

# Options for Lawyer Licensing

A Consultation Paper



Dialogue on Licensing

Dialogue sur l'accès  
à la profession



Law Society  
of Ontario | Barreau  
de l'Ontario

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## TABLE OF CONTENTS

1.	INTRODUCTION .....	3
2.	EXECUTIVE SUMMARY .....	3
3.	BACKGROUND .....	5
4.	CHALLENGES WITH THE LICENSING PROCESS .....	7
A.	Supply of Articling Positions.....	7
B.	Viability of the LPP/PPD.....	8
C.	Fairness in Remuneration .....	9
D.	Fairness and Power Imbalance.....	11
E.	Consistency in Transitional Training.....	11
5.	OTHER RELEVANT CONSIDERATIONS IN LAWYER LICENSING.....	12
A.	Licensing Costs.....	12
B.	Career Pathways of New Lawyers.....	12
C.	Licensing Requirements to Respond to Regulatory Risk .....	13
6.	EVALUATIVE PRINCIPLES .....	13
	Evaluative Principle 1 - Transitional Training.....	13
	Evaluative Principle 2 - Competence .....	14
	Evaluative Principle 3 - Fairness .....	16
	Evaluative Principle 4 - Consistency.....	17
	Evaluative Principle 5 - Cost.....	17
7.	OPTIONS .....	18
	Option 1: Current Model .....	18
	Option 2: Current Model with Enhancements.....	24
	Option 3: Examination-Based Licensing.....	27
	Option 4: LPP/PPD for All Candidates .....	33
8.	CONCLUDING POINTS.....	36
	Orderly Transition .....	37

## 1. INTRODUCTION

Lawyer licensing is an integral part of the mandate of the Law Society of Ontario (LSO). Under its mandate the LSO must regulate the profession in the public interest and ensure that lawyers meet standards of learning, professional competence, and professional conduct. In November 2016, Convocation (the governing body of the LSO) asked the Professional Development & Competence Committee (Committee) to develop long-term recommendations for the licensing process. To this end, the Committee developed this paper to serve as the basis for consultation with the professions and the public on appropriate pathways to licensure.

Currently, licensing candidates are required to pass both the barrister and solicitor licensing examinations and to complete a transitional training requirement focused on teaching candidates the necessary skills, knowledge and tasks for the legal profession. Currently, two main pathways satisfy the LSO's transitional training requirements to become a lawyer – articling and the Law Practice Program (LPP), or Programme de pratique du droit (PPD).

This consultation paper sets out four possible options for consideration. Each of the options maintains the requirement to pass both the barrister and solicitor licensing examinations. Two of the options involve retaining the two current transitional training pathways, with enhancements, while two options involve making significant changes. The Committee welcomes feedback from the professions on these options, as well as other related issues. The Committee has included questions at the end of this paper intended to assist participants, although all comments are welcome.

Written comments are welcome until October 26, 2018 and may be submitted to the LSO at [www.lsodialogue.ca](http://www.lsodialogue.ca). The submissions received will inform the Committee's recommendations to Convocation regarding the lawyer licensing process in early 2019.

## 2. EXECUTIVE SUMMARY

The Committee's consideration of licensing options is taking place at a time of profound disruption and transformation of the legal profession. Globalization has dramatically increased the pool of licensing candidates, while technological advances and outsourcing have reduced the need for articling students to perform routine legal tasks.<sup>1</sup>

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<sup>1</sup> The implementation of technology is replacing lawyers in situations in which routine or predictable matters can be resolved without a lawyer. See Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada*, August 2014, online at [https://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf), p. 19.

In the past decade, the number of licensing candidates has increased by 70 percent but the supply of articling positions has not kept pace. A permanent shortage of articling positions now exists. Candidate education is more varied. Over the past five years, approximately 30% of new registrants into the licensing process have been internationally-trained applicants. Law school debt levels for some candidates have escalated as well, putting increased pressure on graduates to obtain remunerative training positions. These factors can intensify the power imbalance between candidates and their employers, leading to instances of harassment, discrimination and exploitation, where candidates work for nominal or no pay. Moreover, the increasing demand for articling positions has led to marginal placements, where candidates do not receive proper training and instruction.

The LSO has attempted to mitigate the impact of articling shortages by approving the Law Practice Program/Programme de pratique du droit as an alternative pathway to licensing. However, the limited number of participants in each program suggests that these programs may not be an entirely appropriate complement to articling. At the same time, human rights and fairness legislation and the LSO's deepening commitment to equity, diversity and inclusion all impose obligations to ensure that the licensing process is fair to all candidates.

In the face of an evolving landscape and increasing pressures on the licensing process, the Committee determined that the professions and the public should be consulted about the options listed below, including the possibility of changes to the transitional training requirement of the licensing process. In each of these options the current barrister and solicitor examinations would be maintained as a requirement for licensure. The Committee is seeking feedback on the following options:

**Option 1: Current Model:** The current two transitional training pathways would be retained, taking into account the fact that the current model is continuously adjusted to accommodate new developments.

**Option 2: Current Model with Enhancements:** The current two transitional training pathways would be retained, with enhancements. These enhancements include a requirement that candidates be paid at the statutory minimum wage, audits and greater oversight of articling and work placements. Candidates would be required to pass the barrister and solicitor licensing examinations as a prerequisite to transitional training and then pass a new skills examination in order to become licensed.

**Option 3: Examination-Based Licensing:** Candidates would be licensed after they first complete the barrister and solicitor licensing examinations and then the new skills examination. Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a requirement of licensure. The management of regulatory risk would shift to post-call and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees

practising in a workplace of six or more lawyers would not be subject to any additional requirements. Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a new practice essentials course and would be subject to audit within their first few years of practice.

**Option 4: LPP for all Candidates:** All licensing candidates would be required to complete the training course component of the LPP/PPD, without the work placement component. Candidates would also be required to successfully complete the Barrister and Solicitor examinations and the new Skills Examination.

Options 1 and 2 are based on maintaining both the articling program and the LPP/PPD. Option 3 eliminates the requirement that licensees complete transitional training as part of licensure, and Option 4 requires the completion of the LPP/PPD for all candidates. Options 2, 3 and 4 involve a new, mandatory Skills Examination. In addition, Options 2 and 4 require candidates to pass the licensing examinations before moving onto the next phase of the licensing process.

The Committee asks respondents in this consultation to consider the proposed four options in accordance with the evaluative principles described below. The licensing process should:

- i.) ensure that each candidate has achieved the goals of transitional training;
- ii.) provide candidates with an opportunity to meet required standards of professional competence;
- iii.) be derived in a fair and defensible manner;
- iv.) be consistent; and
- v.) be designed to take into consideration the cost of each option to licensing candidates, and to the profession as a whole.

### 3. BACKGROUND

Licensure is official recognition that an individual is qualified to practice as a lawyer and is competent to do so. Licensing requirements are critical to the public interest, and to the reputation of the legal profession. The proper functioning of the profession, and its continued ability to self-regulate, are premised on ensuring that those who enter it are qualified to meet appropriate standards of professional competence and do not pose a risk to the public. This responsibility is clearly stated in s. 4.1(a) of the *Law Society Act* which provides that it is a function of the LSO to ensure that “all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide”.

The current lawyer licensing process includes the following mandatory components:

- A. Articling OR
- B. The Law Practice Program (LPP) or Programme de pratique du droit (PPD), including a work placement OR
- C. The Integrated Practice Curriculum (IPC) AND
- D. Barrister and Solicitor Examinations.<sup>2</sup>

While the LSO's articling program has undergone some adjustments over time, its fundamentals have been in place over forty years. Currently, the articling program requires a candidate to work for 10 months under the supervision of an approved articling principal.<sup>3</sup>

In an effort to address concerns about transitional training while ensuring entry-level competencies, the LSO has made significant changes to the licensing process in recent years. In 2012, Convocation established a pilot project to incorporate a second pathway to licensing beginning in the 2014-2015 licensing year.<sup>4</sup> Following a request for proposal process, Ryerson University was selected to provide the English language program and the University of Ottawa was selected to provide the French language program. The LPP/PPD programs consist of a 17-week training course followed by a four-month work placement.

In 2013, the LSO approved the IPC as a pathway to licensing. This program is available only at Lakehead University's Bora Laskin Faculty of Law. Students are able to fulfill the experiential training component of the licensing process through practical course work and a 15-week practice placement embedded in their third year of law school.

Since 2006, candidates have been required to write barrister and solicitor licensing examinations to test competencies required for entry-level practice. The examinations are multiple-choice, open-book examinations. Each examination is seven hours long.

As part of its review of the licensing process, the LSO conducted the Dialogue on Licensing (DOL) between April and June 2017 to provide an opportunity for input from the legal community regarding the challenges and opportunities of lawyer licensing. Reference materials were made available to participants prior to each session at a

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<sup>2</sup> In addition, each applicant for a licence under the Act is required to be of good character. See *Law Society Act*, R.S.O. 1990, c. L.8, s. 27(3), online at <https://www.ontario.ca/laws/statute/90l08>.

<sup>3</sup> Articling principals are required to meet certain eligibility criteria and to ensure that they have been approved by the LSO in advance of the commencement of the articling placement. See "Apply to serve as an Articling principal", online at [http://www.lso.ca/licensingprocess.aspx?id=2147498211#Apply to Serve as Articling Principal](http://www.lso.ca/licensingprocess.aspx?id=2147498211#Apply%20to%20Serve%20as%20Articling%20Principal).

<sup>4</sup> Articling Task Force Final Report, October 25, 2012, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, online at <http://lso.ca/articling-task-force/>. The pilot project was originally intended to last for three years, to be extended for an additional two years if the LSO determined that there was insufficient evidence to properly evaluate the pilot project after three years.

dedicated website.<sup>5</sup> Further information regarding the DOL is provided in **Tab 3.1.1.1** to this paper.

Despite recent changes to the licensing process, challenges continue. These issues are described below.

## 4. CHALLENGES WITH THE LICENSING PROCESS

### A. Supply of Articling Positions

While the majority of candidates fulfill their transitional training requirements through the articling program, there is an abiding concern that the articling program is not sustainable in the current environment, where an increasing number of candidates, educated domestically and internationally, seek articling positions in Ontario.

In the current articling pathway, candidates are responsible for finding their own articling placement.<sup>6</sup> There is a gap between the demand for articling positions and the available opportunities. Only 10 percent of Ontario law firms currently provide articling placements. The number of graduates from Ontario law programs rose by 60% between 2007 and 2012 due to new programs and growth in the number of available spots in existing programs. The number of new law graduates approached 2500 in 2012, an increase of 1000 from 2007.<sup>7</sup>

Globalization has had an impact on the number of candidates. Over the past five years, approximately 30% of new registrants into the licensing process have been internationally-trained applicants who have completed the equivalency process through the National Committee on Accreditation (NCA) of the Federation of Law Societies of Canada. There has been a 250% increase in the number of applicants to the NCA over the past decade. The NCA issued over 900 Certificates of Qualification in 2016 compared to approximately 200 issued in 2006. Of the top source countries for NCA applicants seeking licensure in Ontario, 60% of NCA applicants are Canadians who have obtained their legal education abroad and are returning to Ontario for licensure.<sup>8</sup>

According to the LSO's data, at any given time, there are 200-500 candidates who are actively searching for articling positions. Since the commencement of the Pathways Pilot Project, there continue to be between 200-300 candidates who have not been

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<sup>5</sup> These materials may be viewed at <http://lsodialogue.ca/>. The Committee provided an information report to Convocation in February 2017 describing this initiative.

<sup>6</sup> The LSO offers several programs to assist candidates in their search for a position. The Registry, the Biographical Paragraphs Program and the Mentorship Program are described at <https://www.lsuc.on.ca/licensingprocess.aspx?id=2147498112>.

<sup>7</sup> Dialogue on Licensing, Topic 2 Reference Materials: Market Dynamics and the Lawyer Profession, p. 23, online at [www.lsodialogue.ca](http://www.lsodialogue.ca).

<sup>8</sup> Dialogue on Licensing, Topic 1 Reference Materials: Licensing Process Statistics, p.22, online at [www.lsodialogue.ca](http://www.lsodialogue.ca).



successful in their search for an articling position by August or September each year, which is the usual start date for most articling positions. Many of the candidates who experience difficulties finding a position following graduation will ultimately obtain articling positions later on in their three-year licensing term, but may end up working in an area that does not align with their career interests or location preference, or does not meet their expectations for remuneration. These candidates may accordingly be delayed in their call to the bar and may not be licensed at the same time as their cohort.

There is evidence to suggest that candidates from equality-seeking groups face barriers in obtaining articling positions. For example, two fifths of racialized licensees who participated in a survey conducted as part of the LSO's Challenges Faced by Racialized Licensees Working Group reported that their ethnic/racial identity was the most serious barrier they faced in entering the profession.<sup>9</sup> Almost half of racialized licensees "strongly" or "somewhat" agreed that they had struggled to find an articling position.<sup>10</sup>

Convocation has issued a number of reports over the years examining the issue of articling shortages.<sup>11</sup> Previous efforts by the LSO to engage encourage more law firms to provide articling placements have resulted in only nominal increases in the number of positions.

## **B. Viability of the LPP/PPD**

The establishment of the LPP/PPD was intended to address the discrepancy between the demand for articling positions and available opportunities. When the LSO established the program, it was estimated that there would be approximately 400 candidates who would enroll in the LPP each year.<sup>12</sup> This estimate was based on the number of candidates who were without an articling position at the usual starting date (August or September) at the time. Enrollment in the program has been more modest than was anticipated. The table on the following page summarizes available LSO data regarding the number of candidates completing the LPP and PPD programs during four licensing years.

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<sup>9</sup> Stratcom Strategic Communications, Challenges Faced by Racialized Licensees: Final Report, Law Society of Upper Canada, March 11, 2014, p. VI, online at [http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees\\_Full-Report.pdf](http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf).

<sup>10</sup> Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, Consultation Paper, 2014, online at [http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/racialized-licensees-consultation-paper.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/racialized-licensees-consultation-paper.pdf), p. 17.

<sup>11</sup> 1972 Report of the Special Committee on Legal Education (the MacKinnon Report); the 1990 Proposals for Articling Reform (the Epstein Report); the 2005 Report of the Task Force on Employment Opportunities for Articling Students, the Licensing and Accreditation Task Force Report (2008), and the Articling Task Force Report (2012).

<sup>12</sup> Professional Development and Competence Committee Report to Convocation, September 22, 2016, online at [http://www.lso.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2016/Convocation-September-2016-Professional-Development-and-Competence-Committee-Report.pdf](http://www.lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/Convocation-September-2016-Professional-Development-and-Competence-Committee-Report.pdf), paragraph 61.

Enrollment Information for the LPP/PPD

Program	2014-15 LPP/PPD Enrollment	2015-16 LPP/PPD Enrollment	2016-17 LPP/PPD Enrollment	2017-2018 LPP/PPD Enrollment
Ryerson (English)	221	219	232	206
Ottawa (French)	17	11	21	12
Total	238	230	253	218

The PPD has had an average of 15 candidates each year.

These lower than anticipated enrollment numbers give rise to the inference that the programs may not be seen by candidates as an appropriate alternative for transitional training. As part of the introduction of the Pathways Pilot Project, Convocation approved the establishment of a formal evaluation framework of the two transitional training programs. According to the 2017 Pathways Evaluation, which analyzed data from candidates, articling principals, and LPP work placement supervisors “the LPP/PPD is still made up mostly of candidates who did not choose the LPP/PPD as their first choice for transitional, experiential training”.<sup>13</sup>

Some participants surveyed as part of this study referred to the fact that articling is perceived as a more traditional pathway and offers a longer period of paid employment. Other comments related to concerns about the perceived stigma of the LPP, and the possibility that candidates would be perceived as “second tier” when searching for a position post-licensure. The 2017 Pathways Evaluation suggests that these perceptions may be on the decline and that candidates are generally very satisfied with the training.<sup>14</sup>

**C. Fairness in Remuneration**

Some candidates are under additional pressure to find paid articling positions because they have high student debts. For the 2017-2018 academic year, tuition at Ontario law schools ranged from \$18,723.27 at Lakehead University to \$36,440.36 at the University

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<sup>13</sup> See the 2017 Pathways Evaluation Interim Results: Years One to Three (July 31, 2017), prepared by Dr. A. Sidiq Ali, Senior Evaluation Consultant (2017 Pathways Evaluation), online at <http://lsodialogue.ca>. Thirty-eight percent of respondents to a survey in 2014-15 conducted as part of the evaluation indicated that the LPP/PPD was their first choice for experiential training. During the second year of the program, this percentage dropped to 27% but had increased to 40% in 2016-2017 (see p. 165). It is also important to note that LPP candidates, once called to the Bar, are succeeding in obtaining employment. Within six months of being called to the bar, 75 percent of LPP candidates in the 2014-2015 licensing year were working full-time in law. Eighty percent of candidates in the 2015-16 licensing year were working full-time in law within six months of their call to the bar. See the 2017 Pathways Evaluation, p. 24.

<sup>14</sup> Ibid., p. 5.

of Toronto. The impact of students' law school debts on their ability to pay their licensing fees was a persistent theme during the 2017 DOL.<sup>15</sup> As part of its submission to the DOL, the Law Students Society of Ontario conducted a survey of students regarding their debt. Eighty-five percent of respondents indicated that their debt was at least \$40,000 or more.<sup>16</sup>

That some articling positions entail inadequate remuneration was addressed in a survey conducted by the LSO in 2017. As part of its review of the licensing process, the LSO commissioned the Articling Experience Survey (Articling Survey) from Dr. Sidiq Ali, Senior Evaluation Consultant of Research & Evaluation Consulting (Articling Survey), to gather better information about a broad range of issues relating to the quality and effectiveness of articling placements. The Articling Survey was aimed at lawyers who had articulated in 2014-2015 or 2015-2016, and at those candidates in the process of completing their articles at the time of the survey (2016-2017 licensing year). The LSO released the results of this survey on January 25, 2018. The survey provides insights into a number of challenges, including remuneration.

The Articling Survey indicated that some candidates are poorly paid or not paid, suggesting that some employers are taking advantage of the opportunity to employ law school graduates for free, or for minimal compensation, given the need of these graduates to fulfil their transitional training requirement. Ten percent of articling candidates who responded to the survey and who had completed articling were paid less than \$20,000 during their articling term. Candidates who were not paid at all are included in this group (four percent did not receive any pay). Of those who responded to the survey who were articling at the time the survey was conducted, 10 percent were receiving a salary of less than \$20,000, and three percent were not paid at all.<sup>17</sup>

Inadequate or non-existent remuneration are also significant factors in LPP work placements. This 2017 Pathways Evaluation demonstrated that approximately 30 percent of LPP candidates have been unpaid during their work placement.<sup>18</sup> Moreover, in comparison with articling candidates, LPP candidates were least likely to be satisfied by the remuneration they received during their work placement (in 2015-2016, 35 percent of LPP candidates said that they were "least satisfied" about their pay; this percentage had declined somewhat in 2016-2017, when 25 percent of LPP candidates indicated that they were "least satisfied" with their salaries).<sup>19</sup>

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<sup>15</sup> See for example the submission from the Law Student Society of Ontario, Topic 5: Law Student Debt, online at [www.lsodialogue.ca](http://www.lsodialogue.ca).

<sup>16</sup> Ibid.

<sup>17</sup> Summary of Articling Experience Survey Results, Prepared by Dr. A. Sidiq Ali, Senior Evaluation Consultant, (Articling Survey) online at <http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>, pp. 15 and 33. Dr Ali notes that the survey cannot be considered to be statistically reliable or representative of the targeted population given that the total response rate for the survey was 28.1%. See p. 6.

<sup>18</sup> 2017 Pathways Evaluation, *supra* note 13, p. 129.

<sup>19</sup> Ibid., p. 128.

Lack of remuneration has been less of an issue in the PPD. During the first year of the program, 88% of PPD work placements were paid. During the second year, all of the work placements were paid. In 2016-2017, 81% of the work placements were paid. Overall, the program was able to offer paid placements to all candidates, although not always in candidates' preferred sector or location.<sup>20</sup>

#### **D. Fairness and Power Imbalance**

The power imbalance inherent in articling can lead to abuses. The Articling Survey revealed that some candidates are subject to sexual harassment, as well as racial and gender discrimination:

- 18 percent of respondents who were currently articling had faced comments or conduct related to personal characteristics (age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation) that was unwelcome and 16 percent felt that they had received differential or unequal treatment due to personal characteristics.<sup>21</sup>
- 21 percent of respondents who had completed articling indicated that they had faced comments or conduct relating to personal characteristics that were unwelcome and 17 percent felt that they had received different or unequal treatment relating to personal characteristics.<sup>22</sup>

The LSO has adopted a number of measures in response to the Articling Survey, which are described later in this report at page 20. The LSO does not currently have similar data for associates to allow it to determine if these statistics continue in the early years of practice. However, the question remains: does this inherent power imbalance support the suggestion that articling should be replaced by a new licensing system?

#### **E. Consistency in Transitional Training**

The nature of the articling experience depends on the individual circumstances of the candidate and the Articling principal, and therefore consistent exposure to competencies can be an issue.

The Articling Survey also indicates that transitional training may provide inconsistent outcomes. In the survey of respondents who were articling at the time the survey was conducted, over 85% said that at least 50% of the work they had completed during their articling term enabled them to develop legal skills. However, 14% of respondents said that less than half of the work helped them to develop their legal skills.<sup>23</sup> The Pathways

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<sup>20</sup> Programme de pratique du droit, Data collected about the Programme de Pratique du droit for the Evaluation of Pathways: Years One to Three, Pathways to the Profession Pilot Project (2014-2015 to 2016-2017), *Ibid.*, p. 22.

<sup>21</sup> Articling Survey, *supra* note 17, p. 38.

<sup>22</sup> *Ibid.*, p. 20.

<sup>23</sup> *Ibid.*, p. 68.

Evaluation data similarly indicates that articling provides varying levels of exposure to the experiential training competencies.

The exposure of candidates to different competencies varies between articling and the LPP, as well as within each pathway. Articling candidates receive the most regular exposure to fact investigation and legal research as well as to file and practice management. They are least likely to have been exposed to transactional/advisory matters, advocacy, and negotiation.<sup>24</sup> In contrast, LPP/PPD candidates were more likely to report “tremendous” to “ample” growth in file and practice management skills and the use of law firm/legal practice management systems.<sup>25</sup>

## 5. OTHER RELEVANT CONSIDERATIONS IN LAWYER LICENSING

### A. Licensing Costs

Currently, LSO licensing fees, excluding HST, are \$4710. A large proportion of LPP/PPD participants in the 2017 Pathways Evaluation commented on the cost of the licensing process (76 percent in 2014-2015, 75 percent in 2015-2016 and 63 percent in 2016-2017).<sup>26</sup>

### B. Career Pathways of New Lawyers

The range of career paths followed by lawyers is increasingly diverse. As of April 2017, there were 50,673 lawyer members of the LSO.<sup>27</sup> Forty percent of these lawyers were not actively practicing law. Further, of the 34,000 lawyers who were practicing, approximately 10,000 or 30% were performing roles in government, education, businesses and other settings where they may not directly advise the public.<sup>28</sup>

Correspondingly, new lawyers have a similar career trajectory. Of lawyers called to the Bar between 2013 and 2017, approximately 30% are practising in settings where they may not directly advise the public (government or in-house environments and other sectors; some newly-called lawyers are not practising at all).

This diversity raises the following question: should the licensing process recognize diversity of career paths?

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<sup>24</sup> 2017 Pathways Evaluation, *supra* note 13, pp. 49 and 51.

<sup>25</sup> *Ibid.*, p. 62.

<sup>26</sup> *Ibid.*, p. 129.

<sup>27</sup> The source for this statistic is LSO licensee data.

<sup>28</sup> See Dialogue on Licensing Reference Materials, Topic 2: Market Dynamics and the Lawyer Profession, p. 40, online at [www.lsodialogue.ca](http://www.lsodialogue.ca).

### **C. Licensing Requirements to Respond to Regulatory Risk**

Given increasing licensing costs and divergent career paths, there is an argument that training and licensing should focus on areas of greatest regulatory risk.

It is more important than ever that new lawyers choosing to practise law possess practice management and client service skills. Although the LPP/PPD training course specifically addresses practice and client management as part of its curriculum, the information available to the Committee, both through the DOL as well as through various studies reviewing the two pathways, suggest that articling may not consistently provide candidates with training in these areas.

## **6. EVALUATIVE PRINCIPLES**

The LSO has a statutory duty to act in the public interest and to ensure that the licensing process ensures entry-level competence. For the purposes of this consultation, the Committee recommends that each licensing option should be evaluated in relation to the extent to which it satisfies the following principles:

- a.) the five goals of transitional training, described below;
- b.) the LSO's statutory responsibility to ensure that newly-licensed lawyers are competent to practice law;
- c.) the need to ensure fairness in the licensing process;
- d.) consistency for candidates in their transitional training experience, irrespective of the nature of their transitional training experience (articling or the LPP/PPD); and
- e.) cost considerations, both for the candidates themselves as well as to the profession.

The evaluation of each option based on the evaluative principles should take into account the challenges and contextual factors outlined earlier in this report. These principles are explained below.

### **Evaluative Principle 1 - Transitional Training**

Transitional training requirements are based on the premise that the licensing process must include transition-to-practice training in order for the LSO to fulfil its competence mandate.<sup>29</sup> In previous reports, the Committee has articulated the following five goals of transitional training:

1. application of defined practice and problem-solving skills through contextual or experiential learning;
2. consideration of practice management issues, including the business of law;
3. application of ethical and professionalism principles in professional, practical and transactional contexts;

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<sup>29</sup> Articling Task Force Final Report, October 25, 2012, *supra* note 4, paragraph 12.

4. socialization from student to practitioner; and
5. introduction to systemic mentoring.<sup>30</sup>

## Evaluative Principle 2 - Competence

Section 4.1(a) of the *Law Society Act* provides that it is a function of the LSO to ensure that “all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide”.<sup>31</sup>

In the medical context, professional competence has been described as “the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and the community being served”. As noted by Professor Amy Salyzyn of the University of Ottawa, the phrase “legal reasoning” could be substituted for “clinical reasoning” in this definition.<sup>32</sup>

“Competencies” are a set of defined requirements that individuals are required to possess. Competencies include skills, knowledge, and abilities. They are acquired through academic and experiential learning.

### Academic Learning

The Federation of Law Societies of Canada (FLSC) National Requirement specifies the required competencies that graduates must have attained through a law school program in order to be considered for LSO licensing, both in Ontario and elsewhere in Canada. In order to obtain FLSC accreditation, Canadian law schools are required to ensure that their students demonstrate competencies in three core areas: skills, ethics and professionalism, and substantive legal knowledge. The National Requirement is summarized in an appendix at **Tab 3.1.1.2** of this paper.

For internationally-educated applicants, the NCA determines whether the applicant’s knowledge and understanding is equivalent to that of a Canadian law graduate. The NCA assessment normally requires an applicant to demonstrate competency in specific subjects, either through successfully completing an examination or attending a Canadian law school to successfully complete certain courses. Further details are provided at **Tab 3.1.1.3**.

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<sup>30</sup> See, for example, the Law Society of Upper Canada Articling Task Force Consultation Report, December 9, 2011, pp. 5-6, online at <http://lso.ca/articling-task-force/>. The goals of transitional training are also described in the Articling Task Force Final Report.

<sup>31</sup> *Law Society Act*, R.S.O. 1990, c. L.8, online at <https://www.ontario.ca/laws/statute/90l08>.

<sup>32</sup> Amy Salyzyn, “From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence”, University of Ottawa Common Law Section Working Paper Series, November 2016, p. 4, online at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2858332](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858332). The definition of competence in the medical setting is discussed in Ronald Epstein and Edward Hundert, “Defining and Assessing Professional Competence” (2002) 287(2) *JAMA: The Journal of the American Medical Association* 226.

NCA Assessments require applicants to demonstrate competence by completing examinations or courses in the following core common law subjects:

Canadian Administrative Law;  
Canadian Constitutional Law;  
Canadian Criminal Law;  
Foundations of Canadian Law; and  
Canadian Professional Responsibility.

While the areas listed above are mandatory, applicants may also be required to demonstrate competence in other core common law subjects (contracts, torts, and property law).<sup>33</sup> In some cases, if an applicant's law degree took less than three years to complete, the applicant may be asked to demonstrate competency in other subject areas.

The National Requirement includes three "skills competencies" (problem-solving, legal research, and oral and written legal communications). The NCA does not currently formally assess applicants' acquisition of these skills. Instead, it relies in part on candidate performance in the NCA examinations.<sup>34</sup>

Candidates are responsible for preparing for the NCA examinations on their own, and for obtaining their own course material. Some Canadian law schools offer support courses or programs for NCA subjects. The examinations are fact-based, open book, and take three hours to complete.<sup>35</sup> The NCA is currently exploring a move to a competency-based assessment system.<sup>36</sup> A recent Program Review recommended that additional steps be taken to strengthen current NCA assessment and marking, and to improve the defensibility of the NCA examinations.<sup>37</sup>

### *Testing of Competencies Through LSO Licensing Examinations*

All candidates registered in the licensing process for lawyers are required to successfully complete both the barrister licensing examination and the solicitor licensing examination to become licensed to practice law.

Lawyer candidates are required to demonstrate proficiency in respect of competencies that reflect the minimum requirements of both barristers and solicitors entering the profession in the seven areas of law that are most frequently practised.<sup>38</sup> The current

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<sup>33</sup> See <https://flsc.ca/national-committee-on-accreditation-nca/faqs/>

<sup>34</sup> Cambridge Professional Development, Program Review on the National Committee on Accreditation for the Federation of Law Societies of Canada, May 29, 2017, online at <https://flsc.ca/wp-content/uploads/2014/10/NCA-Program-Review-Report-FINAL-May-31-2017-GenDistRED.docx.pdf>, (NCA Program Review), p. 24.

<sup>35</sup> For further information, see "Completing NCA exams", online at <https://flsc.ca/national-committee-on-accreditation-nca/meeting-the-assigned-requirements/completing-nca-exams/>.

<sup>36</sup> Federation of Law Societies of Canada, "About the NCA", online at <https://flsc.ca/national-committee-on-accreditation-nca/about-the-nca/>.

<sup>37</sup> NCA Program Review, pp. 44-45.

<sup>38</sup> See <http://lsuc.on.ca/BarristerCompetencies/> and <http://www.lsuc.on.ca/SolicitorCompetencies/>.



barrister and solicitor examinations provide a means of testing candidates' abilities in core knowledge, application and critical thinking competencies, irrespective of their educational background.

Candidates may attempt each examination up to three times, and are permitted a fourth attempt in exceptional circumstances.<sup>39</sup> Currently, candidates are permitted to write the examinations at any point during a three year licensing term. Further details regarding the examinations are provided at **TAB 3.1.1.4**.

The LSO's licensing examinations are internationally-recognized as high-quality, psychometrically-defensible professional qualification assessments.<sup>40</sup>

The Committee does not propose any changes to the requirement that all licensing candidates be required to pass both the Barrister and Solicitor examinations as a requirement for licensure.

### *Experiential Training Competencies*

The LSO has also established experiential training competencies that reflect the necessary skills, knowledge and tasks for the legal profession. These competencies are based on the FLSC's National Entry to Practice Competency Profile and have been further developed and validated by the profession. The experiential training competencies are the basis of the articling program and the LPP/PPD programs and consist of the following: ethics and professional responsibility, interviewing, fact investigation and legal research, drafting and legal writing, planning and advising, file and practice management, negotiation, advocacy, and transactional/advisory matters.<sup>41</sup> The assessment of candidates' acquisition of competencies during the articling program and LPP/PPD has been independently reviewed by the Pathways Evaluations and the Articling Survey and are described in greater detail in an appendix to this report as **TAB 3.1.1.5**.

### **Evaluative Principle 3 - Fairness**

Licensing processes, including transitional training for professional occupations must be derived in a valid and defensible manner. Fairness legislation (Fair Access to Regulated

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<sup>39</sup> Information regarding Lawyer Licensing Outcomes in Ontario is available as part of the DOL Reference Materials. See the Topic 3 Reference Materials (Licensing Examinations: Assessment of Entry-Level Competence), [www.lsdialogue.ca](http://www.lsdialogue.ca).

<sup>40</sup> See, for example, an article written by three U.S. law professors (Kaufman, Curcio, and Chomsky), "A Better Bar Exam – Look to Upper Canada?" (July 25, 2017, online at <https://www.lawschoolcafe.org/2017/07/25/a-better-bar-exam-look-to-upper-canada/>).

<sup>41</sup> DOL Topic 4 Reference Materials, Transitional Training, p. 28, "Experiential Training Competencies for Candidates", online at [https://lsdialogue.ca/wp-content/uploads/2017/03/DoL\\_Topic4\\_Reference\\_Materials\\_EN.pdf](https://lsdialogue.ca/wp-content/uploads/2017/03/DoL_Topic4_Reference_Materials_EN.pdf).

Professions and Compulsory Trades Act<sup>42</sup> ) and human rights laws require that licensing (registration) practices are consistent with the following objectives:

1. fairness;
2. objectivity;
3. transparency; and
4. accountability.

As part of the Fairness Commissioner's oversight of the LSO's licensing process, the LSO submits annual reports and participates in extensive assessment activities regarding its registration practices to demonstrate fulfillment of the general and specific duties enumerated in the legislation.<sup>43</sup>

#### **Evaluative Principle 4 - Consistency**

In order for a mandatory transitional training requirement to be defensible, there must be some degree of uniformity in the nature of the experience for each candidate. Consistency is integral to the ability of the regulator to assure the public that new licensees have achieved entry-level competence. The degree of consistency may be measured by assessing the extent to which all candidates have been exposed to the necessary competencies and experiences, irrespective of the pathway to licensing that they choose or the transitional training opportunity that they hold.

#### **Evaluative Principle 5 - Cost**

Currently, each candidate pays a licensing fee of \$4710 (plus HST) which includes a \$2800 experiential training fee for the articling program or the LPP/PPD. Convocation has determined that all candidates should pay the same licensing fee, irrespective of pathway. Each year, Ontario lawyers contribute \$1,000,000 towards the costs of the licensing process to offset the costs resulting from the introduction of the LPP/PPD (each lawyer contributes between \$25 and \$27 towards the cost of the program). The introduction of the LPP/PPD in 2014-2015 increased licensing costs incurred by candidates from \$2910 per candidate to \$5210 per candidate, which was offset by the \$1,000,000 contribution from lawyer members, resulting in a final fee increase to \$4710.

Since the licensing process operates on a cost recovery basis which entails that candidates bear the cost of the licensure, with contributions from the profession, the Committee is of the view that each option should be evaluated with a view to the estimated financial impact.

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<sup>42</sup> *Fair Access to Regulated Professions and Compulsory Trades Act*, 2006, S.O. 2006, c. 31, s. 6, online at <https://www.ontario.ca/laws/statute/06f31#BK7>.

<sup>43</sup> The 2016 OFC report regarding the LSO's registration practices may be accessed at [http://www.fairnesscommissioner.ca/index\\_en.php?page=professions/law\\_society\\_of\\_upper\\_canada](http://www.fairnesscommissioner.ca/index_en.php?page=professions/law_society_of_upper_canada).

## 7. OPTIONS

The Committee seeks feedback from the profession about whether or not the transitional training requirement should be altered, and, if so, how. This consultation takes the form of proposing four options for licensure, including the existing program.

The four options can be broadly described as follows:

- Option 1: Current Model**
- Option 2: Current Model with Enhancements**
- Option 3: Examination-Based Licensing**
- Option 4: LPP for All Candidates**

Options 1 and 2 are based on maintaining both the articling program and the LPP/PPD. Option 3 eliminates the requirement that licensing candidates complete transitional training.

Option 4 requires the completion of the LPP/PPD for all candidates without the work placement component. Options 2, 3 and 4 involve a new mandatory skills examination. In addition, Options 2 and 4 require candidates to pass the licensing examinations before moving onto the next phase of the licensing process.

### **Option 1: Current Model**

#### *Overview*

The first option is the current model of licensure, including multiple pathways for transitional training. The primary components are:

- A. Articling OR
- B. LPP/PPD, including a work placement OR
- C. Integrated Practice Curriculum
- D. Barrister and Solicitor Examinations

#### *Evaluative Principles Analysis - Option 1*

#### Transitional Training

The 2017 Pathways Evaluation reviewed data from surveys conducted in 2014-2015, 2015-2016 and 2016-2017 and concluded that both articling and the LPP/PPD achieve the goals of transitional training in a manner consistent with the objectives of licensing (fairness, objectivity, transparency and accountability).<sup>44</sup>

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<sup>44</sup> 2017 Pathways Evaluation, *supra* note 13, p. 6. Of the 1455 licensing candidates in 2014-2015, 44% responded to the survey conducted as part of this study. In 2015-16, participation was similar (44% of 1392 candidates). During

The evaluation concluded that both the articling program and the LPP/PPD provide candidates with an opportunity to apply defined practice and problem-solving skills through contextual or experiential learning, which is the first goal of transitional training. Candidates also have an opportunity to consider practice management issues, including the business of law, although LPP/PPD candidates are more consistently exposed to this second goal of transitional training given the specific emphasis on this topic during the LPP and PPD training courses.

Candidates in both pathways also have an opportunity to apply ethical and professionalism principles in professional, practical and transactional contexts (the third goal of transitional training). Both pathways provide an opportunity for candidates to experience socialization from student to practitioner and address the fourth component (the LPP and PPD training courses and the work placement itself offers this opportunity). Finally, articling principals and LPP/PPD mentors provide candidates with an introduction to systemic mentoring, which is the fifth goal of transitional training.

Options 1, 2 and 4, which contemplate retaining a mandatory transitional training requirement, are consistent with the practices of regulated professions in most jurisdictions around the world. Options 1 and 2 are also responsive to the views expressed by in-person participants during the DOL. Forty-one percent of respondents polled during a discussion group organized to discuss transitional training indicated that work placements during licensing, including work placements during law school, were the best option to ensure entry-level competence of new lawyers. An equal percentage selected a practical training course during licensing. Only one percent of participants indicated that transitional training should not be part of the licensing process.<sup>45</sup>

## Competence

Data reviewed by the Committee suggests that both of the current transitional training options assist candidates to achieve the required standard of competence. The 2017 Pathways Evaluation, which included data from both candidates and articling principals, concluded that the articling pathway offers candidates an opportunity to develop their skills and competencies, particularly in relation to fact investigation and legal research, and file and practice management.<sup>46</sup>

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the third year of the evaluation (2016-2017), only 25% of 1411 articling candidates responded to the survey. A survey was also sent to articling principals. The response rate from articling principals was also low (39% of principals in 2014-15, 29% in 2015-16, and 17% in 2016-17). The Pathways Evaluation also included a survey sent to practising new lawyers who articulated in 2014-15 and 2015-16. Participation by newly-licensed lawyers was low (30% during the first year and 10% in the second). Dr. Ali suggests that the low participation rates in the Pathways Evaluation may be related to the fact that the Articling Survey had been conducted shortly before this study began. The findings regarding acquisition of competencies for articling candidates are at pp. 48-49 of the 2017 Pathways Evaluation. The study suggests that the findings should be treated with some caution, given the low response rate to the survey.

<sup>45</sup> Dialogue on Licensing, Topic 4: Transitional Training, Discussion Group Summary Report, online at [www.lsodialogue.ca](http://www.lsodialogue.ca), p. 8.

<sup>46</sup> 2017 Pathways Evaluation, *supra* note 13, p. 49.

The 2017 Pathways Evaluation also shows that both the LPP and the PPD assist candidates in achieving the competence required for licensure. Dr. Ali observes that most LPP candidates are meeting the competency development expectations on all of their assessments, and a considerable proportion of candidates are “exceeding” or “exceeding/meeting” the expectations on all assessments.<sup>47</sup> Available data also indicates that the majority of PPD candidates reported “ample” to “tremendous” growth in all of the skills competencies areas.<sup>48</sup>

The Articling Survey also suggests that four-fifths of respondents thought that at least 50 percent of the work they had completed during their placement enabled them to further develop their legal skills.<sup>49</sup>

The Articling Survey also revealed that the mean satisfaction rating for candidates currently articling with respect to the work they had performed during articling was 3.69 on a scale of 0 (“highly dissatisfied”) to 5 (“highly satisfied”). Of those who had completed their articles, the average response was 3.62.<sup>50</sup> When asked to rate their level of satisfaction with respect to the quality of learning during their articling placement, respondents who had completed their articles provided an average rating of 3.72 on a scale of 0 to 5. Respondents who were articling at the time reported an average satisfaction rating of 3.52.<sup>51</sup>

## Fairness

### *Articling*

The results of the Articling Survey suggest that some candidates continue to experience discrimination and harassment based on irrelevant personal characteristics during their articling experience. The LSO takes these matters very seriously. Discrimination and harassment have no place in the legal professions or in the licensing process.

A series of measures have been adopted by the LSO in response to the Articling Survey, including:

- i.) engaging with law firms and legal departments in a variety of settings to share best practices to address issues regarding harassment and discrimination, including examining how best to establish mechanisms for articling candidates, lawyers, and paralegals to confidentially report instances of harassment and discrimination;

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<sup>47</sup> Ibid., pp. 71-73.

<sup>48</sup> Programme de pratique du droit, *supra* note 20, pp. 10-11.

<sup>49</sup> Articling Survey, *supra* note 17, p. 16 (respondents who had completed articling) and p. 35 (currently articling).

<sup>50</sup> Ibid., pp. 36 and 17.

<sup>51</sup> Ibid., pp. 36 and 18.

- ii.) raising awareness of LSO services and supports to assist people experiencing harassment and discrimination, including the Discrimination and Harassment Counsel and the Member Assistance Program;<sup>52</sup>
- iii.) reviewing and amending the *Rules of Professional Conduct* (in particular Section 6.3 - Sexual Harassment - and Section 6.3.1 - Discrimination) to ensure that the *Rules* are up-to-date and reflect the latest statutory changes and case-law developments.

An additional mitigating factor to be considered in evaluating the fairness of the articling program is that discrimination and harassment are specifically prohibited under the *Rules of Professional Conduct*. Articling candidates experiencing these issues have access to assistance from the Discrimination and Harassment Counsel Program, the Articling Office and the Member Assistance Program.

With respect to barriers to licensing faced by racialized articling candidates seeking a position, the LSO has adopted various measures recommended by the Challenges Faced by Racialized Licensees Report to raise awareness in the profession as a whole about the need to eliminate unconscious bias and to ensure fairness and equity during the hiring process. The report requires that a licensee representative of a legal workplace of at least 10 licensees develop, implement and maintain a human rights/diversity policy addressing the need for fair recruitment, among other issues. Licensees will also be required to complete Continuing Professional Development hours focused on equality, diversity, and inclusion.

### *LPP/PPD*

According to the 2017 Pathways Evaluation, the composition of candidates in the LPP/PPD is more diverse than the articling population. The existence of the LPP/PPD as an alternative to articling supports fairness by ensuring access to the profession for all candidates, including those who have faced barriers to obtaining articles for a variety of reasons. Approximately half of the candidates in the LPP are internationally educated (the largest proportion of candidates received their law degrees in the U.K., the U.S., and Australia).<sup>53</sup> Half of the internationally-educated candidates are Canadians.<sup>54</sup>

In contrast, since the establishment of the program, none of the PPD candidates to date has been internationally-educated. The vast majority are University of Ottawa graduates, as no other Ontario law school offers a common-law degree in French. Compared to the articling program, both the LPP and the PPD have a greater proportional representation of candidates who are racialized, are francophone, indicate

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<sup>52</sup> Discrimination and Harassment Counsel, online at <http://www.lsuc.on.ca/discrimination-harassment-counsel/>. Member Assistance Program, online at <http://www.myassistplan.com/>.

<sup>53</sup> 2017 Pathways Evaluation, *supra* note 13, pp. 4, 95 and 97.

<sup>54</sup> Ryerson University, 2016-2017 LPP Final Report to the Law Society of Upper Canada, May 15, 2017, p. 2.

that they have a disability, or are over 40.<sup>55</sup> The following table compares the percentage of racialized candidates in each pathway.

**Percentage of Racialized Candidates by Pathway – Based on Voluntary Self-Identification Data**

Pathway	Year 1 2014-2015	Year 2 2015-2016	Year 3 2016-2017	Year 4 2017-2018
Articling	21%	18%	17%	22%
LPP/PPD	33%	32%	30%	36%

Another measure of fairness is the extent to which the licensing program, including the two pathways, responds to the needs of French-speaking licensing candidates. The LSO’s French Language Services Policy provides that the LSO is committed to offering lawyer and paralegal licensing in French, including resources and examinations of equal quality in French and English and the option to receive the Call to the Bar certificate in either French or English.<sup>56</sup>

The PPD is seen to have a unique role in addressing the current access to justice crisis for members of the public who seek legal services in French in Ontario.<sup>57</sup> The PPD work placement offers candidates the opportunity to experience a francophone work environment during the 17-week training component of the program. As a result, the PPD currently plays a special role in Ontario’s legal services landscape.

The program is based on the recognition of linguistic dualism, and takes into account the particular needs and realities of the Franco-Ontarian community, particularly with respect to access to justice.<sup>58</sup> Almost all of the PPD candidates surveyed in the 2017 Pathways Evaluation indicated that as a result of their participation in the program, they had become aware of the unique needs and characteristics of the Franco-Ontarian legal community.<sup>59</sup>

Participants in the DOL (both individuals as well as legal stakeholder groups) emphasized the importance of the PPD in ensuring that lawyers of the future are equipped to serve francophone clients.<sup>60</sup>

A significant number of PPD candidates are graduates of the University of Ottawa’s National (civil and common law) Program. Because common law courses are not

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<sup>55</sup> 2017 Pathways Evaluation, *supra* note 13, p. 4.  
<sup>56</sup> Law Society of Upper Canada French Language Services Policy, January 2015, online at <http://www.lsuc.on.ca/providing-services-french/>.  
<sup>57</sup> Letter from Allan Rock, “Linguistic Dualism and the Programme de pratique du droit”, March 7, 2018, [www.lsocialogue.ca](http://www.lsocialogue.ca).  
<sup>58</sup> *Ibid.*  
<sup>59</sup> 2017 Pathways Evaluation, *supra* note 13, p. 153.  
<sup>60</sup> See submission of Ronald F. Caza to the DOL, July 28, 2017, online at [www.lsocialogue.ca](http://www.lsocialogue.ca).

offered until the fourth year of the program, these candidates are not in a position to apply for a transitional training position until their final year. The PPD offers these candidates an opportunity to be licensed in Ontario.<sup>61</sup>

### *Remuneration in Articling and the LPP/PPD*

There are inherent differences between the two pathways with respect to pay. While articling candidates are paid for a 10-month placement (subject to the issues regarding unpaid and poorly paid placements referred to earlier), LPP/PPD candidates are paid only for the four-month work placement. Further, as noted above, thirty percent of LPP candidates are not paid at all during their work placement. In 2016-2017, 19% of the LPP work placements were unpaid.

### *Consistency*

#### Articling

The articling experience is dependent on the circumstances of the principal employing the candidate. In some cases, candidates may not receive any exposure to certain competencies because of the nature of the practice and the relationship between the principal and the candidate.

The 2017 Pathways Evaluation suggests that articling does not provide a consistent exposure to all of the LSO experiential competencies, which reflect the skills, knowledge, and tasks that are necessary for entry into the profession. During the past three years, articling candidates have received the most regular exposure to fact investigation and legal research as well as to file and practice management. Articling candidates were least likely to have been exposed to transactional/advisory matters, advocacy, and negotiation.<sup>62</sup>

The Articling Survey and comments received during the DOL also suggest that there are an increasing number of marginal placements that are not delivering appropriate transitional training. Fourteen percent of respondents who were articling at the time of the Articling Survey indicated that less than half of the work they completed enabled them to further develop their legal skills.<sup>63</sup> Twenty percent of respondents who had completed their articles at the time of their participation in the survey had the same observation.<sup>64</sup>

Unpaid and poorly paid articles, as well as unpaid LPP work placements (30% of positions are unpaid, despite Ryerson's best efforts) contribute to a lack of consistency between the pathways.

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<sup>61</sup> Alain Roussy, *Le Programme de pratique du droit à mi-parcours: une étude empirique*, *Revue de droit de l'Université d'Ottawa*, 48:1 (2017) 79, p. 59.

<sup>62</sup> 2017 Pathways Evaluation, *supra* note 13, pp. 49 and 51.

<sup>63</sup> Articling Experience Survey Results, *supra* note 17, p. 35.

<sup>64</sup> *Ibid.*, p. 17.



## LPP/PPD

Because of their structure and design, the LPP and PPD training courses offer a more consistent learning opportunity than does articling. Both training courses provide a systematic approach involving scenarios and tasks developed by lawyers with expertise in various areas of law. This training helps ensure practice readiness by providing candidates with an opportunity to perform entry-level lawyer tasks and activities during both the training course and the work placement component of the program, as well as formative and summative assessment in relation to the required competencies. Because of this structure, each candidate can be assured of reasonably consistent legal training.

### *Cost*

Option 1, if implemented, would not have any additional cost implications for candidates who would continue to pay the same licensing fee of \$4710 (plus HST), subject to necessary increases for inflation over time, and assuming an annual member contribution to the licensing process.

## **Option 2: Current Model with Enhancements**

### *Overview*

Option 2 has the same basic elements as Option 1 with enhancements to address inadequate placements, including a new requirement that all candidates would have to receive at least the statutory minimum wage during transitional training wherever possible. In addition, Option 2 would involve a new mandatory skills examination to measure the achievement of the required standard of competence. Option 2 would involve completion of the following components in the order listed:

- A. Barrister and solicitor examinations, with successful completion required as a prerequisite to the commencement of transitional training;
- B. Articling or LPP/PPD, with enhancements; and
- C. New skills examination, with successful completion required before licensure.

### *Barrister and Solicitor Examinations*

Option 2 would maintain the content and focus of the barrister and solicitor examinations. However, it would require these examinations to be successfully completed prior to the transitional training phase. These examinations test competencies that candidates are expected to have acquired while in law school; success in these examinations is necessary to ensure that candidates are ready for a practice environment. The LSO will offer two opportunities for candidates to pass the examinations before beginning their articles or the LPP/PPD. Candidates who are not successful in the examinations will be required to defer transitional training. Only

candidates able to pass the examinations will be able to occupy valuable transitional training positions.

### *Articling, LPP/PPD with enhancements*

The proposed enhancements to the articling and work placement processes are:

1. additional measurement and monitoring to ensure that all placements meet the basic goals and objectives of transitional training;
2. random audits to confirm that placements are meeting transitional training goals;
3. a new requirement regarding remuneration of licensing candidates at the statutory minimum wage prior to approval of the articling or LPP/PPD work placement; wherever possible; and
4. the elimination of marginal placements.

### *Skills Examination*

At the conclusion of their articling or work placement, all candidates would be required to complete a new examination to test their lawyering skills (skills examination). The skills examination could consist of written tasks, such as writing an opinion letter or memorandum, drafting an affidavit or short pleading, providing an analysis of the application of the *Rules of Professional Conduct* to a particular situation, or identifying proposed solutions to an urgent issue or question.

### *Evaluative Principles Analysis – Option 2*

#### Transitional Training

Because Option 2 would involve retaining both the articling and LPP/PPD pathway, it would ensure that licensing candidates meet the goals of transitional training. The analysis of the five goals of transitional training under Option 1 should be reviewed when evaluating this option.

#### Competence

Option 2 requires candidates to successfully complete the barrister and solicitor examinations before transitional training begins. As noted above, this requirement would mean that only those who have attained the required competencies in law school will enter the transitional training phase.

As set out under Option 1, the evidence indicates that articling and the LPP enable candidates to acquire the necessary skills and competencies. Option 2 proposes a new mandatory skills examination before licensure to objectively evaluate this learning process. Although the licensing process currently requires candidates to demonstrate that they have acquired certain experiential training competencies during the transitional training phase, the evaluation is conducted by individual articling principals

and LPP training course and work placement assessors. The skills examination would ensure that all candidates would be subject to a common evaluation and required to demonstrate the same competencies before they are licensed.

Option 2 would include additional LSO monitoring and random audits of articling placements to ensure that they meet the goals and objectives of transitional training. These measures would respond to some of the concerns expressed by some respondents to the Articling Survey about the extent to which their articling experiences enabled them to develop their legal skills.

### Fairness

The concerns noted earlier in relation to Option 1 about whether candidates from equality-seeking groups have equal access to articling positions would also apply to Option 2. Some of these concerns are currently being addressed through the LSO's equality, diversity and inclusion initiatives, and as a result of its response to the Articling Survey. The analysis under Option 1 regarding the role played by LPP/PPD in ensuring fairness in the licensing process would also apply to Option 2. The continuation of the PPD would ensure that the licensing system continues to (i) respond to the needs of French-speaking licensing candidates, and (ii) ensure that future lawyers are able to meet the public's need for competent and ethical legal services in French.

Requiring all candidates to successfully complete the Barrister and Solicitor examinations before beginning their transitional training may address some of the issues regarding the perception that the LPP/PPD is a "second-tier" pathway to licensing, since only candidates who demonstrate that they have acquired the necessary competencies in law school would be permitted to enter transitional training.

The new requirement that all licensing candidates receive the statutory minimum wage would address the lack of fairness with respect to pay, as follows:

- i.) Unpaid or poorly paid articles would no longer be permitted, which would address the exploitative nature of such arrangements and ensure a minimum standard of payment, irrespective of the nature of their placement.
- ii.) The discrepancies between the percentage of unpaid articling positions (3%) and unpaid LPP work placements (30%) would be eliminated.

### Consistency

As discussed above, the requirement that all candidates pass the barrister and solicitor examinations before beginning transitional training ensures consistency among all candidates by requiring them to demonstrate that they have acquired certain competencies.

Further, the addition of LSO audits of articling and other enhancements proposed as part of Option 2 may not eliminate the issue of the inconsistent quality of articles, but will reduce the number of poor quality or marginal articling positions and ensure a more consistent experience among all candidates.

### Cost

The proposed new quality assurance protocols (audits and additional measurement and monitoring) for all placements could result in a fee increase of approximately between \$125 and \$175 per candidate. The estimated cost of a final skills examination would depend on the type of examination to be implemented. A written skills examination, described earlier, could result in a cost of between \$1600 and \$2000 per candidate. These additional costs would be added to the current licensing fee which is \$4710 per candidate. The total cost, per candidate, of Option 2 would likely be in the range of \$7000 (plus HST).

## **Option 3: Examination-Based Licensing**

### *Overview*

Based on an analysis of regulatory risk to the public, and mindful of the sustainability of the current universal transitional training requirement, Option 3 is based on the premise that there is a need for profound change in the current licensing system. If implemented, Option 3 would involve the removal of the pre-licensure transitional training requirement for all. The acquisition of competencies would be measured through the successful completion of three examinations as the precondition to licensure (the current barrister and solicitor examinations and the new Skills Examination).

Option 3 shifts the management of regulatory risk to the post-call career path of the new licensee. Option 3 would involve completion of the following components in the order listed:

- A. Barrister and solicitor examinations, with the same content as described in Option 1 and successful completion required as a condition of licensure;
- B. Skills examination, with the content as described in Option 2 and successful completion required as a condition of licensure;
- C. Licensure, with post-call regulatory requirements dependent on the lawyer's employment situation. A Sole Practice Essentials Course would be required for lawyers entering into sole practice or practice with five or fewer lawyers.

Candidates would be licensed to practise after they successfully completed the three examinations described above. The LSO's focus would shift to post-call oversight. The requirements are described below:

- i. *Non-Practising Licensees*: Candidates who choose not to provide legal services directly to members of the public would be licensed after the examinations and would be in a non-practising membership category. As noted earlier, currently, 30 percent of newly-licensed lawyers fall into this category. Should non-practising licensees decide to practice law at some later date, they would be required to satisfy the conditions described in paragraphs ii or iii below.
- ii. *Licensees Practising in a Workplace of Six or More Lawyers*: Candidates who obtain employment as lawyers in a workplace of six or more lawyers would be licensed after the examinations with no post-call requirements. This option assumes that the transitional training for these new lawyers would be provided by their workplaces, and acknowledges that students have experiential learning opportunities in law school.
- iii. *Licensees Practising in a Sole or Small Firm Practice with Five or Fewer Lawyers*: Candidates would be licensed after the examinations and required to complete a Practice Essentials Course specifically designed for sole practitioners and members of small firms within 12-18 months of the candidate choosing this category of practice. The course could include 30 hours of online e-course content and five in-person days.

### *Practice Essentials Course*

Subjects to be covered in this course include client service and communication, financial and practice management, and the business of running a law or legal services practice. Optional modules could be added onto the course that would focus on particular areas of practice (real estate, estates and trusts, family law, criminal law, civil litigation, and corporate-commercial law).<sup>65</sup> Newly licensed lawyers entering sole or small firm practice may also be subject to audit within their first few years of practice.

The practice essentials course could be a requirement for licensees who move from a workplace of six or more lawyers to a sole or small firm practice at any point in their careers.

### *Risk Analysis - Option 3*

Option 3 has been designed to ensure that the resources allocated by the LSO to the licensing system are directed towards the areas of greatest risk.

The LSO's data demonstrates that sole practitioners continue to receive a significantly higher number and proportion of complaints while licensees practising in larger firms continue to receive a significantly fewer number and proportion of complaints.<sup>66</sup> As at

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<sup>65</sup> The Practice Essentials Course could also be adapted for paralegal licensing candidates.

<sup>66</sup> "Larger firm" refers to lawyers practising in firms with more than 26 licensees. Law Society of Upper Canada Professional Regulation Division End-of-Year Report (31 December 2016), online at

December 31, 2016, sole practitioners constituted 35% of all lawyers in private practice, yet, this group received 51% of all complaints against lawyers in private practice in 2016. Further, lawyers practising in two-licensee firms (9% of all lawyers in private practice) received significantly more complaints (13% of all complaints received against lawyers in private practice in 2016).<sup>67</sup>

In 2016, the highest proportion of complaints made to the LSO about lawyers (47%) involved service issues. Service issues include failure to report to a client, failure to follow client instructions, lack of communication with a client, failure to preserve client property, failure to serve a client, failure to supervise staff, failure to account to a client, failure to pay financial obligations, breach of confidentiality, and withdrawal of services.<sup>68</sup>

The Practice Essentials Course would emphasize client service and communication, financial and practice management, and the business of running a law or legal services practice.

Seventy-five percent of law firms in Ontario are one lawyer firms. However, relatively few articling positions are available in these settings (in 2016-2017, 16.8% of available articling placements were in sole practice or in firms of between 2-5 lawyers).<sup>69</sup> Most of the available placements are in larger metropolitan areas and are offered by medium and large firms where candidates are not routinely exposed to the business of law and the realities of running a law practice. As a result, the majority of current available transitional training opportunities may not prepare candidates for the challenges of small firm or sole practice.

Given market realities, Option 3 focuses on regulatory risk in settings in which lawyers do not have access to colleagues and other practice supports. LSO resources would be directed to proactively addressing risk issues in a different way, by requiring lawyers in higher risk practices to take the Practice Essentials Course. Option 3 would not direct resources to an unnecessary transitional training infrastructure for candidates who choose not to practice law and do not pose a risk to the public.

Other factors taken into consideration by Option 3 include

- (i) the role played by law firms in training new lawyers; and

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[https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf), p. 10.

<sup>67</sup> Ibid., pp. 62-63.

<sup>68</sup> Service issues are described in the Professional Regulation Division Report to Convocation May 2017 (Analysis of Complaints Received in the Professional Regulation Division in 2016), p. 22. Also see the Professional Regulation Division End of Year Report (31 December 2016), p. 23, online at

[http://www.lso.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf](http://www.lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf).

<sup>69</sup> 2017 Pathways Evaluation, *supra* note 13, p. 124 (“Settings for Articling Placements (Years One through Three)”).

- (ii) the establishment of mentoring initiatives in the profession, described in greater detail below.

### *LSO Initiatives*

In January 2016, LSO Convocation approved the creation and funding of a new law practice coaching and advisory network for lawyers and paralegals, one of the goals of which was to “provide coherent and systematic opportunities for the enhancement of competence”.<sup>70</sup> The LSO Coach and Advisor Network was launched in November 2016. Since inception, 150 lawyers and paralegals have volunteered for the program and have responded to over 500 requests from individuals seeking opportunities to meet with a coach or advisor.<sup>71</sup> Many legal organizations have also established mentoring initiatives.<sup>72</sup> The LSO’s Practice Management Helpline also assists lawyers with situations raising ethical questions.

### *Role of Law Schools*

The proposed new skills examination, common to Options 2, 3 and 4 could function as an incentive to law schools to ensure that their curricula sufficiently prepare graduates for this practical examination. Further, with the removal of articling, students may pressure law schools to provide more experiential training opportunities.

### *Evaluative Principles Analysis – Option 3*

#### Transitional Training

Option 3 recognizes that candidates who do not provide legal services to the public do not require transitional training in the traditional sense. It also takes into consideration that candidates who begin their careers in a workplace of six or more lawyers will have greater access to supervised training and mentoring in those settings.

For lawyers in sole or small firm practices of five or fewer licensees, the Practice Essentials Course would systematically address the first three transitional training goals (application of practice and problem-solving skills through contextual or experiential learning, consideration of practice management issues, including the business of law,

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<sup>70</sup> Mentoring and Advisory Services Proposal Task Force Report to Convocation, January 2016, online at [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-january-2016-mentoring.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf).

<sup>71</sup> Current statistics regarding the use of Coach and Advisor Network is available in the Professional Development & Competence Committee Report to Convocation, February 2018, online at [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2018/2018-Feb-Convocation-Professional-Development-Competence-Committee-Report.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2018/2018-Feb-Convocation-Professional-Development-Competence-Committee-Report.pdf).

<sup>72</sup> Further information regarding the OBA Mentorship Program is available at <https://www.oba.org/Professional-Development-Resources/Mentorship>. Further information about the Advocates’ Society mentorship initiative is available at [http://www.advocates.ca/TAS/Community\\_Events/Mentoring/TAS/Community\\_Events/Mentoring.aspx?hkey=b0e04c98-eabb-495e-b345-dc9a2cc95ea1](http://www.advocates.ca/TAS/Community_Events/Mentoring/TAS/Community_Events/Mentoring.aspx?hkey=b0e04c98-eabb-495e-b345-dc9a2cc95ea1).

and application of ethical and professionalism principles). In fact, the course could be more effective in addressing these goals than articling in many cases. Not all work environments offer candidates exposure to client services and communication, financial and practice management, and the business of running a law or legal services practice, which would be covered in the course.

The final two transitional training goals are socialization from student to practitioner and the introduction to systemic mentoring. While candidates who complete the Practice Essentials Course may experience some of these benefits through their participation in the course, they would not have had as lengthy a period of supervised work pre-licensure. That said, Option 3 takes into consideration that, compared to previous generations of law students, today's law students have greater access to opportunities to provide legal services as a result of a wide variety of experiential learning opportunities currently available in law school.<sup>73</sup> Further, as noted above, both the LSO and other legal organizations offer a variety of mentoring programs that may offer opportunities for socialization from student to practitioner. While the goals of transitional training can be achieved in law school to some extent, they can also be achieved post-call in a practising environment where lawyers have access to more experienced members of the profession.

### Competence

Option 3 addresses competence by requiring candidates to be tested through the barrister and solicitor examinations and the skills examination. Further, individuals practising on their own or in small firms would benefit from additional focus on the business of running a law practice through the Practice Essentials Course. Further, all Canadian law schools must demonstrate that their curricula requires students to demonstrate competencies in three core areas (skills, ethics and professionalism, and substantive legal knowledge).<sup>74</sup> As part of the NCA process, the credentials of internationally-trained lawyers are evaluated in accordance with the competencies and standards in the FLSC National Requirement.<sup>75</sup>

Option 3 also takes into consideration the mentoring initiatives undertaken by both the LSO and legal organizations, described above, that are designed to enhance competence.

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<sup>73</sup> Information provided as part of the DOL (current as of March 2017) indicates that eleven Canadian law schools offer experiential training opportunities including legal clinics, clerkships, internships, and mediation practicums, which may or may not be for academic credit. All Canadian law schools offer non-credit or volunteer learning opportunities. See [www.lsodialogue.ca](http://www.lsodialogue.ca). In September 2012, Osgoode Hall Law school became the first Canadian law school to introduce an experiential education requirement as part of its curriculum.

<sup>74</sup> See the National Requirement of the Federation of Law Societies of Canada. "Canadian Law School Curricula: Minimum Competencies and Skills Attained at a Canadian Law School", [www.lsodialogue.ca](http://www.lsodialogue.ca).

<sup>75</sup> The factors considered by the National Committee on Accreditation are set out at **Tab 3.1.1.3**.



## Fairness

Option 3 ensures that all licensing candidates have an equal opportunity to be licensed. Market conditions with respect to the supply of paid articling or LPP positions would no longer determine access to transitional training as a mandatory component of the licensing process. Option 3 would eliminate concerns about the “two tiered” nature of the two transitional training pathways. That said, not all candidates have identical access to transitional training opportunities in law school, with the result that some may be in a better position than others to be successful on the mandatory skills examination. However, as noted earlier, Option 3 may encourage law schools to recognize the need to ensure that all law graduates would be able to demonstrate the competencies that would be tested in the Skills Examination by ensuring that these competencies are offered as part of the law school curriculum, either through more experiential training opportunities or otherwise.

Option 3, if implemented, would need to be carefully designed to ensure that the licensing system continues to meet the needs of French-speaking candidates, and to ensure that the public has access to competent French-speaking lawyers. The Practice Essentials Course could be offered in French and English, incorporating much of the content of the current PPD, including the emphasis on lawyers’ ethical obligations to ensure that clients are aware of their language rights as set out in the *Rules of Professional Conduct*. Mentors from the francophone bar could be involved in the delivery of the course as instructors.

The cost of the proposed course could be a burden for some new lawyers. It could be argued that the imposition of an additional requirement on only one category of licensee is unfair. Through this consultation, the Committee hopes to receive recommendations to minimize this burden.

Option 3 reduces the prospect of a power imbalance because licensing would no longer be contingent upon transitional training. That said, it is important to note that some power imbalances may still exist in legal workplaces.

Option 3, if implemented, would establish a completely new licensing system. As a result, not all of the impacts of Option 3 and steps to mitigate these impacts can be currently identified. For example, some argue that transitional training plays a key role in assisting candidates to enter the legal services marketplace. Option 3 could have impacts on equality-seeking groups and international law graduates that may need to be further considered. Further, depending on the nature of a candidate’s law school exposure to experiential training, it may be challenging for some candidates to be successful in the skills examination. Some private providers may emerge in the marketplace offering courses to prepare candidates to fulfil this requirement.

## Consistency

Option 3 would address the concerns about uneven articling experiences and inconsistencies regarding the acquisition of competencies between the two licensing pathways. All candidates would be required to complete the same summative examinations, irrespective of their chosen career path. The Practice Essentials Course would provide a consistent means of ensuring that lawyers entering sole practice or small firms have been exposed to, and are able to demonstrate, the same competencies necessary for the practice of law, including those competencies relating to the business of law.

## Cost

Assuming 600 newly licensed participants in the Practice Essentials Course annually, the estimated per candidate cost of the course could be in the range of \$2200-\$2500. Costs would vary if the course were extended to include all licensees who enter the sole or small practice category regardless of the date of licensure. This estimate assumes approximately 30 hours of online e-course content and five in-person days. Only candidates who choose to practise in this sector would be required to pay for the course, in addition to the current licensing fee.

All candidates would have to pay for the skills examination (as noted above, the new examination would likely cost between \$1600 and \$2000 per candidate).

In Option 3 fees would vary depending on the category of practice, as follows:

- i.) Non-Practising Lawyers – would continue to pay the current licensing fees, less the cost of the transitional training requirement, as well as the new Skills Examination fee (the total licensing cost for this category would be approximately \$4200 plus HST);
- ii.) Lawyers Entering Workplaces of Six or More – would continue to pay the current licensing fee, less the cost of the transitional training requirement, in addition to the new skills examination (approximately \$4200 plus HST);
- iii.) Lawyers Entering Sole Practice or Small Firms would be required to pay the current licensing fee, less the cost of the transitional training requirement, plus the new skills examination fee, and the Practice Essentials Course fee (to be taken at some point during the first 12-18 months of practice) for a total of approximately \$6,400-\$6700, plus HST.

## **Option 4: LPP/PPD for All Candidates**

### *Overview*

Like Option 3, Option 4 assumes the need for significant change in the current LSO licensing requirements, given the need to ensure that the current paradigm is responsive to the changing nature of the legal services marketplace. Option 4 also

takes into consideration available data regarding the LPP/PPD and its effectiveness in ensuring a consistent exposure to competencies necessary for the practice of law.

Option 4 would require all licensing candidates to complete the LPP/PPD training course. The LPP could be offered at different sites and at different times throughout the year. Recognizing the ongoing challenges in providing paid work placements to all LPP/PPD candidates in their chosen areas, the LPP/PPD work placement would be removed. As is the case with Options 2 and 3, candidates would also be required to complete the three examinations described above.

The primary components of Option 4 listed in order of completion, are:

- A. Barrister and solicitor examinations, as described in Option 1, with successful completion required before commencement of transitional training;
- B. LPP/PPD, without work placements; and
- C. Skills examination, as described in Option 2, with successful completion required before licensure.

#### *Evaluative Principles Analysis – Option 4*

##### Transitional Training

Option 4 satisfies all of the transitional training requirements. The LPP/PPD 17-week training course was specifically designed to train candidates in the experiential training competencies and to support their ability to fulfill the LSO's transitional training goals. The first transitional training goal (application of defined practice and problem-solving skills through contextual or experiential learning) is satisfied by the LPP/PPD 17-week course. The web-based and in-person learning modules, requiring candidates to complete specific tasks on files, ensure that candidates have an opportunity develop practice and problem-solving skills through contextual or experiential training.

The second transitional training goal is consideration of practice management issues, including the business of law. The LPP/PPD course curriculum includes content relating to practice and client management, and tests candidates' skills in these areas. By requiring all candidates to complete the LPP/PPD, all candidates would meet this transitional training requirement.

The third transitional training goal – application of ethical and professionalism principles in professional, practical and transaction contexts, and the fifth – introduction to systemic mentoring - are also satisfied by the LPP/PPD training course. The course ensures that candidates regularly meet with a mentor who reviews case file work and discusses ethics and professionalism and practice and client management issues with the candidates. The virtual or simulated law firm concept, as well as the three-week in person session that is part of the LPP, offers candidates an opportunity to experience socialization from candidate to practitioner (the fourth transitional training goal).

## Competence

Mandatory completion of the LPP/PPD course would satisfy the competency criterion by providing a more consistent approach to the acquisition of competencies than does articling, which is more dependent on the specific practice of the articling principal. The LPP/PPD course is designed to provide candidates with transitional training in the most common practice areas.

Further, as is the case with Options 2 and 3, the requirement that candidates successfully complete the barrister and solicitor examinations before licensure will assist in ensuring that candidates have mastered the competencies taught in law school. The skills examination will also ensure the practice readiness of all candidates. Candidates would also be better-prepared for the new skills examination having completed the LPP/PPD training course, given the design of the course which simulates the experience of working in a law firm.

## Fairness

Option 4 would ensure a single pathway to licensing, eliminating any lingering concerns about the “two tiered” nature of the current system. It addresses the following fairness issues described earlier:

1. the removal of articling would address concerns about differential access to articling by candidates from equality-seeking groups and in particular racialized candidates;
2. concerns about discrimination and harassment during articling would be addressed, since articling would be eliminated;
3. unpaid and poorly paid articling positions would no longer exist; and
4. unpaid LPP work placements would no longer be a concern.

Consideration could be given to redesigning the PPD course to ensure that candidates are made aware of the employment opportunities in the French-speaking legal services sector and have occasion to network with French-speaking lawyers currently serving the public in this sector.

## Consistency

Option 4 would provide consistent transitional training to all for the reasons enumerated earlier under Options 1 and 2. The LPP/PPD training courses are inherently consistent due to their structure and design.

## Cost

It is estimated that implementation of LPP/PPD for all candidates could result in an experiential training fee of approximately \$10,000-\$12,000 per candidate as a result of the significant infrastructure and education provider expenses that would be incurred to

support a mandatory course for over 2000 candidates annually. The estimated experiential training fee of approximately \$10,000 to \$12,000 per candidate could be reduced if law schools were to offer a form of the LPP/PPD as part of their curriculum that met the LSO's transitional training requirements.

Another advantage of this approach might be that candidates would be able to obtain assistance from the Ontario Student Assistance Program (OSAP) while they complete their transitional training, since it would be offered as part of their law school studies. Currently, unpaid articling candidates and candidates completing the LPP/PPD training course are not able to obtain financial assistance from OSAP during this period.

Assuming the additional costs of the new skills examination described above, and including the costs of the Barrister and Solicitor licensing examinations, Option 4 could result in a total licensing fee of \$13,500 to \$15,500 (plus HST) per candidate.

## 8. CONCLUDING POINTS

### Questions for Consideration

The following questions may assist those responding to this consultation paper.

1. Which option most effectively addresses the five goals of transitional training?
2. Which option most effectively ensures that new lawyers have entry-level competencies?
3. Which option is most effectively addresses fairness in the licensing process?
4. Which option is the most effectively addresses consistency in the licensing process?
5. Should successful completion of the Barrister and Solicitor Examinations be a prerequisite to commencing transitional training? Why? If not, why not?
6. Should the licensing process include the proposed new Skills Examination? Why? If not, why not?
7. In your view, what additional measures would be required to ensure that licensing candidates are adequately prepared for the proposed skills examination?
8. Should transitional training be a mandatory component of the LSO licensing process? If so, why? If not, why not?
9. Should the LSO focus its training requirements post-licensure as proposed in Option 3? Why?

10. What other factors should be considered in weighing the various options?

**Orderly Transition**

Any changes to the transitional training pathways or licensing examinations approved by Convocation following this consultation would require a transition period to ensure an appropriate length of time to implement any new policies and procedures.

## THE DIALOGUE ON LICENSING

As part of its review of the licensing process, the LSO conducted the Dialogue on Licensing (DOL) between April and June 2017 to provide an opportunity for input from the legal community regarding the challenges and opportunities of lawyer licensing. Reference materials were made available to participants prior to each session at a dedicated website.<sup>1</sup> The DOL involved 15 in-person discussions at seven Ontario cities regarding the following topics:

- i. the need for change with respect to lawyer licensing;
- ii. market dynamics and the lawyer profession;
- iii. licensing examinations and the assessment of entry-level competence; and
- iv. transitional training.

The sessions were facilitated by an independent facilitator. Over 300 lawyers, licensing candidates, law students and other organizations participated in the sessions and 44 written submissions were received by the LSO. Thirty-three legal organizations and associations were represented.<sup>2</sup>

The comments made during the in-person sessions and written submissions were similar and identified the following challenges:

- i. law students were concerned about the significant debt they had incurred to complete their legal education;
- ii. in addition to law student debt, some respondents commented on the high cost of becoming a lawyer, given Law Society licensing fees;
- iii. others suggested that the Law Society consider making changes to the licensing examinations to emphasize practical skills;
- iv. some were of the view that articling should be replaced by a standardized training course for all candidates, or LPP for all;
- v. some respondents were in favour of maintaining articling as their firms are able to offer candidates an excellent learning experience;
- vi. others indicated that articling should be retained, but should become more standardized to address the unevenness of candidates' experiences;
- vii. some suggested that the practice of law is increasingly diverse and fragmented, with the result that there should no longer be one path to prepare candidates to become ethical and competent lawyers.
- viii. Some respondents described the experience of some candidates with unpaid articling positions who were sometimes asked to perform tasks entirely unrelated to the development of legal skills;

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<sup>1</sup> <https://lsodialogue.ca/>. The Committee provided an information report to Convocation in February 2017 describing this initiative.

<sup>2</sup> The organizations represented during the 15 DOL in-person sessions are listed in the summary reports available on at [www.lsodialogue.ca](http://www.lsodialogue.ca). The session regarding licensing examinations was webcast.

- ix. others described situations in which unpaid articling candidates were expected to cover disbursements incurred on behalf of their employer's client out of pocket; and
- x. some participants indicated that in their view unpaid articles are exploitative, and should not be condoned. All articling candidates should receive the statutory minimum wage.<sup>3</sup>

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<sup>3</sup> The following Discussion Group Summary Reports are available online: Topic 1: The Need for Change; Topic 2: Market Dynamics and the Lawyer Profession; Topic 3: Licensing Examinations: Assessment of Entry-level Competence and Topic 4: Transitional Training. The written submissions are available on at [www.lsodialogue.ca](http://www.lsodialogue.ca). Summaries of the meetings are available at <https://lsodialogue.ca/updates/>.



## THE NATIONAL REQUIREMENT

## TAB 3.1.1.2

The three major categories of competencies to be taught by law schools in the Federation of Law Societies of Canada National Requirement are

### Skills

- a.) problem-solving;
- b.) legal research;
- c.) oral and written legal communication.

### Ethics and Professionalism

Candidates must demonstrate an awareness and understanding of the ethical requirements for law practice in Canada and ability to identify and address ethical dilemmas in a legal context.

### Substantive Legal Knowledge

- a.) Foundations of Law;
- b.) Public Law of Canada; and
- c.) Private Law principles.<sup>1</sup>

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<sup>1</sup> Federation of Law Societies of Canada National Requirement, <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>.

**FACTORS CONSIDERED BY THE NATIONAL COMMITTEE ON ACCREDITATION**

The NCA assessment is intended to determine whether an applicant's knowledge and understanding is equivalent to that of a Canadian law graduate. It considers a number of factors listed below:

- (i) the type of legal system where the education was acquired (e.g. common or civil law);
- (ii) the length and nature of the education program;
- (iii) the subject areas studied;
- (iv) academic performance in respect of the core subject areas required by the NCA, as well as overall academic performance;
- (v) whether the legal education program is recognized by the local regulatory authority governing admission to the practice of law in that jurisdiction;
- (vi) whether the program was full-time, part-time, in-person, or offered by distance learning;
- (vii) the length of time since the applicant completed their degree;
- (viii) professional legal experience and qualifications; and
- (ix) the nature and length of the applicant's professional legal experience.

The NCA Assessment Policy complies with the FLSC National Requirement for Canadian Common Law Programs.<sup>1</sup>

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<sup>1</sup> NCA, "How We Assess Your File", and "NCA Policies and Guidelines", online at <https://flsc.ca/national-committee-on-accreditation-nca/applying-to-the-nca/how-we-assess-your-file/> and <https://flsc.ca/national-committee-on-accreditation-nca/nca-resources/policies-and-guidelines/>.

## TESTING OF COMPETENCIES THROUGH LSO LICENSING EXAMINATIONS

All candidates registered in the licensing process for lawyers are required to successfully complete both the Barrister Licensing Examination and the Solicitor Licensing Examination to become licensed to practice law. The examinations are multiple choice, open book examinations. Each examination is seven hours long.

The competencies that are tested as part of the examinations are those required for entry-level practice. Lawyer candidates are required to demonstrate proficiency in respect of competencies that reflect the minimum requirements of both barristers and solicitors entering the profession in the seven areas of law that are most frequently practised.<sup>1</sup>

The current Barrister and Solicitor Examinations provide a means of testing candidates' abilities in core knowledge, application and critical thinking competencies, irrespective of their educational background.

The Barrister Examination assesses competencies necessary to the practice of civil litigation, family law, public law, and criminal law while the Solicitor Examination requires candidates to demonstrate required competencies in real estate law, business law and estates and trusts law. Both examinations assess competencies in ethics, professional responsibility and practice management.

Candidates may attempt each examination up to three times, and are permitted a fourth attempt in exceptional circumstances.<sup>2</sup> Currently, candidates are permitted to write the examinations at any point during a three year licensing term.

The Law Society of Ontario's licensing examinations are internationally-recognized as high-quality, psychometrically-defensible professional qualification assessments.<sup>3</sup>

The Committee does not propose any changes to the requirement that all licensing candidates be required to pass both the Barrister and Solicitor examinations as a requirement for licensure.

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<sup>1</sup> See <http://lsuc.on.ca/BarristerCompetencies/> and <http://www.lsuc.on.ca/SolicitorCompetencies/>.

<sup>2</sup> Information regarding Lawyer Licensing Outcomes in Ontario is available as part of the DOL Reference Materials. See the Topic 3 Reference Materials (Licensing Examinations: Assessment of Entry-Level Competence), [www.lsodialogue.ca](http://www.lsodialogue.ca).

<sup>3</sup> See, for example, an article written by three U.S. law professors (Kaufman, Curcio, and Chomsky), "A Better Bar Exam – Look to Upper Canada?" (July 25, 2017, online at <https://www.lawschoolcafe.org/2017/07/25/a-better-bar-exam-look-to-upper-canada/>).

**LSO TRANSITIONAL TRAINING PATHWAYS***Articling Program*

Articling provides an opportunity for candidates to achieve the experiential training competencies required by the LSO for licensure. In 2012, in response to concerns about the uneven nature of the articling experience raised during the Articling Task Force consultations, the LSO enhanced the reporting and candidate evaluation requirements for the articling program, reinstating and expanding reporting requirements withdrawn in 2008.

As a result of these changes, both candidates and principals report to the LSO regarding the candidate's experience and levels of achievement in relation to the experiential training competencies. Articling principals are required to file an Experiential Training Plan at the outset of the articling placement to provide a level of assurance that training will meet the required competencies. Principals are required to report on candidate exposure to all of the experiential training competencies and to assess the performance of the candidates with respect to specific skills and tasks, and to file the Record of Experiential Training in the articling program with the LSO within ten business days of the end of the articling placement.<sup>1</sup>

Candidates are required to demonstrate their skill level by completing specific tasks during the articling placement.<sup>2</sup> Candidates file a final Record of Experiential Training in the articling program within ten business days of the end of the placement.

*LPP Training Course*

The design and delivery of the 17 week training course ensures that candidates are exposed to required lawyer competencies, based on the Federation of Law Societies National Entry to Practice Competency Profile. The LPP replicates the experience of working in a law firm by creating a virtual law firm. It uses interactive web-based modules and digital simulation tools to develop necessary skills by requiring candidates to complete tasks on files developed by subject matter experts, who are leading Ontario practitioners in their fields. Candidates are required to interview clients, conduct research, draft documents, letters and agreements, develop an approach to the file, conduct negotiations, argue motions, conduct examinations and cross-examinations, and manage a law practice.

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<sup>1</sup> Law Society of Ontario, "Articling Program" ("Articling Placement Requirements"), online at <https://www.lsuc.on.ca/articling/>.

<sup>2</sup> The tasks are interviewing a client, drafting a legal opinion, representing a client in an appearance or through some form of Alternative Dispute Resolution or settlement process, demonstrating professional conduct, and using legal firm/legal practice management systems. See Law Society of Ontario, Experiential Training Competencies for Candidates, online at [www.lsodialogue.ca](http://www.lsodialogue.ca).

Candidates have regular meetings with mentors who are knowledgeable practising lawyers with at least 15 years' experience. Mentors are rotated mid-way through the training course so that firms have the benefit of different perspectives and experiences. Mentors act as "supervising lawyers" for the virtual law firm by meeting with the entire firm once a week and with the individual candidates every two weeks. They discuss matters raised by the files developed for the program, including specific professionalism and ethics and practice and client management matters with candidates. Candidates connect with mentors, each other, subject matter experts and their clients through web conferencing and other online platforms.

The LPP training course also includes a three-week in-person session at Ryerson. During this time, candidates have an opportunity to meet one another and members of the profession, and engage in intensive training opportunities, including a Trial Advocacy Training Program. The LPP assesses candidates' skills with respect to the LSO competencies described earlier in this paper. These include professionalism and ethics; analysis; research, communications, practice management and client management.

### LPP Work Placement

The second phase of the LPP/PPD involves a four month work placement, which is designed to provide candidates with the opportunity to further develop relevant competencies and skills in the context of a practical legal workplace experience.

Candidates may apply to positions advertised by the Ryerson Work Placement Office. The largest proportion of work placements have been in small firms (29 percent in 2014-2015, 31 percent in 2015-2016, and 22 percent in 2016-2017). Corporate commercial law (11%), real estate (9%), civil litigation – plaintiff (8%), civil litigation – defendant (8%), and wills, estates and trusts law (8%) were the most common areas of practice in both LPP work placements. Other settings have included non-governmental organizations, the Crown's office, government or public agencies, positions with in-house counsel departments, and legal clinics.<sup>3</sup> Sixty-five percent of the LPP work placements were in Toronto during the first three years of the program.

### PPD Training Course

The PPD four month intensive course also simulates a law firm work environment, through an in-person format. Each candidate has access to a work station in an office on the University of Ottawa campus with a filing cabinet, a letterbox, wireless Internet, and printers. As is the case with the LPP, candidates are assessed with respect to the ability to perform all of the tasks in the FLSC National Competency Profile for Lawyers. Each candidate is matched with a lawyer who acts as their mentor for the duration of the program.<sup>4</sup>

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<sup>3</sup> 2017 Pathways Evaluation Interim Results: Years One to Three, Law Society of Upper Canada Pathways to the Profession Pilot Project (2015-2015 to 2016-2017), 31 July 2017, p. 120.

<sup>4</sup> Rapport Annuel 2016-2017 Programme de Pratique du Droit de L »Université d'Ottawa, pp. 8-10.

In addition to the mentorship program, several supervising lawyers moderate discussion groups every other week with candidates to discuss their progress and to provide them with more individualized feedback on legal drafting, practice management, and file management. The discussion groups also provide an opportunity to discuss ethical and professionalism issues. One example of the program's emphasis on practice management included the opportunity to develop and present business cases to assess the viability of opening satellite firms in smaller cities with a significant francophone population.<sup>5</sup>

### Work Placement - PPD

PPD candidates also complete a four month work placement. In 2016-2017, 57% of work placements were in government or in a public agency. The remaining candidates were employed in legal clinics, in-house legal departments, unions, non-profit organizations, small firms, or in the offices of sole practitioners.<sup>6</sup> The vast majority of PPD placements were in Eastern Ontario (84% in 2014-2015, 91% in 2015-2016 and 90% in 2016-2017).<sup>7</sup>

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<sup>5</sup> Ibid., p. 19.

<sup>6</sup> Programme de pratique du droit, Data collected about the Programme de pratique du droit for the Evaluation of Pathways : Years One to Three, p. 22.

<sup>7</sup> Ibid..