kenora (Kenora), Thunder Bay (Thunder Bay), Rainy River (Fort Frances)</i>	3 (5%)
<i>Southwest, including Huron (Goderich), Perth (Stratford), Oxford (Woodstock), Middlesex (London), Lambton (Sarnia), Elgin (St. Thomas), Kent (Chatham), Essex (Windsor)</i>	2 (3%)
<i>Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)</i>	2 (3%)
<i>Central East, including Muskoka (Bracebridge), Victoria & Haliburton (Lindsay), Simcoe (Barrie), Durham (Whitby), Peterborough (Peterborough), Northumberland (Cobourg)</i>	1 (2%)
<i>Northeast, including Cochrane (Timmins), Algoma (Sault Ste. Marie), Sudbury (Sudbury), Temiskaming (Haileybury), Nipissing (North Bay), Parry Sound (Parry Sound)</i>	1 (2%)
Other	1 (2%)
<i>Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton), Halton (Milton)</i>	0
Total	64 ² (100%)

² Region information for 5 participants is unknown.

Topic 3

Licensing Examinations: Assessment of Entry-level Competence Dialogue Themes

Theme	Positive/Observation	Critique/Questions	Recommendations
Education: Law School			Evidence should be a compulsory course in law school.
			Attending classes should be mandatory.
	People attend international law schools for reasons other than not being able to get into a Canadian school.		
Education: Role of the Law Society		Does Law Society monitor content and quality of Ontario law school skills training?	
		Concerned that Law Society is pushing skills training onto the law schools where the purpose is training in substantive law.	Law Society should revert to Bar Ads (lectures/seminars/ assessments) to build practical skills in entry-level lawyers.
			Law Society should take responsibility for practical training; the limitations of in-person training for the old Bar Ads have been addressed through advancements in online learning technology.

Theme	Positive/Observation	Critique/Questions	Recommendations
	LPP is an 8 month program; 4 months is practical skills training in addition to a 4 month placement; new calls don't have practical lawyering skills, LPP prepares candidates with the general skills they need to start their own practice; will alleviate fear of starting on your own		
	Law Society in Saskatchewan requires practical assessments; articling candidates are required to attend in person training weeks; although a smaller province, could we consider this here in Ontario?		Law Society should implement experiential training like medical field, where experiential training is part of licensing process (rotations); possibility of graduated licensing.
	Pre-articling teaching portion of Bar Ads was very beneficial; obtain experience arguing a motion prior to articling; exposure to a variety of excellent practitioners; Bar Ad course materials were useful reference tool when entering practice.		Recommend a consistent practical training program in Ontario that everyone must attend to protect the public.

Theme	Positive/Observation	Critique/Questions	Recommendations
			Law Society should take responsibility to place lawyers into closely monitored rotational positions.
Examinations: Communication			Students and professors in law schools should get more information about the exams with opportunity to ask questions; suggest webcast.
		The exam is shrouded in mystery; candidates must get information about the exam from unregulated providers of examination preparation courses.	Exams are shrouded in mystery; this information should be more accessible.
		Why can't the passing mark be shared?	Results should be shared with successful as well as unsuccessful candidates so they can work on competency/problem areas of law (other jurisdictions do so); available to share with current and potential employers.

Theme	Positive/Observation	Critique/Questions	Recommendations
		Third party suppliers sell sample questions to examination candidates; some of these questions are incorrect; Law Society provides no oversight of these individuals; unfair to candidates.	Law Society should repurpose content from Dialogue to pre-empt third party suppliers on Law Society website; encourage candidates to learn material to be a better lawyer versus just to pass an exam.
Examinations: Assessing Entry Level Competence		We are not elevating the profession by only testing entry-level competence. You are not testing practical ability or checking later to see if they are good lawyers.	Entry level competence testing is a great leveller given many paths to this destination.
		Although you can fail examinations, you can't fail transitional training. Inconsistent as a legitimate assessment of licensing process.	
Examination Format: Multiple-Choice Questions vs. Constructed Response; Open Book vs. Closed Book	Science of current multiple choice exam is impressive; effective way to test competencies.		Exams should offer assessment opportunities beyond multiple choice questions; should also include essays examining, reasoning communication and critical thinking skills.

Theme	Positive/Observation	Critique/Questions	Recommendations
		Not sure that open book examination allows Law Society to appropriately assess competencies.	No substitute for closed book exam, putting things in your own words; use process adopted for National Committee on Accreditation (NCA) tests (may not be scalable)
		Difficult to standardize a closed book exam.	Support open book exam; no need to commit anything to memory; We are an open book profession needing to know how to find reliable information quickly.
		Other professions and jurisdictions assess entry level competence using more than multiple choice questions (e.g., physicians, Chartered Public Accountants).	Require essay type questions (like NCA) to test reasoning skills versus how fast can you find an answer in a book.
		There has been no independent evaluation of the assessment process since 2011.	Recommend that an independent evaluation be performed on Law Society assessment processes.
			Seven hour multiple choice question exam difficult for internationally trained candidates.

Theme	Positive/Observation	Critique/Questions	Recommendations
			Oral exam would provide opportunity to simulate real experiences (e.g., motions)
Examinations: Assessing Practical Skills		How can the Law Society justify not assessing practical lawyering skills, (e.g., drafting, negotiation, business of law, etc.) given that many who are admitted to the bar start their own practice?	Exams should examine practical skills such as drafting and amending documents (e.g., purchase and sale agreement).
		Unsure if open book examination providing 1.75 minutes on average to answer each multiple choice question is testing the right competencies.	Better that new lawyers know substance + practice + process of law. Focus should not be on gaming the exam, tabbing materials.
Examinations: Both Official Languages	Keep in mind that the process will be offered in both official languages. This requires that the process be fair and equivalent		
Examinations: Preparing Candidates for the Exam			Law Society should put more materials sample multiple choice questions on website (currently only 10 questions for Barrister Exam and 10 questions for Solicitor Exam)
			Law Society should provide mock examinations and not just 10 questions.

Theme	Positive/Observation	Critique/Questions	Recommendations
Examinations: Setting the Passing Mark		Is there a bell curve and what is the minimum pass grade?	
		How do you determine how many questions candidates have to get correct?	Let new practitioners complete the exam and that would reflect average competence.
Examinations: Judicial Input			Lawyers learn from other lawyers and from judges; need more judicial input in licensing process (expectations of new lawyers).
Examination Statistics: By Law School, Foreign and Domestic Trained, etc.		Do you track pass rates by law school?	
		Struck by reported lower performance on first writing from foreign universities; are foreign online distance learning programs increasing? If so, that's a problem.	If numbers show that candidates from outside of Canada are doing well, these numbers should be released to minimize stigma and improve diversity in the profession.
		Do you track how candidates with high examination marks perform when they enter the profession?	
		How is the entire examination constructed? Is there a balance of competencies?	

Theme	Positive/Observation	Critique/Questions	Recommendations
		<p>With regards to the disparity in passing rates between Ontario law school grads and foreign trained candidates, what causes this?</p>	<p>Given the lower pass rates of internationally trained candidates, there should be a study of the gap in the current NCA and Law Society licensing process to help candidates coming through the international stream.</p>
		<p>LPP is not a review class for the examinations. It is not fair to compare examination results between LPP candidates and those that have completed review classes.</p>	

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