

## Topic 3

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

Janet Pierce

Good evening, everyone. For those that have joined us in person and joined us on the webcast, we really appreciate you joining the third topic in the Dialogue on Licensing. Tonight we're going to be learning about and taking your comments and questions about licensing examinations, the assessment of entry level competence.

My name is Janet Pierce and I'm a CPA, and although I've been involved in the licensure of professional accountants and am a professional facilitator, what I am not is a lawyer and that's by design. I have no vested interest in the outcome of these meetings and my role is to facilitate the discussions and to hear from a broad cross section of folks attending in person and online and get as many perspectives as we can from as many stakeholder groups as we possibly can. Your input from these sessions is being documented but it will be made available in aggregate form only. This is a safe place to provide your feedback and comments so we encourage everyone to contribute whether you're in person or online.

I'm going to go through a few initial slides and then we'll provide a little bit more direction for you as we move through this evening. So, as you know, the Law Society is undertaking a comprehensive analysis of the licensing process. The goal is to formulate a long-term recommendation or set of 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 so your input is greatly appreciated. As you also probably know, these discussion groups are being held in seven cities across Ontario so that we can get the regional representation. Each discussion group is focusing on a particular area and we've already gone through the need for change and just this past week, we completed our circuit of the market dynamics in the lawyer profession, and tonight our focus as I mentioned before is on licensing examinations: the assessment of entry level competence and then in the rest of June we will be having sessions on transitional training.

You've been provided with some great reference materials to get you ready for this evening and to get your creative juices flowing as you think about some questions to ask and comments to make. You were provided with an Overview of the Lawyer Licensing Process in Ontario, a Primer on the Purpose of Licensure, also Licensing Examinations Best Practices and the Ontario Assessment Model. You've also seen a document on

Lawyer Licensing Examination Outcomes in Ontario which has some really great information. The Evolution of the Lawyer Licensing Examinations in Ontario so we're going to have an opportunity to look back at where we've come from, and the Licensing Examination Frameworks in Other Professions, we'll have a chance to look at those as well. And then finally Licensing Process Statistics which will provide some great insight breaking down the results. The focus of today's discussion is to help us get a better sense of the Barrister and Solicitor Examinations, how they are developed, reviewing the key attributes of effective licensing examinations and also to discuss future options that support assessment of entry level competence that are valid, reliable, and defensible and that needs to be front and centre.

Throughout the discussion, you will have to keep in mind the objectives of licensing which we have to fall within the parameters of being fair, transparent, and valid. Second, assuring entry level competence. They must be sustainable, both realistic and acceptable whether it's financially, resources, and also it needs to support the public interest. Those objectives are also front and centre at the front of the room and we encourage you to keep that in mind as we have discussions and when we open the floor up for recommendations and your own thoughts.

Okay, I am actually going to pass the presentation over to a couple of lovely ladies here who I've gotten to know quite well over the past couple of months. Leading the first part of the discussion is Diana Miles and the second part will be Priya and we'll probably be going back and forth between these two ladies depending on what the question is. Diana Miles is the Executive Director, Professional Development and Competence, and Priya Bhatia is the Licensing and Accreditation Manager, Professional Development and Competence. Diana and Priya will be walking us through the educational component of this evening's session and answering questions you may have on the content they have shared.

After the instructional component, and after answering any questions you have, clarifying questions so if they go through their process and you say okay, I'm going to jot down some questions to ask we are not going to stop the education portion but we want to hear your questions before we move into the commentary part of the session. If you have any questions jot them down. We'll provide about 15 minutes for hearing from you either in the room or we've also got Will here who's going to be taking all the comments that are coming in through the webcast because we have a number of people--in fact more people online than in person so we'll be wanting to make sure that they have an opportunity to speak up as well.

After the instructional component, we'll be answering any clarifying questions about the content and then we will lead a discussion about future options for entry assessment and possibly future examinations. Okay, so Will Morrison I just actually want to introduce him. He's Associate Counsel for the Articling Program Licensing and Accreditation. Thank you very much for looking after that part this evening, Will.

What I wanted to also reiterate or at least introduce you to is the instructions for submitting comments if you're online. For those attending remotely via the webcast, you may submit your question or comment online using the Q&A tab which you'll find at the bottom left-hand corner of the screen. These will be moderated by Will and we'll respond to these questions throughout the evening, and we'll also be responding to the in person questions. For those of you attending in person, just raise your hand and myself and Krystal will be walking around with a microphone hearing your comments, and from time to time we'll pass it over to Will who will read out questions from the people attending remotely. Okay, so you're also able to send in texts if you're in person and I understand that you got a slip of paper that showed you how to submit text messages. If you don't have that information, then you can raise your hand at that appropriate time. We'll make sure that you've got that information. But text your question or comment to 647-557-6058 and press 214500 prior to the question. We look forward to hearing your input in whichever way you feel most comfortable speaking this evening. I am now going to pass the presentation over to Diana Miles, thank you very much, Diana.

Diana Miles

Thanks, Janet. Well thank you all for joining us and thank you to those on the webcast for also joining us. We're going to take you through a bit of information about the licensing examination process here at the Law Society and hopefully you'll have some questions that we can take from you to clarify that process before we have a discussion about the future state.

Let's just start with a little bit of history about licensing exams. A common requirement for licensing in most regulated professions both in Ontario, and Canada and across the world is the requirement to pass a secure and high stakes, valid licensing examination. In Ontario, all candidates registered in our licensing process for lawyers are required to successfully complete both the Barrister Licensing Examination as well as the Solicitor Licensing Examination in order to be eligible to become licensed to be a lawyer in Ontario. That, of course, is in addition to the other requirements of licensing which include a period of transitional training which as you know is either articling or the law practice program, or the integrated practice course that we see at Lakehead and also the requirement for good character.

Our licensing examinations assess whether a candidate can demonstrate a minimum level of competency for entry to the profession. Today's session we're going to actually focus on providing you with more information about our examination form and function. We are going to be covering a little bit of technical detail as we proceed. We're often asked about these examinations by members of the profession and we've found that there's actually a lot of confusion and misunderstanding as to the purpose and the objectives of our examinations and the assessment protocol so we're hoping that we'll be able to clarify that for all of you today and then later on you'll be able to give us your comments. Let's just look at the history of why and how we got here.

Initially, the Law Society's approach to licensing was really to fill a perceived gap in legal education by providing a testing platform. I'm not going to go all the way back to the 1950s which I could do in technicolor. I'm going to start you at around 1990, and from 1990 to 2005, we had the Bar Admission Course which integrated substantive and procedural law into a series of examinations and instruction, and they were in seven discrete areas of law and also professional responsibility, so eight areas. We received as an organization through that time period, 1990-2005 quite a few criticisms around the Bar Admission Course being duplicative of law school coursework, that it was being delivered in an outmoded or outdated classroom modality or model. In particular with the growing number of candidates that we were receiving in our licensing process, the Law Society was also responding to a lot of concerns about the cost and the length of the Bar Admission Course, and also that candidates had to travel or relocate which was perceived, as you can imagine, as quite disruptive. In addition, there were also increasing challenges with administering the eight examinations which were part of the Bar Admission Course due to the increasing number of candidates in the process. And importantly, there was also significant criticism related to a perceived lack of rigor with regard to the examination questions and also the manner in which the examination questions were being marked by practitioners. So all of those issues led to a full scale review of the licensing process about 15 or so years ago and a significant change in the approach that the Law Society took to licensing exams.

Based on the recommendations received by convocation through the Task Force on the Continuum of Legal Education, Convocation in early 2002 approved a shift in our model of licensing from an instructional model to focus on our primary regulatory obligation to assess entry level knowledge, skills, and abilities as a prerequisite to licensure and not teach it. The Bar Admission Course and all of its related formative examinations and assessments were replaced with the Barrister and Solicitor

licensing examinations which now represent a standardized summative assessment framework which focuses on assuring competence at entry to the profession in the public interest. The new examinations focus on substantive and procedural concepts applied in the context of various barrister and solicitor practice areas. This process moved away from a focus on formative assessment and actually embraced summative assessments which is the manner in which most regulated professions around the world deal with professionally regulated licensure assessment processes.

The formative portion of entry level assessment, the training and teaching portion or the skills and tasks portion of the licensing process are now reserved for our transitional training protocol which includes the Law Practice Program, articling, and the Integrated Practice Course in Lakehead. Let me just flip for a second because I've been referring to the words formative and summative, so a little bit of technical jargon and theory for you. When we say formative assessment, what we're really talking about is testing that's designed to monitor learning and to provide ongoing feedback that is developmental. It's about developing, it's about trying, it's about attempting and doing tasks, and actually reflecting on your activities after the fact and then making improvements. Our current examinations are summative. What that means is that we will be assessing a candidate's ability against a defined benchmark after they've completed their education. It's not about ongoing evaluation of the candidate related to procedural concepts or substance of the law. It's an assessment that actually confirms their skills and knowledge that they obtained in law school and their ability to apply that knowledge in the circumstances of a situation that's presented by a testing question.

Back to history for a second. The changes to the examination process that we made were premised on enhancing the validity of our licensing standards. In order to standardize results, to ensure that the assessments were actually being applied equally to all of our candidates in the process, this improved the equity of our results and the access to admission to licensing for an increasingly large and diverse body of candidates and also reduced the cost of the process for our candidates. Because no two candidate experiences are alike in the manner in which they've travelled through their legal education and the manner in which they've engaged in their learning, the exams that we hold now equalize knowledge and ability, and ensure readiness for entry to practice by assessing only the most important competencies in a consistent, standardized, and fair manner. In essence, the licensing exams are a leveler. This leads us to where we are today.

Our current process is valid and defensible, and it is a best practices response to fulfilling our regulatory obligation to assess entry level competence. The Barrister and Solicitor Examinations are designed to assess whether a candidate can demonstrate a minimal level of competence required to enter our profession and then proceed to become a good practitioner. And there is, of course, an expectation that all licensed lawyers will continue to maintain and enhance their competence as their careers progress thereafter. So let's look for a moment though at the key attributes for an effective licensing exam.

There are three words that we pass around a lot in the psychometric and the licensure field and those are valid, reliable, and defensible. An examination has to be valid. It has to test what it says it's supposed to be testing, or measure what it's supposed to measure. We're measuring capacity at entry to practice, not the ability to practice two years from now, or five years from now. It has to be reliable, and that is dependent on the degree to which a test is consistent, and stable in measuring what it's intended to measure. Or in other words, whether the exam will actually support the same testing outcomes across different administrations of the exam because all candidates should be tested consistently in the process. And defensibility is critically important. The examination has to be able to ascertain with evidence and in a fair manner, the degree to which a candidate possesses entry level capacity that's acceptable to proceed to enter the practice and to begin their careers serving clients. It's a general understanding of what professional exams must be able to achieve that we're hoping to provide you with tonight. And on that note I'm going to actually ask Priya to take it over and she's going to take you through some of the particulars of how we actually design our exams.

Priya Bhatia:

Thank you, Diana. So when we're talking about entry level competence, and you've been hearing that term batted around a little bit and what I'm going to do is tell you a little bit more about that and explain what that means. We actually have to start with the competencies themselves to illustrate the concept of entry level competence. And so you have a definition there on the screen that tells you that a competency is a knowledge, skill, ability, attitude, or judgment required for practice. It's a very broad, inclusive definition and encompasses a variety of behaviours and knowledge, and skills --so it's not just one thing --covering many dimensions. The licensing examinations are designed to test the competencies which I've just defined that are required for entry level practice that have the most direct impact on the protection of the public and that influence an effective and ethical practice. It's important to remember that by definition, these entry level competencies must be measurable, in a summative written examination that Diana's talked about, and so they've been framed in that manner.

And, of course, when we talk about the competencies, it's important to appreciate the very involved and structured process by which they are developed. So the competencies were developed by the Law Society with the assistance of literally hundreds of practitioners across the profession using a process of practice analysis or we sometimes call it front end analysis or job analysis to determine those entry level requirements that are most common for new lawyers.

Practice analysis really involves defining the functions, tasks, roles, and activities performed by lawyers at point of entry to the profession, and this is an incredibly rigorous process that took the better part of a year, if not longer, and involved many drafts, countless working groups, and review groups of practitioners and subject matter experts. So it's not something undertaken lightly. It is a significant undertaking.

What follows next is an extensive validation process. Once a final version of the competencies was arrived at, it was sent to 4,000 randomly chosen practicing lawyers in a variety of practice areas, firm sizes, geographic locations, and perspectives so that they could rate the importance of this draft list of competencies to entry level practice. And what we end up with are the 527 individual competencies that were determined to be the most critical and the most frequently performed, and which essentially represent the minimum requirements expected of both barristers and solicitors entering the profession. And these competencies are posted on the Law Society's website absolutely accessible to candidates and members of the profession who are interested to know how we define entry level competence for the purpose of the summative licensing examinations.

Speaking of the examinations, let's talk a little bit more about those and how they're experienced by candidates, what the process is, and what the parameters are. So each examination is seven hours in length, comprised of two parts of 3.5 hours each with a part 1 in the morning and a part 2 in the afternoon. The exams are multiple choice and there are 240 questions on each examination. They can be written in French or English and they're administered three times a year. For lawyers, that's March, June, and November to support multiple opportunities for candidates to complete their licensing requirements. And these are open book examinations which means that candidates are essentially free to bring in any written material that they've prepared to assist themselves, or that they've purchased to assist them, but the Law Society is the primary provider of these materials in the form of the Examination Study Materials which are essentially a compendium of barrister and solicitor reference chapters that are fully aligned with the competencies and designed to support self-study for the licensing examinations. The Law Society develops these materials in conjunction with

subject matter expert authors who review and update them annually, and they are provided to candidates to assist them. And, of course, as a standard practice for all regulated professions, the Law Society has examination policies to support the objectives of fairness, validity, and assuring competence in the public interest and so the Law Society examination policies provide that candidates may attempt each examination up to three times within their three year licensing term, and a fourth attempt is permitted based on extenuating circumstances that must be approved by senior management. Candidates who are unsuccessful after the three or four attempts, as the case may be, are withdrawn from the licensing process and must wait a minimum of one year before reapplying to the licensing process.

Just to give you a sense of the numbers of candidates we're dealing with and the scale of our activities in licensing in 2016, we had over 5,000 candidates take the barrister or the solicitor exam and many took both, and in our largest sittings in June we had over 1,200 candidates assemble in a large venue such as the Toronto Congress Centre or Exhibition Place all of which is standardized and follows all of our extensive protocols, but just to give you a visual of what we're looking at in terms of scale and size, it's a large undertaking.

And, of course, as already mentioned, the examinations are summative in nature. And what that means is the goal is to evaluate student learning against a standard or benchmark after students have completed their schooling. The goal of the licensing examinations is not to teach students, these are not didactic examinations, it's not a didactic process. It is to measure their level of success or proficiency by comparing their performance against a defined standard and that standard as we've been talking about is entry level competence.

So what do the examinations actually test? And I would say that if you've looked at the competencies you will see quite quickly that in both barrister and the solicitor examinations, the competencies go well beyond purely substantive law. The competencies incorporate a number of abilities including those to analyse client needs, apply law and procedure, to advocate for the client in a variety of contexts, exercise sound professional judgment, provide a high level of client service, comply with ethical obligations and follow practice management protocols. And that's not an exhaustive list but that gives you a sense that we're going beyond just purely substantive law. In particular, you'll see the barrister examination assesses competencies related to application of law and procedure, issue identification, analysis and assessment, litigation process and ADR, ethics, professional responsibility, and practice management issues as they all arise in the areas of civil litigation, family law, public law, and criminal law.

So we could you give a flavour of the exam in a session all about the licensing examination, we're going to ask those of you online and those of you in the room just take a few minutes just to read the scenario in your head and we're going to ask you to test yourself in a minute.

All right, speed readers, slower readers, you've digested it and we're going to mentally decide what the right answer is. Let me know if you want to go back. I understand that it was a lengthier prompt. So everyone has an answer in their head? The correct answer is A, and the rationalization is that the competency being tested by this particular item is that the lawyer complies with duties with respect to unrepresented persons and we know that rule 7.2-9 in the Rules of Professional Conduct sets out some protocols there. Now, of course, we have to make it very clear that the examination is premised on selecting the best answer in the circumstances and the questions are highly contextual. It's very much about applying the knowledge in the situation informed by the practice area work that is most critical and frequently performed by new lawyers. Absolutely the distracters can and should present. The distracters are the wrong answers by the way, another technical term. They may well present viable options, but the best answer is the one that is supported by the facts, relevant legal principles and by the applicable professional responsibility obligations engaged by this particular scenario in this context.

So we could let you have a shot at the solicitor side so solicitors in particular have a good read, but all of you have a look at this one.

Okay, again in your mind you're picking the right answer based on the context, the facts, and in this case we have the correct answer, D which is testing the following competency: transfers files appropriately to another lawyer on discharge. If the client would otherwise be prejudiced, an outstanding account should not interfere with the successor lawyer's representation. Again the best answer is the answer that's supported by the facts and the context. We're talking about entry level competence and there you have a bit of a flavour of how the licensing examination questions read.

I'm just going to talk a little bit about what is actually foundational for the defensibility of the licensing examinations and these are what we call the test specifications or the examination blueprint. And I just want to say how we get to the final exam and the protocol are and procedures we use to get to the final exam are as integral to the defensibility of that exam as they actual end product. I think that's going to come through as we continue to explain the process, that there's really a lot of steps and stages.

How are the examinations developed? Well, first of all, the creation of the examinations are based on those key attributes of validity, reliability, and defensibility which Diana mentioned and, of course, knowing what is expected of a minimally competent lawyer. To do that, we need test specifications, also known as the examination blueprint and we use the competencies that I've just described as the building blocks for the design of the examination blueprint. And why do we have a blueprint? A blueprint serves a number of critical purposes. It ensures that entry level competencies are being assessed and not other competencies that are relevant to a practitioner later on in their career. It ensures that the same categories of competencies are being assessed to the same standard in every single administration of the examination even though naturally questions on the examinations change from one administration to another. It provides overall consistency between each sitting of the examination and as mentioned it enhances the reliability, validity, fairness, and defensibility of the examination from one licensing cycle to the next. And to assist us with all of this work that we do, we have two advisory groups, a barrister advisory group and a solicitor advisory group who will review the competencies and the blueprint on a regular basis and are integral to ensuring that the examination remains defensible.

Our advisory groups are also comprised of exemplary practitioners who represent a cross-section of relevant practice areas, context, geographies, and from sizes and our advisory groups work with psychometricians who are professionals with expertise in licensing, test development, measurement, and validation.

We've talked about the competencies, we've talked about the blueprint, and now we're talking about the actual creation of the questions on the examination. The individual questions on the examinations are called items, and they reflect the entry level competencies, meaning if you've ever been in an item writing session or if you ever have the opportunity to do that because our item writers are members of the profession, each item is actually created to align with a specific competency. We don't just write the items in an abstract sense. They are absolutely connected. So each one of the 527 entry level competencies has items associated with it.

All questions have a short stem or scenario containing the salient facts, information about client needs, expectations, goals, or other contextual factors that would appear in a real life scenario dealing with a client. And the process we have for developing and validating the items that will appear on the examinations is also once again labour and resource intensive. Practitioners representing all of the relevant practice areas on the examination gather at the Law Society in a very highly structured setting with

the psychometricians guiding the process, and over two or three days several times a year, usually in groups of six, we'll actually sit in a room three straight days, two and a half straight days and write these items. And after that, we go through a validation phase where each item must be validated by being reviewed by independent practitioners, being reviewed by Law Society counsel with expertise, and training, and assessment and testing, and finally the advisory groups I've just mentioned. It's only once an item has gone through all of these cycles that it will appear on an examination and this, again, can take upwards of a year to do.

Finally, I just want to mention that while the standard is entry level competence, absolutely it's critical to appreciate that the licensing examinations in their multiple choice format are able to address three different cognitive domains or levels, and not just what one might say is knowledge because I think that's a misconception about the licensing exam. Of course, the examination questions or items will address knowledge and comprehension which is the ability to recall facts, policies, procedures, and standards, but they also test application. The ability to apply knowledge and comprehension in a straightforward, applied situation which can include recognizing the appropriate procedure, or steps, or course of action to employ, and often our most challenging cognitive level that's tested is critical thinking which is the ability to apply knowledge and comprehension in complex applied situations requiring analytical problem solving in addition to knowledge, comprehension, application. And I'd say, based on our examination blueprint which sets all of this stuff out for us, it defines the proportion of questions from each cognitive domain on the examination - approximately 50% of the examination is comprised of questions in the application category with the remaining items split roughly equally between knowledge and critical thinking.

I'm going to actually hand the mic back to Diana now to talk a little bit about standard setting.

Diana Miles

Great, thanks Priya. Let's talk a little bit about standard setting, and we're in the home stretch and then we'll open it up to some clarifying questions. Standard setting and understanding the passing mark, this is an area where we receive a lot of questions, usually in the vein of what's the passing score and why can't you tell me what it is? The short answer is that the passing score for each examination changes slightly based on the questions that make up that particular examination. As Priya just mentioned, we have lots of questions in a secure exam bank, thousands of them actually. The exams are organized on an examination to ensure that each examination's competencies assessment is standardized but the questions on each exam will differ. We

don't ask the same questions. Candidates write the exams multiple times. We can't ask the same questions all the time. The passing score is set independently by the exemplars that Priya was mentioning. Individuals from the profession who represent the various practice areas that are the subject matter of all of our testing and who provide us with really critical guidance and input on the percentage of candidates in the process that should be expected to get the answer correct if they were minimally competent at that time before they engage in the actual practice of law.

How does this work? Those advisory groups that Priya mentioned of exemplar practitioners will approve every item that appears on every examination. At the same time, they're also setting and approving the passing mark for the examination as a whole including each individual question on the examination. The passing mark for the exam itself represents the expected performance of a minimally competent entry level lawyer to proceed through the licensing process.

So a bit more technical jargon for you, the passing mark is determined using a criterion referenced standard setting method. What this means is that our entry level competence is assessed against a fixed standard as opposed to norm referencing standard which is actually something that measures a candidate's performance relative to other candidates in the test taking group. The standard is minimal competence at point of entry as we've mentioned, but the key point here is simply this. We do not bell curve our exams. If you are competent to begin practice as demonstrated by achieving the defined passing score on our exams, you will be able to move on in licensing to complete the rest of your requirements. Psychometric experts recommend that the passing score for a professional, regulated licensing examination should depend on a candidate's demonstration of the knowledge and skills that are necessary for entry level competence and should not be adjusted to control the number of candidates who pass the exam. The passing mark actually represents the expected performance of a minimally competent entry level lawyer and is based on the judgment of these informed subject matter experts that assist us and guide us, and is determined through rigorous consultation and ongoing dialogue.

Every year hundreds of lawyers are involved with our licensing process to ensure that it's keeping pace with what's happening in the profession, as well as ensuring that our questions are mirroring what early entry level lawyers should actually know. The process is consistent with those most commonly used in credentialing examinations around the world and this means that candidates are not being assessed in comparison to the performance of other candidates but they're assessed based on

their individual merit. There is no bell curved or pre-determined portion of candidates who must fail any of our exams. Nor are we as a credentialing unit actually selecting an arbitrary cut off base based on some convention. For instance, we're not saying 60% of the candidates will pass, 40% will fail. We're not setting a benchmark that's not defensible. Each exam is marked on a pass/fail basis with scores equal to or higher than the passing mark receiving a pass result and any scores lower than the passing mark receiving a fail result.

So scoring and reporting, the Law Society actually uses computerised scoring devices to scan and score all of our answer sheets with our candidates. We also manually mark any answer sheets that will fall within a certain percentage above the passing mark and any answer sheet that falls below the passing mark. All candidates who fail our exams are provided with a licensing examination profile and on this profile, it will show them their performance as compared to all of the other candidates in the aggregate group so that they have an indication of where on that exam, in what categories of competency they may have fallen down or not done as well as others. That gives them an indication for their next effort at studying so that they can focus and try to bring those marks up. The Law Society also provides candidates who were not successful with access to five hours of tutoring from practitioners and we cover the cost of that tutoring for the candidate.

Let's just talk about licensing outcomes for a moment. The outcomes of our licensing exams have been provided to you in the materials as Janet pointed out to you. We've provided the success rates on first attempts of our examinations because they're an indicator of readiness to begin to commence through the licensing process and into practice. The perspective of demonstrating the ability to analyse a broad range of issues, client problems, and to be able to apply the appropriate principles to determine a solution, a strategy, or next steps to meet the clients' needs is really what we're trying to get at with these exams. Candidates are, as you've heard, provided with three opportunities to write and pass these examinations, and overall and across all of our candidate groups, for the last few years, we see that the first time success rate is actually about 75%-80%. So about 20%-25% of candidates will fail the exams on their first attempt. In the end though, after three attempts, our data will show that most candidates will be able to demonstrate the standard of entry level competence and ultimately will be successful on the licensing examinations even if some of them struggle on their first attempts.

When it's all said and done, and this is another question that we also frequently receive, we estimate that approximately 5%-6% of our applicants will either not make it through the process or

will remove themselves from the process due to an inability to actually get through these exams. In addition, another 5% or 4% of candidates will actually remove themselves from the process for other reasons.

We see that the first attempt at passing rates will differ across candidates from different education paths and experiential training streams as well and this is also in your materials. We know that a significant number of candidates who require repeated attempts at the examinations also tend to continue to perform on these examinations at a much lower rate of success. And those who receive extremely low scores on their first attempts at the examinations are actually unlikely to pass these exams. Preparation for these exams, spending the adequate time studying, ensuring that you're ready to tackle them, making sure all your critical steps are undertaken before you attempt to write these exams, those are also critical skills that we're actually testing in the preparation and writing of these exams. We often hear commentary actually from candidates that they may have found the examination process or the exams themselves to be an exercise in recall or perhaps that a good index is all you need to get through it. Because these are open book examinations, we're not actually surprised that those candidates who achieved at the highest levels throughout their academic history and in law school, and who have a really proactive and organized methodology for studying and good study styles, will perhaps find our examinations somewhat rote, but we can assure you that with a 20%-25% failure rate out of the gate amongst various groups of peers, there are many candidates in our process who would not agree that this is either rote, or an exercise in recall.

The one final comment on the examinations that I would like to make is that it is important to note that this is just one assessment of capacity to practice that is applied by the Law Society in each candidate's journey as they try to become licensed. The examinations assess key skills such as the ability to prepare, the ability to analyse, to apply, and formulate sound judgment. Other important skills that we all tend to think of and are top of mind for many of us because this is a hands-on practical career for all of us including the ability to formulate logical and well-written or verbalised responses and to complete discreet tasks or activities for clients, those are all competencies that are part of other components of the licensing process, not the barrister and solicitor exams.

The licensing examination assessment is just one component of assessment that provides us, as the regulator, with a holistic picture of the capacity of each candidate to be able to proceed to become a good lawyer in the future. And that includes continuing to develop their skills and abilities once they've started their careers.

On that note, I'm actually going to turn it back to Janet because that little briefing I think is where we're going to stop today or we might get into too much licensing jargon and Janet's going to take it from here with the discussion.

Janet Pierce Great, thank you very much. Before we begin our discussion about next steps and your ideas about how assessing entry level competence continues, we wanted to offer you an opportunity to ask any clarifying questions. So if there is someone in the room, I've got a microphone here and I'll come over to see you and we'll be going back and forth between in person here in Toronto as well as online. Will is keeping an eye on all those questions and please focus this part of the discussion on any clarifying questions that you have either for Diana or for Priya about this examination process.

So it's handed over to you, let's hear some questions and I'm going to go to this gentleman right in the front row here.

Participant Do you keep track of how the students do above the pass mark? In other words, that student A got 90% and student B got 75%? And the second part, would be if you do, do you track then later to see if students who did badly although they got through were not successful lawyers?

Diana Miles We, of course, here, from an operational perspective, know exactly what score every candidate got. We do not provide the results to candidates because our benchmark is competence at entry and if you pass you've passed and we won't question it further. It's a good question about trending, do we take those scores and do we look later to see if any of these individuals perhaps are superb lawyers versus lawyers in the conduct stream. It's hard to make those connections because things change. We don't generally do that. Because this is a point in time assessment only, personally I think it would be unfair to apply what they did on the licensing exams to their future career, conduct, or activity.

Janet Pierce Thank you very much, we're going to hear from this young lady, then we're going to hear from someone online.

Participant Thank you. You spoke a fair bit about how the individual questions or items are developed. I was wondering if you could speak a bit more about how they're put together into an entire examination. I'm sure there's a balance of which competencies there are. If you could speak a bit more about that, that'd be great.

Priya Bhatia This comes back to the blueprint. The blueprint specifies the percentage of questions in the three cognitive domains that I talked about. It specifies the practice context that we address

because we don't just address sole practitioner context. We address other practice contexts, other kinds of clients so the blueprint is quite detailed and so what we do is, we actually have to pull the examination items from the bank to create an exam that meets the blueprint parameters and that is a lot of work. So that is why we are constantly engaged in a process of creating new items that then have to be validated so we always have current items to use for examinations because, of course, the law is changing, right?

So that's how we do it, and it's done over the period of a few weeks. Our psychometricians start the process and then they work with our counsel and our examination team to ensure that the examination meets all requirements and then it's formatted, and translated and all of that. Does that answer your question?

Janet Pierce

Thank you. So, Will, is there a question online?

Priya Bhatia

Okay, I'm going to read one out loud here. Will's assisting by pushing the questions over to me. I understand that the law schools are now 100% responsible for the formative preparation of future lawyers. I notice that 80% of Ontario grads passed the first time. What does the Law Society do to monitor the content and quality of law school skills training? Have you noticed variations in the quality of the formative preparation provided by the various Ontario law schools?

Diana Miles

That's an interesting question. First of all, I would start by saying it's not just the law schools who deal with formative training. Obviously, there is formative training as well in the licensing process via the actual transitional training component, or the articling process, the Law Practice Program, or the Integrated Practice Course. In actual fact, the formative training in law school relates to the learning of substantive and procedural skills, and then as you know, in many, if not most of, the law schools around the world increasingly they are focusing on experiential learning opportunities but candidates in law school are allowed to choose their own paths, their own types of courses, their own activities, how they wish to proceed and it'll depend on their career choices and where they want to practice later.

We are not at the Law Society. We do not have authority over the law schools and so we do not dictate in any way the skills, activities, or formative experiential activities that they are undertaking in those law school courses but certainly our materials will show you that there's a significant bevy of opportunities in those law schools and that coupled with licensing, coupled with other activities including the first few years of practice, all come together to help the formative development of career practitioners.

Janet Pierce

Thank you very much, Diana, we have a young lady in the back here.

Participant

Good evening, I have two questions. One is: there are jurisdictions where your bar exam grades or mark, or passing percentage is made public and you share that with your employers, perspective employers? I'm not saying it's either good or bad but I'm just curious as to why we don't have that system here. My second kind of related question is, is there a reason why a lot of the information regarding the bar exam is wrapped in a shroud of mystery especially for students who have not yet taken the bar. I mean, it's entirely a self-study program. They get the materials from the Law Society and from there on they're pretty much on their own unless they pay money to third party tutors which is also entirely unregulated. But a lot of students, certainly when I took the bar, and a lot of my peers have no idea what they're going into. They know okay, there's 200 questions, 201 questions whatever it is. They have no idea what is the minimum pass mark required. Is there a standard pass mark? Is this graded on a bell curve? A lot of the students are entirely clueless and they scour the Law Society website looking for a clue as to what a guiding principle would be to find nothing. And I'm just curious as to why this is the state of these issues.

Diana Miles

Question number one was the publicizing of marks, etcetera. The Law Society has, since the reversion to the licensing protocol that we have now, we've never published the marks. Prior in the Bar Admission Course, candidates' marks were published but they were anonymous so you could look by your number, no one else would know that was you. The Law Society never in its history has ever published marks. [Unintelligible 00:53:32] Right, so and I take your point, and that is certainly something we're starting to look at now and in fact, you'll see in your materials we've started to publish some past score results which is also something that the Law Society has never done before. So, for transparency purposes, we are looking at that issue so I can tell you that.

Your second question was around the mystery shrouding the licensing process. It's unfortunate that candidates think it's a mystery and that it's shrouded. Especially given that we visit all the law schools on multiple occasions, we talk to them repeatedly about what they need to do, they're driven to our website, all the information about how they should prepare and what they can do to do that is on our website, including practice test questions and then you're right though, it is a self-study process. They are given materials to study and to prepare for the exams. We no longer teach because that was the decision by Convocation back in 2002, but it continues to be dismaying to me that candidates seem to be expressing that they're dismayed

that they don't understand how this is happening and I would certainly encourage, and we do with the law schools, encourage the law schools to ensure that the candidates in their law school actually are aware of what's coming down the pipe. This shouldn't be a surprise, I agree with you, to any candidate coming into licensing. I would certainly hope that prior to entering law school, they would've explored what it was they were going to be facing when they got through to the end but thank you for your questions.

Janet Pierce

Thank you, Diana. There's someone in the room here?

Participant

So I was in the Bar Admission Course of 1990 and I greatly benefitted from the pre-articling teaching portion where, for example, I got the experience of arguing a motion before actually articling. And then after the articling portion, I had in the Bar Admission Course, several weeks we did here, exposure to a whole series of practitioners, excellent practitioners how I hadn't been exposed to in the particular firm where I was articling. So, I'm a little bit of a dinosaur that way. One thing that was available in the old days is there was the Bar Admission Course materials which were a very useful reference tool in the early years of practice for all those who had gone through the Bar Admission Course. Today, we have the study materials. Very comprehensive, hopefully they create a standardized benchmark compared with all the law schools. I wonder if the study materials are available to the profession going forward again as a reference tool especially for younger practitioners?

Diana Miles

At the moment, the study materials aren't available for the general profession. When the Bar Admission Course materials were available for the general profession, we had fewer than, I believe, it was 175 people purchase them on an annual basis. So they weren't in high demand. And the fact that the current materials--

Participant

[Unintelligible 00:56:42] going forward?

Diana Miles

That's right, and unfortunately to our dismay as well, I'd often hear from people, I still use my Bar Admission materials from 1990 to practice which always makes me a little squeamish. With my audit hat on, very squeamish. Very good points, thank you, and we'll put that in the bucket of some commentary for discussion for consideration as opposed to a clarifying question, but that was very helpful.

Janet Pierce

Okay, thank you. Priya has a question from the remote attendees.

Priya Bhatia

The question is many candidates prepare for the examinations through a strict reliance on quickly searching indexes keyed to

the study matter. Does this undermine the integrity of the examinations? Why, or why not?

Diana Miles

I'm going to go back, I was called in 1990 so even when we had different sets of exams and different modalities of answering the questions, it was still an exercise in studying and knowing in your materials where the answers or the range of answers were. And again, as I said, we often get the discussion about the indexes. Is it really about flipping through the indexes? Across the world, psychometrically and through licensure processes in many professions, the professions will tell you that one of the key strengths of any professional is the ability to marshal the ability and wherewithal to get through that sort of material on behalf of your clients and to ensure that you can actually, at the right moment, find the right answer because we could do a closed book exam but law isn't about trying to recall facts. Law is about being able to look in the materials that you know are available and find the most appropriate answer to a particular client's situation in that context, at that time. So I do take the points that often candidates make about indexes and feeling that it's rather rote but I would like to really reinforce that there is an exercise in skill development that's happening at the very moment that they're doing that in an exam environment under some stress with a question they've never seen or let's say a client they've never met before with an issue or a dilemma., It's again, one component in a holistic assessment process and it is the great leveler really of regulatory licensing.

Janet Pierce

I think we don't have any on the line anymore but we do have someone in the back row here. If there's any others that would like to speak up, we're going to move to the next segment. Go ahead, sir.

Christopher Bredt

Hi, Diana, I just want a little but better understanding of how we set the pass rate. So if there's 500 questions, then do you have to get 300 right? Do you have to get 350 right? Do you have to get 400 right? How does that get assessed? I'm just curious. I guess one approach to it would be --and I don't know whether we did, if we tested a group of first or second year lawyers and see what the pass rate is there that would kind of reflect what the average competence rate is in the earliest. So I wanted a bit better understanding of how we do that.

Diana Miles

Sure, let me start at the end of your question and then we'll move back. When we established the licensing exams, we actually did a huge pilot of all of the questions that were developed for the very purpose that you said. And it was with early entry lawyers to figure out what exactly their results would be on the questions so that we could test the veracity and the credibility of the questions. We wanted input, feedback, and we also wanted to know if our exemplars who sit with us and assess the percentage

of candidates who can pass each question were getting it correct. We did that for all of these exams. Each question, Chris, is actually assessed individually by the advisors and a passing score is set based on what they believe --and I know I probably sound like I'm repeating myself but they sit and they determine at entry on the first day of practice what percentage of candidates do we believe should be able to get this question correct? Across 240 questions on one exam, each of the percentages of those questions of those who will get it correct varies slightly depending on the questions. Some questions will be relatively easy. They are procedural. They should be able to find these fairly quickly. It's a core solicitor issue. 90% of these folks should be able to know this. They better be able to know this or they're not minimally competent. Other questions will be far more complex contextually and because, for instance, the candidates may not have necessarily taken those courses, they weren't standardized courses in law school. So, for instance, family law is not a standard course in law school. Evidence is not a standard course in law school. There may be some room to move that some candidates will have to do more studying or more development.

Scores are cut from each individual question. 240 questions are pulled to fulfill our blueprint so it covers all contexts, all types, all areas of law in the same manner, standardised across all the exams that all the other candidates had to be tested on, and then literally the pass scores for each individual question are added up to provide one final pass score. So the answer to your question is there is one cut score for the exam and it doesn't matter how many in each section the question gets right or wrong. Overall, they need to meet that passing score to get through the exam. And we don't set an arbitrary passage rate because each exam depending on which questions are pulled to fulfill it, the passing score will vary within a range of a few percent.

Janet Pierce                      We have one other person here and then we're going to move into the next part of our session.

Participant                      Thank you, thank you so much for an excellent presentation and materials. I was really struck by the disparity in passing rates between candidates who went to law school in Ontario and candidates who are coming to Ontario from elsewhere. And I was wondering if you have any insights into where that comes from? And does it come from the fact that these candidates studied Ontario law specifically, or is it more of a reflection of what those candidates are simply able to learn and able to achieve?

Diana Miles                      It's a very interesting question. One of the reasons why most professional licensure examinations around the world always

give candidates more than one opportunity and one of the reasons why we only cite the first passing score rate is that candidates come into our process at different levels of preparation and ability, and it is formative in the sense that they do have to continue to study to come up to speed. I think what we'll find is, like any new testing activity, and every stressful environment many candidates from outside of the Canadian environment are, first of all, not necessarily as aware of some of the Canadian content and will have to study things that are new to them and prepare unlike their colleagues who have gone through Canadian law school and perhaps have been exposed to those. But the new candidates coming from outside haven't had exposure. They also probably haven't had necessarily exposure to the types of test questions that we're asking, or the modality of the test itself so all of these things are adjusted by allowing more writings of the exam. We know from the first score which is important to us how many people were truly prepared for the exam, and then the 20%-25% who fail aren't necessarily not going to make it through, but they're not ready yet and they need to spend more time focusing on it. And that, in and of itself, is an important part of licensure at a base level. It's quite foundational. Candidates from outside the country are definitely going to have a little bit more of a challenge. They simply aren't aware of some of the issues and will need to spend some more time. But we have lots of candidates coming in from external locations now. It's at least 25%-30% of our group and a significant portion of them are doing extremely well.

Janet Pierce

Thank you very much, Diana. There was one other question in the back and then we will for sure shut this part down and we'll move on so thank you.

Participant

Just one more question, is the Law Society looking at some kind of restrictions? Because there's a lot of third party suppliers for a lack of a better word that sell often sample questions and answers which is supposedly to help prep students for the bar exam. I had an experience this March where I helped a friend study for the bar exam and saw for the first time a lot of these third party questions. Some of the questions and answers are just flat out wrong. It's like there's no oversight of these materials so there's no minimum standard they need to meet and from what I understand, a lot of students rely on these and it's worse than unhelpful because sometimes it's just wrong.

Diana Miles

This has been an ongoing discussion, as you can imagine, in the Law Society for many years, and with many other Law Societies across Canada. We have no market control over those providers who would like to do these. We do again, and it's back to the issue about the mystery and the shroud of licensing. We do advise all of our candidates very directly and very distinctly that they should not be relying on external third party programs

because those people do not have our test questions. And I can assure you because it's absolutely secure, they have no idea about what the questions are in our databank. And only the materials that we provide, which provide all the answers to all of the questions on the exam, although you have to analyse it and think critically about them, are the only materials that will support that activity. We get questions like this from candidates all the time and we very pointedly indicate to them that they'll have to govern themselves accordingly but we do not recommend those third party providers.

Janet Pierce

Great, thank you very much Diana. Now we're going to pass the floor over to the attendees in person and those that are on the webcast. So given the information that you were provided with in regards to how licensing examinations are developed, as well as the statistics you were provided and that have been online and that we've heard this evening, what changes would you propose to the approach or focus for these licensing examinations? Are there any changes that you would make given what you now understand about the licensing examinations? And keeping in mind that it's critical for the Law Society as regulators to assess entry level competence in a valid, reliable, and defensible manner. And I would also ask that you keep the objectives of licensing front and centre and I'll reiterate them: Fair, transparent, and valid. Assuring entry level competence, so assuring entry level competence and you heard Diana on a number of occasions and Priya talk about a minimally competent entry level lawyer. Sustainable, it needs to be realistic and acceptable, can we actually do this. And in the public interest, so it must support that. So I'm going to pass it over to the floor now as well as online and I think we have a hand up on the floor.

Participant

Before I start I'm just going to say thank you for all this information and I really wish that I had, had a lot of the statistics, for example in these materials a few years ago when I wrote, and I hope I won't get in trouble for this because it is public domain, it's on your website but I've been making this available to a friend of mine who coaches students writing the Bar Ads within a law school. So it's not one of these third party things. But I've had a concern ever since I wrote in 2014/2015 and I should say that before I went to law school I was a full time professor for 20 years so I know a fair bit about testing and assessment. And it became very clear to me as I was studying for the Bar Ads and helping my friends study for the bBar Ads and so on that, the incentives that are set by an open book, multiple choice exam with 1.75 minutes per answer may not be entirely consistent with the goal of assuring entry level competence across a range of substance, and content, and subject matters and so on. And I'm heartened especially to hear Diana talk about indexes and so on. I mean it sounds like there is some awareness at the Law Society of how students are actually

preparing to write these tests. My experience was very much that it wasn't how much you actually knew about the substance of law, the practice of law, the process of law that made the difference. What really seemed to make the difference for a lot of people was how well they gamed the exam, how many tabs they put in their materials. And by the way I would love to have my Bar Ad materials but you have to leave them behind now when you leave the test.

How many tabs did you put in? How good was your index? Which of the many indexes that float around out there at bar ad time did you latch onto? So I totally appreciate the need for something that is sustainable, practical, and affordable and it may be that you have found the best practice for reconciling that with validity, reliability, defensibility, but I do still have some concerns that the incentives set by the test are not so much learn everything you can about the law to be the best lawyer you can be, but get over this hurdle by gaming it.

Diana Miles

Do you have a recommendation for what you might see would be better because hopefully that's what we're going to try to get at now – are there any proposals that you may have to address these challenges or thoughts that you may have to deal with it in a more appropriate way?

Participant

And I've just been thinking about that. The only thing that really leaps to mind and it may be as simple as just repurposing some of this content that's been prepared for this dialogue on licensing and to maybe pre-empt some of the third party suppliers and put more information on the Law Society website. I know there's a lot of material out there about preparing. I recognize that and it's only a couple years. It's all coming back to me now but I think you may want to consider putting up some tips. Something to tell people it's not just about passing these two tests. You're going to be a much better lawyer, you're going to be a much better articling student, you're going to be a better member of a firm whatever it might be if you genuinely take this seriously and learn this material. Something like that. The other thing is, and I recognize again that it's a huge undertaking testing thousands of people a year. I do recognize that, but when I was teaching and I was testing I found if you want people to master something, 527 or one or whatever it is, there is no substitute for closed book, putting it in your own words. I don't know how you incorporate that but I do recognize some of the NCA tests are still done that way. So I don't know how you make that practical but there are serious questions out there among people who are doing this process as candidates about the validity of the process.

Janet Pierce

Thank you very much. We have someone online that would like to ask a question?

Will Morrison                    One question is has the Law Society even considered reverting to the old system to which the 1990 call gentleman referred? I too went through that system, lectures, and small seminar practical exercises which I believe was very beneficial. If the Law Society has not considered this I would urge a review of this.

Diana Miles                      We're not here to comment or give explanations. I just want to hear comments, but what I would like the person online or anyone in the room, and I'll challenge you with this, by the time we finished the Bar Admission Course in 2005 and there were iterations, so in your iteration there was a mandatory component. It was then three or four years later done away with because there was a mass protest and then it went to non-mandatory. By the time we finished the Bar Admission Course in 2005, and I can quote this song and verse, 26.7% of the candidates were bothering to come to the instructional component. In this scenario, our online questioner, would you see this as being mandatory or optional? I'll just throw that out there and then we can continue with the comments.

Janet Pierce                      Right, go ahead.

Edward                            Hi, my name is Edward. I've done the bar exams back in November so I'm quite familiar with the current structure. I absolutely agree with my friend that the Law Society should put more of the materials or at least sample questions out on the website. I know you have 10 for the solicitors, 10 for the barristers last time I checked and I also bought a private set of exams just to do practice on because there was not sufficient questions on the Law Society website. And I think if you have more of that people will not go for third party materials because you have better materials anyways, why would you go for third party materials? So I think that is something that I would change. The other thing is, I absolutely agree with my friends who were talking about the Bar Ads. I think we discussed about this issue last session and I think it's back here so it should ring a bell to the LSUC. Reason being as my friend in the red t-shirt said earlier that he practiced arguing a motion. That is something that is not testable on the written exam so that's something. And also as my other friend mentioned about closed book exams, that can be something that can be covered in the Bar Ads where you have lectures, you have moots and other things that are important for perspective lawyers to learn. Also, because of the difference in pass rate between students within Canada and outside of Canada, if you have that then you have something that balances so that everyone will go through a very similar education and that also protects the public as well, thank you.

Janet Pierce                      Thank you very much. Go ahead.

Participant I'd like to say a few words in favour of open book exams. Fair disclosure, I'm now teaching at public colleges paralegals and I presume it's a very similar approach. And I teach my students that we are an open book profession. We are not committing anything to memory. Over time things will stick in our memory. We'll remember Rule 16 of the Rules of Civil Procedure, the service rule thing. That'll stick eventually, but we are an open book profession which means we have to know where to look up the answer in a reliable source quickly and efficiently in order to do problem solving. So I'm 100% in favour of 100% open book exams. I think basing any kind of professional testing on memory also leads to all kinds of really gaming the exam. Memory tricks and acronyms, and all that kind of stuff, it's just so silly. We need to know how and where to look it up and that's why the person who prepares for a licensing exam by using a lot of tabs and preparing a good index, that person is preparing to be a five star lawyer. That's what I think they're doing and that's why I'm in favour of that. So that's just an argument in favour of not pulling the blanket away from that. And I have other suggestions for another time, thank you.

Janet Pierce We have someone online?

Will Morrison Sure, this comment is the written exam is useful in practice but does not measure practical lawyering skills required by new calls who cannot find a job and are forced to start their own firm or professional corporation. How is the Law Society's choice to not measure practical skills, for example drafting, basic litigation skills, or negotiation defensible when the public and the lawyers are left with an underprepared practitioner? Articling only provides 10 months of training and the LPP only four months. This is not a sufficient amount of training for a new call.

Janet Pierce Thank you very much, we have someone back here? Pardon me?

Participant My comment is somewhat in the same vein which is that you had asked whether practical skills should be mandatory or not? Absolutely under all circumstances they should be for exactly the same point. I'm not sure it's protecting the public, and I'm not sure it's protecting new calls, if they don't have those practical lawyering skills. Especially in a world with specialized training and specialized practices, 10 months of articling or even four months at the LPP would not provide someone who's in a specialized placement to actually have the general skills they need should they have to start their own practice. That means you end up with an anxiety ridden new call who's constantly and consistently afraid of being sued and you have a public who can't rely on that call. So yes, I absolutely think it should be mandatory and I don't think we should reinvent the wheel. England and Wales has the, back in my day it was the Bar Vocational Course but I think now it's the BPTC and they have a

two year training contract and to pick up on the comments of my colleagues from previous sessions, maybe we ought to look at the medical field because they do have experiential training which is part of the entire licensing process with rotations and it gives people the level of competence and confidence they need and perhaps graduated licensing to really get those anxiety ridden new calls less afraid of being sued because they know what they're doing and have more experience doing it.

Janet Pierce Thank you very much. We have someone online. We have a lot of people online so I'm going to continue to go back to the people that are on the webcast.

Will Morrison This comment is the Law Society is assessing entry level competence based on the Barrister Examination and the Solicitor Examination both of which are multiple choice open book exams, however the licensing frameworks in other professions' section in the topic three materials sets out the following professions which do not rely solely on multiple choice open book examinations as an assessment of entry level competence: psychologists, physicians, and surgeons, and chartered professional accountants. So the question is, why is there no information on why these professions do not believe a multiple choice, open book examination assesses entry level competence?

Diana Miles It's a good question and Janet can actually speak to the accountants but actually those professions have a range of different tests. The medical profession, of course, is very different. People die. It's tough. The other professions use a range. I know the accountants do use a range and they've recently changed as well but very good question and if you have other comments you want to send us, other information online the person with the question, that'd be great. But it does vary across the world. The legal profession does tend to use multiple choice or short answer question. I can also, just as a point of history in the Bar Admission Course again going back to that process, but the time the Bar Admission Course was completed and we moved to these new modalities, close to 70% of the questions on those exams were multiple choice.

Janet Pierce And is it the certified public accountants in the States, that is all multiple choice. In Canada, we continue to have a combination of different approaches but it's very difficult, it's very expensive because we do a lot of cases.

Participant My question is on that theme about the practical skills and whether they should be mandatory, but you were saying that the licensing exams is just one component of the assessment in the licensing process. There is experiential training. It's my understanding that cannot be failed though and so that's a concern that I have in terms of how do we place the licensing

exams as only a component of a process when the other components may have candidates that quite frankly should not pass them and yet cannot be failed.

- Diana Miles I'm just going to take that comment because I think that's probably one of the cruxes of the discussion that we have to have on an ongoing basis over the next few months and we hope that you'll all be involved in that but certainly the lack of consistency in some of the other processes and sometimes the profession's unwillingness to actually say in, for instance, an articling placement that they're not willing to sign the Articles of Clerkship and not sign off on fitness because they don't want to stand in the way of someone being called is perhaps something we need to address.
- Janet Pierce We're going to listen to someone in the room and then we'll move back to the webinar.
- Participant Okay, one thing I noticed in looking at the materials for tonight is it talked about other professions and that's something. It didn't talk about the way other Law Societies approach this. Like I actually went to law school in Saskatchewan so I'm familiar with the [CPLED] program used on the prairies, that it does have more of the practical assessments to it from my understanding. I was wondering if that sort of model could be considered here. I realize they're a lot smaller, don't have as many people and they do have the in-person training weeks. Most of it is done online so that does seem like something we could consider here as well.
- Janet Pierce Thank you very much, Will?
- Will Morrison I'm going to read out a couple of comments because they're quite short and they're all on a similar theme. Why not a mixed exam of multiple choice and essay so that the reasoning and critical skills are also tested? Another comment is there is no way to standardize closed book exams, particularly if you're requiring short answers or essays. Practical skills must be gained in another manner.
- Janet Pierce Great, thank you very much. So this gentleman is first, then we'll move to you.
- Participant I'm concerned that the whole tone of the debate is not elevating the profession to the highest it can accomplish. And that's what I'm after. We need a profession that is the best that it can be. Not minimally, if I can get the word right, minimally acceptable or entry level competence. I just think that is somehow setting the wrong tone, the wrong goal, the wrong whatever. Now how we correct it, I don't know. I agree with all that's been said about the practical side. You're not testing practical ability, you're not inculcating practical abilities. And you're not testing people later

to see if they are good lawyers. Without doing something of that nature we're never going to get the kind of standard of performance that we need out of our lawyers and I'm just concerned that it's going to go down and down if we keep saying well our objective is to have a minimally competent lawyer at an entry level.

Diana Miles                      Would you be supportive of periodic testing post-call to the bar?

Participant                      Yes.

Participant                      We've been talking about getting enough skills training and what worries me a bit is that the Law Society is pushing the opportunity to do skills training back at the law schools and the law schools are not necessarily the best place to really expose people to a profession. That you get substantive law there, and they're moving in that direction but they're not necessarily there yet. To give up the education at the bar level is very unfortunate because there's so many ways to teach now that don't require people to come to a particular location. Those barriers that were in place a decade ago are just not there anymore. So I think rethinking doing that kind of education is really worthwhile now because so many of the concerns people had originally just don't exist anymore. The final thought that I had and this goes to a comment that [Rohina] made in the medical profession is that what I'd really love the profession to start thinking about is large-scale clinical education where the Law Society takes some real responsibility much in the way the medical profession does for placing new lawyers in spots where they're being monitored closely. It's part of their just regular education. They're doing rotations. And you can imagine access to justice also really being served by a mechanism that provides large law firms essentially run either by the Law Society which I know might be horrifying or it might be wonderful, but maybe providing representation to the so many people who can't get representation in a supervised environment.

Now whether there's the appetite for that sort of thing, it's a big change but that gets us way past the minimally competent lawyer. You get people who have actually functioned in challenging circumstances so that would be what I would hope to see in the coming years.

Will Morrison                    Sure, another comment related to getting down to the details of other forms of testing. This comment says I would recommend alternate forms of testing for purposes of validity. For example, there is always the possibility of having an oral exam. This would give the opportunity to simulate real experiences such as motions. Another type of exam that you could have rather than multiple choice would be to allot a portion of the examination to drafting. For example, you could provide a partially completed

purchase and sale agreement and candidates would then be required to amend the contract accordingly.

Janet Pierce

Great, thank you very much. We have someone in the room.

Participant

I love the idea of entry level competence testing. What I like about it is as you said, it's a great leveller. People have gotten their skills in all sorts of ways. They may have got it in law school, they may have got it through articling, they may have got it through LPP, or through the Lakehead Program, or through any other way that we would come up with but at the end of the day, what we're saying is no matter how you learned what you learned you come to a point in time and before you become a lawyer, we're going to say you're good enough. And that's something that the public absolutely has a right to, to know that every lawyer that they might go to has been assessed as good enough. And I think that it's not enough to a member of the public to say this person went to a school, and this person had an apprenticeship because they don't know how good that school is, how good that apprenticeship is and there's nothing to point to there. And in that spirit, I'm struck by your statement that the licensing exam currently aims to test three abilities: knowledge, application, and critical thinking but not the many other abilities that we know are essential to being a lawyer: speaking, writing, drafting, interviewing, asking questions, negotiating. To some extent, the exam does cover practice management but also the practicalities of practice management as well and I think that it would be a wonderful thing to move towards exams or a set of exams that covered all of the entry level competencies that someone has a right to expect from a lawyer on that day. And the solution there shouldn't be to look do we expand articling? Do we expand these particular programs? But when we're looking at how do we ensure people are competent it should be well there's a stamp. You are, or you aren't.

Janet Pierce

Thank you very much. Krystal has someone in the other side of the room.

Participant

Good evening, as a graduate, as a candidate I just finished my Law Practice Program. I would like only to correct the impression that it's only four months. It's an eight month program. There's a four month training component, and it's also a four month placement. Now in recognition I think of different ways in getting licensed here in Ontario, one, of course, is the Law Practice Program, the other one is articling, and my proposal is it was already read is that why not a mix licensure examination which is multiple choice and at the same time essay because those who came from other jurisdiction outside Ontario took the essay examination. It's more like essay type where a candidate is tested on his reasoning skill, not on how fast he can find it in the book, or in this material. So it doesn't matter really

how you arrive at the answer in the conclusion but rather on how you reason out how you used the materials in reasoning out which tested more your critical thinking. So that's my suggestion for the licensing examination.

Now it comes to I think the data that has been presented as to low passing percentage of LPP candidates. LPP is not a review class for the Barrister and Solicitor Examinations. It's an alternative to articling. It does not offer a review class for barristers as their examination. So comparing it with a student that will finish from a law school or review classes is not fair. It's not even transparent, it's not even valid. Thank you.

Janet Pierce

Sure, Will?

Will Morrison

Another comment from the webcast, the pathways evaluation in June 2016 was an evaluation of the enhanced articling program and also the Law Practice Program by an independent professional program evaluator Dr. [Sadiq] Ali. The profession is being asked to discuss and make submissions on the licensing examinations without the benefit of a similar evaluation done by an independent, professional evaluator. As far as I can tell from the Convocation reports on the Law Society webpage, there has been no such independent professional evaluation of the licensing examinations since 2011.

Janet Pierce

I think there's someone here.

Participant

My comment comes from my experience as one of your charming item writers and a former Bar Admission Course instructor. So I have seen the evolution of this, the science behind the current exam is to me very impressive. My own conclusion is that this can be a very effective way of testing these competencies and the only suggestion I have if we're talking about taking approaches, I wouldn't take a different approach but I think the big limiting factor is the material that's provided which strikes me as fairly condensed and if you have to find the answer in there somewhere, then that is a limitation which can be frustrating and I think you miss a lot of things. So I would be inclined to push that envelope a bit.

Janet Pierce

Thank you, yes?

Participant

Hello, a lot has been said about the practical aspect of Bar Admissions or the lack thereof depending on who you speak to and I agree with all of what's said this evening. One thing I'd like to add is I did 10 months of articling and I worked for a senior lawyer for several months before I started going to court on my own, making motion submissions etcetera and I think there's a notable difference in what lawyers teach you and what judges expect from you at a practical level and I'd like to suggest that

maybe more judicial input in the what Bar Admissions process might teach a lot of us young lawyers, or new lawyers, or students coming in doing the bar exam a lot of the skills that judges expect them to have walking into court that isn't necessarily covered because we are all looking at this from a lawyer's perspective as opposed to what the bench really expects from any lawyer of any level or seniority that walks into a courtroom.

Janet Pierce Thank you very much. Do you have any more questions from the web?

Will Morrison Sure, a quick comment. This is addressed to the speakers here. You mentioned visiting Canadian law schools to discuss the exams. For all the internationally trained lawyers, you may want to consider having a live information webinar or two for all to have the info and chance to ask questions.

Janet Pierce Great, thanks, did you want to speak?

Diana Miles I just wanted to mention that we do offer a webinar for those of you who are dealing with candidates. We do offer a webinar available to all candidates that addresses the licensing process, the examinations, and all of the experiential training components and that it's offered every fall.

Janet Pierce Great, thank you very much. Yes, go ahead.

Participant I guess I have a question. I too was impressed by the statistics in your materials about the lower performance on the first try by students who came from other universities including many of whom are Canadians who have degrees from foreign universities. So I know anecdotally about lots of basically distance learning programs that people register for. They're in Canada and they register for distance learning in Australia and England institutions that I never heard of. That doesn't mean much. And I wonder what kind of a baseline they come with. I have a question, I mean do we see an increase in that kind of basic legal education? An increase in this online distance learning, people located in Canada studying online in foreign universities and then going to the licensing exam? Is there an increase in that?

Priya Bhatia Yes.

Participant Well, it's a problem.

Janet Pierce Do we have anything else online or? Is there anyone else in the room that hasn't had their comments heard? Anyone online?

Will Morrison A response to a challenge that Diana put out earlier.

- Diana Miles All right, thank you!
- Will Morrison Regarding going back to the previous Bar Admissions Course the comment is while I appreciate that many students have financial issues which make attending a half-day lecture or seminar difficult as a self-governing profession attending lectures should be mandatory. Why should this not be the case when there is mandatory CPD? This is intellectually difficult to reconcile.
- Janet Pierce Thank you, going once, going twice. Oh, we've got someone on the floor here.
- Participant I just had sort of a comment or a thought about the internationally trained lawyer population, and I think one of the things is there's a huge amount of variation in that population when they arrive at the licensing process. So for those who aren't familiar with the accreditation process, everyone who has a law degree from outside Canada has to be assessed by the National Committee on Accreditation which is a federal body, and then they all have different requirements imposed on what they have to do in order to be ready for licensing. And I guess the question is if at the end of that process they receive what's called a Certificate of Qualification. Some people are able to move through that process entirely by writing self-study exams. Other people are required to actually do in-person education programs at a law school in Canada and that would include the distance education graduates from outside Canada are actually required to go to school here for a period of time. But I guess what's interesting is if when you get a Certificate of Qualification, from a regulatory perspective, you're in the same position as someone who has a Canadian law degree but there's a significant difference in the passing rates on the exams. Does that tell us anything useful in terms of whether there's a gap in the accreditation process to prepare people for licensing? Or whether there should be additional information or additional resources available for people coming through that international stream.
- Janet Pierce Thank you very much. One more chance. Oh, we have someone over there.
- Participant To answer that question with expertise, I came from a civil jurisdiction, I'm an internationally trained lawyer from Venezuela and I went through the NCA process and then I took the bar exams. I think that it's the practice with the multiple choices questions in seven hours, 1.75 minutes per question. It was a challenge for me. So getting used to that type of examination was difficult.
- Janet Pierce Thank you very much. Priya has a question she was sent?

- Priya Bhatia This is a question about the process that we were talking about. So the comment is release the grades at least to the candidates, if otherwise anonymously, so candidates can work towards improvement where they require improvement. The answer actually is that we do provide a very informative tool which is the examination profile that Diana mentioned which is actually a candidate specific diagnostic tool that provides a summary of the candidate performance in all the competency categories as against how the rest of the administration and the rest of the candidates in that administration performed and we've introduced a service over the last few years where we have a roster of counsel who will actually speak to the candidate one on one to guide them through the profile and assist them in focusing on areas of additional study. So I just wanted to make that clear.
- Janet Pierce Great thank you, we have a question in the room?
- Participant Yes, well just a comment actually. Briefly with regards to the lower performance of internationally trained lawyers, I am an internationally trained lawyer. I managed to get through everything successfully on my first try, I'm happy to say. Not everyone does but in any event, I think we should be very careful with what we read into any gaps that may exist. There are different pools of candidates and they're going to have different things that they bring to the table and ultimately if there is a gap that shouldn't necessarily mean that the whole system needs to be reformed or changed. It simply means people come with different backgrounds and it may just take them longer or they may need to take the exams multiple times. And so in other words, I don't believe that we should be reading this as indicating that we need to totally change the system and at the same time, it should be noted that there are many internationally trained lawyers who do excel at all of these metrics.
- Participant I just want to follow up on Priya, briefly your last comment because that profile is only made available to candidates who have failed. And I can tell you that, thank God, I didn't and that was two of the happiest days of my life, but I would say I would have liked to have known just how I did not across all 527 competencies but just how did I do on family, how did I do on civil? Because it's nice to know actually when you're developing your skills, where you need to do more work. I don't know if that's possible and the issues raised earlier about that as a selling point to potential employers. I'm not talking about that necessarily although it might be but just to give people who are starting their careers as much information as possible about which of their competencies are strongest. It's something that I think a lot of people would like to know. Thank you.
- Janet Pierce Thank you very much, we have another question here. Is there anyone online? Okay, we're going to hear from young lady.

- Participant So just a quick point, I'm also a foreign trained lawyer and I also struggled with the seven hour portion of the exam. It is something of an endurance sport and if you haven't been trained in that before, it would be helpful if the Law Society would provide a mock exam rather than just 10 questions that way we can actually train ourselves in the endurance aspect of it.
- Janet Pierce Thank you very much, Priya?
- Participant I think two of my friends mentioned that for international graduates, the 7.5 hour multiple choice exam is a challenge but I graduated from New Brunswick which is a Canadian law school and I've never done a 7.5 hour multiple choice exam. Most of my exams were essays, or applications, or moots or things like that. So I think it's across the board for everybody. Now one thing I notice is with international graduates, as my friend mentioned, there's a huge difference in terms of even in the chart you provided in the materials, United States I think did better than United Kingdom and other countries, right? So I think that's to do with a few things. First some jurisdictions, they focus on barristers only, or solicitors only. Some of them do both like the United States. And then others have people can go into those programs from high school for example. And then there's also different entry requirements. Some people can't get into law school in Canada and therefore go to law schools in other jurisdictions. So there's a variety of reasons why that is the case. So I think what the NCA does, and correct me if I'm wrong, is that they assess the courses based on if it's contracts, torts, or whatever the topic is as opposed to actually seeing what is being taught, how it's being taught, and assessed.
- So I think for the public interest it would be helpful, and also for the lawyers' interests it would be helpful, for the Law Society to pay attention to those aspects as well, thank you.
- Will Morrison We received a couple of online comments that if you'll forgive me for paraphrasing suggests that the examination profiles should be provided to all candidates.
- Janet Pierce Great, thank you very much. Is there anyone else? Okay, we're going to hear from this young lady and I think that we've slowed down our questions so I think we're going to close it off after we hear from this young lady unless someone is desperate to get their point made.
- Participant Just a quick comment about the idea of the whole thing being shrouded in mystery. I remember trying to find if it was on a curve or that sort of information. I could not find it. So maybe it is somewhere but if it could be a bit more accessible that'd be really nice.

Janet Pierce

Thank you very much. Well thank you very much for all the questions that we received online and for those in the room. We really appreciate the input and I am sure that this is the entire purpose of these dialogues so thank you very much for everyone that participated this evening. I just wanted to point out that the next topic for discussion is going to be topic four, transitional training and we know that's near and dear to many people's hearts so I'm hoping that if you haven't registered already that you will do so. We're going to be in Sudbury on Monday, June 12th, Thunder Bay on Thursday, June 15th, Hamilton on Tuesday, June 20th, London on Tuesday, June 20th. We go from one right to the other, it's a great day. Ottawa on Thursday, June 22nd and Toronto on Tuesday, June 27th and I hope everyone here is enrolled again. And I just again want to thank you on behalf of the Law Society for coming this evening either in person or on the webcast and have a great evening. I know there's more food outside for those of you people that were lucky enough to be here in Toronto. The rest of you can go into your kitchens and go grab a cup of coffee. But thank you very much for joining us this evening.

[End of recorded material 01:48:27]