



**Tab 4**

**Professional Development and Competence  
Committee**

**Options for Lawyer Licensing**

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## Table of Contents

**Motion ..... 2**

**Executive Summary ..... 2**

**Background ..... 6**

    A. Context .....6

    B. Previous Decisions.....6

**Analysis..... 10**

    A. Framework .....10

    B. Research and Engagement.....11

    C. Analysis of Options.....19

**Implementation ..... 31**

    A. Cost.....31

    B. Timing and Reporting.....32

## Motion

1. That Convocation determine one of the following two models for lawyer licensure in Ontario:

- (a) **Current Model with Enhancements (Option 2):** The two current transitional training pathways of articling and the Law Practice Program (LPP) and Programme de Pratique du droit (PPD) would be retained, with enhancements. These enhancements include:
- i) paid articling and LPP/PPD work placements, in accordance with Law Society requirements (required salary), with limited exceptions;
  - ii) measurements, audits or other forms of monitoring, to provide greater oversight of articling and the LPP/PPD work placements;
  - iii) mandatory education and training for articling principals and LPP/PPD work placement supervisors.
- (b) **Examination-Based Licensing (Option 3):** Candidates would be licensed as soon as they complete the barrister and solicitor examinations. Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a licensure requirement. The management of regulatory risk would shift to post-licensure, and would depend upon the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm 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. Licensees who begin their careers in a firm of six or more lawyers or in the non-practising category and then move into sole practice or a small firm would also be required to take the course.

## Executive Summary

Lawyer licensing is an integral part of the mandate of the Law Society of Ontario. According to its mandate, the Law Society must regulate the profession in the public interest and ensure that lawyers meet standards of learning, professional competence, and professional conduct. Since November 2016, the Professional Development & Competence Committee (the Committee) has been engaged in a process to develop long-term recommendations for an appropriate and sustainable licensing system for lawyers in Ontario. As part of its review of the licensing process, the Committee conducted the first phase of the Dialogue on Licensing (DOL) between April and June 2017. In May 2018, the second phase of the DOL was launched when the Committee released a consultation paper that proposed four options for lawyer licensing and invited the legal professions and the public to comment.

The four options that were proposed in the May 2018 paper are set out below:

**Option 1: Current Model:** The current two transitional training pathways (articling and LPP/PPD, plus barrister and solicitor examinations) would be retained, allowing for continuous adjustments 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 an amount equivalent to minimum wage, and measurements, audits or other forms of monitoring to provide greater oversight of articling and work placements.

**Option 3: Examination-Based Licensing:** Candidates would be licensed after they complete the licensing examinations. Transitional training would be eliminated as a requirement of licensure. The management of regulatory risk would shift to post-licensure and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm 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/PPD for all Candidates:** All licensing candidates would be required to complete the training course component of either the LPP or the PPD, without the work placement component. Candidates would also be required to successfully complete the licensing examinations.

**Examinations:** The consultation paper referred to two sets of examinations: the current barrister and solicitor examinations and a new skills examination. The current barrister and solicitor examinations are multiple choice, open-book examinations. Each examination is seven hours long and is designed to assess competencies that are required for entry-level practice. Currently, these examinations can be undertaken at any time during the licensing process. The consultation paper also proposed that candidates should undertake a skills examination as a prerequisite to licensure for Options 2-4.

**DOL:** In response to the invitation to comment on the May 2018 report, the Law Society received 86 submissions from individuals (primarily lawyers and licensing candidates), 34 letters from legal organizations and institutions, and a letter from the Office of the Fairness Commissioner (OFC).<sup>1</sup>

In addition, the Law Society retained Strategic Communications Inc. (Stratcom) to conduct several focus groups about the licensing process and the four options for licensure. In October 2018, 12 facilitated focus groups were held in Toronto, Hamilton, London, Windsor, Sudbury, Ottawa, and Thunder Bay.

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<sup>1</sup> The responses received are available on the Dialogue on Licensing website at [www.lsdialogue.ca](http://www.lsdialogue.ca)

The majority of legal organizations (61%) and a plurality of individuals (47%) preferred either Option 1 or 2, indicating significant support for transitional training composed primarily of supervised work experience following completion of law school. However, some respondents proposed an alternative, termed Option 5, which involved some integration of work experience into the law school curriculum.

The Committee has reviewed all of the feedback received through the DOL and considered if or how each option addresses the goals of transitional training, the need to ensure acquisition of entry-level competencies,<sup>2</sup> and the current challenges identified with the licensing process, such as:

- persistent shortages of articling positions given the increasing numbers of candidates seeking licensure in Ontario;
- lack of consistency across different articling positions and contexts;
- concerns about the viability of the LPP/PPD given that fewer candidates have enrolled in these programs than was anticipated;
- reports of discrimination and harassment of licensing candidates during transitional training; and
- unpaid or poorly-paid articling positions or LPP work placements, which could constitute a barrier to licensing for economically disadvantaged candidates.

**Conclusions:** The Committee has concluded that Option 1 (current model) does not respond to various challenges currently facing the lawyer licensing system. The Committee has also concluded that Option 4 (LPP/PPD for all) would impose too great a financial burden on licensing candidates, given its potential cost of up to approximately \$15,000, plus H.S.T. per candidate.

The Committee recommends Option 2 and Option 3 to Convocation for its consideration. The elements of Option 2, as recommended to Convocation, are i) maintenance of the current two transitional training pathways; ii) a required salary for all licensing candidates, with limited exceptions; iii) measurements, audits or other forms of monitoring to provide greater oversight of articling and work placements; and iv) mandatory education and training for articling principals and LPP/PPD work placement supervisors.

Option 2 is recommended because it reflects the view of the majority of Committee members and most of the profession, that is: training in an employment setting is the most effective form of transitional training because it provides candidates with the opportunity to deal with real issues

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<sup>2</sup> The Barrister and Solicitor competencies may be viewed at <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-barrister-competencies> and <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-solicitor-competencies>. The Law Society's experiential training competencies may be viewed at <https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/experiential-training-competencies>

and actual clients in authentic settings. It also provides many candidates with invaluable job opportunities and professional relationships. While the majority of the Committee acknowledges the flaws in the current system, specifically inconsistency in training and incidents of exploitation, discrimination and harassment, the majority believes that the proposed enhancements will address these flaws. Moreover, the majority believe that Option 2 is consistent with the licensing processes of law societies in other Canadian jurisdictions and those of most regulated professions.

A minority of the Committee recommends Option 3 as a contemporary sustainable pathway that responds to the increasingly diverse range of career paths followed by new lawyers. The elements of Option 3 are i) the elimination of mandatory transitional training; ii) continuation of barrister and solicitor examinations as a requirement of licensure; and iii) those entering sole practice or a small firm upon licensure would be required to complete a practice essentials course. The Committee notes that of lawyers called to the Bar between 2015 and 2017, approximately 30 percent of new lawyers are not actively practising law. Option 3 would focus the Law Society's resources on areas of regulatory risk through the requirement of a practice essentials course for those practising alone or in small firms. It would also ensure entry-level competence for all licensees through the barrister and solicitor examinations. Further, by eliminating transitional training, Option 3 eliminates the power imbalance that can lead to exploitation, discrimination and harassment, at least during the licensing process.

Irrespective of whether Convocation chooses Option 2 or Option 3, the majority of the Committee favour the inclusion of some form of skills testing in the licensing process, either through an examination or an assessment. The majority also recommends deferral of further consideration of this matter. The Committee has considered the advantages and disadvantages of the skills examination. A skills examination would be consistent with best practices developed by other legal regulators in the United States and the United Kingdom. It would also ensure consistent standards for all licensing candidates, regardless of the law school attended or the pathway pursued. A skills examination would also provide an opportunity to assess a candidate's ability to perform essential lawyering tasks. Concerns with the implementation of a skills examination centre on the resources required to develop and implement an examination that is defensible and fair. Such a process could lead to increased costs for candidates. In addition, some Committee members point to the skepticism expressed in the DOL about the efficacy of a skills examination.

The Committee also considered the feasibility of a skills assessment, which would be less resource-intensive. It would offer the opportunity to test a candidate's ability to perform essential lawyering tasks, through an assessment conducted by the articling principal or the LPP/PPD. If Convocation chooses Option 3, the skills assessment could be administered as part of the practice essentials course. Given that the concept of a skills assessment is relatively new, the Committee is recommending deferral of the matter of skills testing. During the upcoming months, the

Committee will consider the benefits and concerns arising from the implementation of both the skills examination and skills assessment, and report to Convocation at a later date.

Finally, the Committee recommends that the Law Society respond to the suggested Option 5 by reaching out to the legal academy to explore areas of collaboration in integrating more experiential learning into the law school experience. While recognizing that law schools have a role separate from the Law Society in developing standards and curriculum, the Committee believes that the both the public and the candidates will be better served if we work together to identify solutions posed by the need to ensure lawyer competence, find new ways to serve clients of modest means, and respond to the rapid changes occurring in society and the profession.

## **Background**

### **A. Context**

Currently, the articling program requires a candidate to work for 10 months under the supervision of an approved articling principal. In an effort to address concerns about transitional training while ensuring entry-level competence, the Law Society 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 (the Pathways Pilot Project): the Law Practice Program (LPP) and the Programme de pratique du droit (PPD).

Following a request for proposal process, Ryerson University was selected to provide the English language program and the University of Ottawa was chosen to provide the French language program. The LPP/PPD programs consist of a 17-week training course followed by a four-month work placement. The LPP and PPD programs have been in place since September 2014 and are now in their fifth year.

In 2013, the Law Society approved the integrated practice program (“IPC”) at Lakehead University’s Bora Laskin Faculty of Law as an additional pathway to fulfill the experiential training requirement of the licensing process. Students are able to fulfil the experiential training component of the training process through practical course work during their three-year law degree and a 15-week practice placement embedded into their third year of law school.

### **B. Previous Decisions**

In November 2016, Convocation asked the Committee to review the lawyer licensing process with the goal of formulating long-term recommendations for an appropriate and sustainable licensing system for lawyers in Ontario. As part of its review of the licensing process, the Committee conducted the first phase of the Dialogue on Licensing (DOL) between April and June 2017 to

provide an opportunity for input from the legal community about the challenges and opportunities of lawyer licensing.<sup>3</sup>

Based on the information gathered during the 2017 DOL, a survey of articling students<sup>4</sup> and other information, the Committee identified various challenges with the transitional training component of the licensing process, including:

- persistent shortages of articling positions given the increasing numbers of candidates seeking licensure in Ontario;
- lack of consistency across different articling positions and contexts;
- concerns about the viability of the LPP/PPD given that fewer candidates have enrolled in these programs than was anticipated;<sup>5</sup>
- reports of discrimination and harassment of licensing candidates during transitional training; and
- unpaid or poorly-paid articling positions or LPP work placements, which may constitute an unfair barrier to licensing for economically disadvantaged candidates.<sup>6</sup>

Some of the other relevant considerations are licensing costs in the face of rising student debt loads,<sup>7</sup> increasing numbers of lawyers who practice in settings in which they do not directly advise the public, and the suggestion that licensing requirements should focus on areas of greatest regulatory risk.

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<sup>3</sup> The materials developed for the 2017 DOL may be viewed at <http://lsdialogue.ca>. The Committee provided an information report to Convocation in February 2017 describing this initiative, which involved extensive participation of the profession in facilitated discussion groups across the province, as well as submissions from a range of stakeholders. The report may be accessed at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/2/2017-feb-convocation-professional-development-competence-committee-report.pdf>.

<sup>4</sup> As part of its review of the licensing process, the Law Society commissioned the Articling Experience Survey from Dr. Sidiq Ali, Senior Evaluation Consultant of Research & Evaluation Consulting. As noted in the Committee's May 2018 report (Professional Development & Competence Committee, *Options for Lawyer Licensing: A Consultation Paper*, online at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-professionaldevelopmentcompetencecommitteereport-may-2018.pdf>), the survey revealed that some candidates are subject to sexual harassment, racial and gender discrimination. Please see p. 11 of the report.

<sup>5</sup> As noted in the May 2018 consultation report, the Law Society anticipated that approximately 400 candidates would enrol in the LPP/PPD each year. As of November 20, 2018, there were 231 candidates enrolled in the LPP and 23 in the PPD. Enrollment information for the LPP is as follows: 221 (2014-2015); 219 (2015-2016); 232 (2016-2017) and 206 (2017-2018). In the LPP, there were 17 candidates enrolled in 2014-2015; 11 in 2015-2016; 21 in 2016-2017 and 12 in 2017-2018.

<sup>6</sup> As indicated in the May 2018 consultation paper, the PPD has been able to offer paid placements to all candidates, although not always in a candidate's preferred sector or location. May 2018 consultation paper, *supra* note 4, p. 11.

<sup>7</sup> See the 2017 submission from the Law Student's Society of Ontario regarding law school debt provided as part of the Dialogue on Licensing at [https://lsdialogue.ca/wp-content/uploads/2018/07/Written-Submissions-Dialogue-on-Licensing-D2\\_2018jul6-red.pdf](https://lsdialogue.ca/wp-content/uploads/2018/07/Written-Submissions-Dialogue-on-Licensing-D2_2018jul6-red.pdf).

After considering the feedback received as part of the 2017 DOL, and taking into consideration the challenges listed above, the Committee developed the following four options for lawyer licensing:

**Option 1: Current Model:** The current two transitional training pathways would be retained, taking into account the fact that the current model will be 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 minimum wage, measurements, audits or other forms of monitoring to provide 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-licensure and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm 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/PPD for all Candidates:** All licensing candidates would be required to complete the training course component of either the LPP or the PPD, without the work placement component. Candidates would also be required to successfully complete the barrister and solicitor examinations and the new skills examination.

### **Call for Input and Focus Groups – Overview**

The Committee launched the second phase of the DOL on May 24, 2018, by inviting respondents to submit comments on the four options by October 26, 2018 (Call for Input). The Law Society received 86 submissions from individuals (primarily lawyers and licensing candidates), 34 letters from legal organizations and institutions, and a letter from the Office of the Fairness Commissioner (OFC).

In addition to the Call for Input, the Law Society retained Strategic Communications Inc. (Stratcom) to conduct several focus groups about the licensing process and the four options for licensure. In October 2018, 12 facilitated focus groups were held in Toronto, Hamilton, London, Windsor, Sudbury, Ottawa, and Thunder Bay. The focus groups consisted of the following:



- five groups of licensing candidates and lawyers practising for less than three years;
- one group of students, PPD candidates, and lawyers practising less than three years (French-speaking);
- one group of third-year Integrated Practice Curriculum (IPC) students/candidates and lawyers practising for less than three years;
- three groups of third year law students; and
- two groups of experienced lawyers with eight to 15 years of practice (with limited exceptions).

Stratcom's Report summarizing the results of the focus groups and key informants is available as **TAB 4.1**.<sup>8</sup> In addition, key informant interviews were conducted with nine individuals representing the following organizations:

- the Ministry of the Attorney General;
- Law School Career Development Officers;
- Law Society Equity Advisory Group;
- Law Society Indigenous Advisory Group; and
- the Association for Canadian Clinical Legal Education.

Although participants in the focus groups, key informant interviews and respondents to the Call for Input had a great deal to say about the licensing process and specific features of the four licensing options, there was no overwhelming support for any of the options presented in the consultation paper. However, it was almost universally accepted that, at the end of the licensing process, candidates should have some degree of a practical, real-world experience with the practice of law, whether through articling and/or the LPP/PPD pathways, or during their law school training.

Some respondents, including legal organizations, thought that none of the options were responsive to the challenges of the lawyer licensing process and suggested various alternatives, ranging from the incorporation of the LPP/PPD into the law school curriculum to a mandatory practical legal training course similar to the LPP/PPD for all, followed by a mandatory work placement. Option 5 emerged as an alternative solution that would involve incorporating transitional training opportunities in law school, although respondents had different ideas about how this might be implemented.

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<sup>8</sup> Strategic Communications (Stratcom) conducted the focus groups and prepared the report at the Law Society's request. See Strategic Communications, Options for Lawyer Licensing: Key Informant Interviews and Focus Groups and Individual Interviews, (Stratcom - Options for Lawyer Licensing) submitted by David Kraft and Angela Lee, November 21, 2018.

A number of respondents, including legal organizations, supported Option 1, either because they wanted more information about Options 2 to 4, or thought the other options did not adequately address the issues.

For the reasons described in this report, informed by the feedback received from the Call for Input and comments made in the focus groups, a majority of the Committee recommends Options 2, while a minority recommends Option 3.

## Analysis

### A. Framework

Licensure is official recognition that an individual is qualified to practice as a lawyer and 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 meet appropriate and fair standards of professional competence and do not pose a risk to the public.

The Law Society's responsibility with respect to the competence of licensees is enshrined in section 4.1 (a) of the *Law Society Act*, which provides that the Society has a duty to ensure that "all persons who practise law in Ontario . . . meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide." In addition, s. 4.2, clause 5 of the Act requires the Law Society to have regard to the principle that "standards of learning, professional competence and professional conduct...should be proportionate to the significance of the regulatory objectives sought to be realized". Further, the Law Society's Strategic Plan for 2015-2019 requires the Law Society to evaluate and enhance licensing standards and requirements.<sup>9</sup> Finally, the Law Society's public interest mandate extends to ensuring that economically disadvantaged candidates do not face unfair barriers to the profession.

In considering how the licensing process should ensure competence, the Committee identified the following principles according to which lawyer licensing options should be evaluated. Specifically, lawyer licensing should:

- ensure that each candidate achieves the goals of transitional training;<sup>10</sup>

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<sup>9</sup> The LSO strategic plan for the 2015-2019 bench term may be viewed at <https://lso.ca/about-lso/governance/2015-2019-strategic-plan>.

<sup>10</sup> The Articling Task Force Final Report, October 25, 2012 identified the goals of transitional training as: 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; 4) socialization from student to practitioner; and 5) introduction to systemic mentoring. The Articling Task Force Final Report may be accessed online at [https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convoc2012\\_articlingtaskforce.pdf?lang=en-ca](https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convoc2012_articlingtaskforce.pdf?lang=en-ca).



- provide candidates with an opportunity to meet required standards of professional competence;
- be derived in a fair and defensible manner, and ensure equitable access to licensing;
- be consistent; and
- be designed to take into consideration the cost of each option to the licensing candidate, and to the profession as a whole.

## **B. Research and Engagement**

### **Overall Support for Options<sup>11</sup>**

Although there was some support for each option, the majority of respondents supported maintaining transitional training through the current pathways (either Option 1 or 2).

Among individual respondents, the levels of support for each option were as follows:

- Option 1 – 28 percent;
- Option 2 – 19 percent;
- Option 3 – 13 percent;
- Option 4 – 15 percent;
- Option 5 – 9 percent; and
- None of the Options – 17 percent.

Among legal organizations, the levels of support for each option were as follows:

- Option 1 – 28 percent;
- Option 2 – 33 percent;
- Option 3 – 3 percent;
- Option 4 – 0 percent;
- Option 5 – 3 percent; and
- None of the Options – 32 percent.

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<sup>11</sup> Overall support was determined by recording the chosen option of each respondent and totalling the number of responses. Considerable judgement was required in determining support as some respondents qualified their support or chose more than one option. Where respondents chose more than one option, a fraction was allocated to each option chosen. Rounding has resulted in totals of more or less than 100 percent. While focus group results produce large amounts of qualitative data, the small sample size in this case and the open-ended questions do not allow for statistical precision.

### **Skills Examination – Overall Support – Call for Input**

The Call for Input revealed that there was either limited support, limited information, or indifference regarding the proposed skills examination. Of individual respondents, 17.4 percent indicated that they were in favour of the skills examination, while 2.3 percent said they were against it. The majority of individual respondents (80.2 percent) did not express any views regarding the skills examination; in some cases, respondents said that they did not have enough information about the format and content of the examination to comment.

The results for legal organizations were similar. Seventeen percent of organizations said that they were in favour of the skills examination. Three percent said they against the proposed examination, while 80 percent did not take a position on the proposed skills examination. In some cases, these respondents indicated that they needed more information from the Law Society in order to express a view.

### **Skills Examination – Focus Groups**

According to the Stratcom report, there was some interest and support for the idea that the introduction of the skills examination might encourage law schools to deliver more experiential training opportunities. However, with only a few exceptions, the majority of licensing candidates, law students, and new lawyers did not support the proposed examination. In particular, LPP/PPD and IPC candidates viewed this proposed enhancement as redundant, which would serve as an unnecessary and costly hurdle to overcome prior to licensing, rather than raising and/or streamlining measures of competency for new licensees.<sup>12</sup>

### **Focus Group and Call for Input Feedback**

#### Option 1 - Support

A small number of focus group participants endorsed this option. For these participants, Option 1 offered the best available option to maintain transitional training. Participants were of the view that the other three options presented did not address the issues with the licensing process that had been identified by the Law Society.

During the Call for Input, 28 percent of individual respondents and 28 percent of legal organizations expressed support for Option 1. Respondents who chose Option 1 were generally supportive of the existing pathways. Some respondents described positive experiences as articling

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<sup>12</sup> Stratcom – Options for Lawyer Licensing, *supra* note 8, p. 13.

principals or candidates. In particular, LPP/PPD proponents cited the following positive attributes of the program:

- The curriculum is high-calibre and provides an opportunity to connect with legal employers.
- Candidates are able to benefit from good mentoring experiences.
- The program responds to equity and diversity concerns.
- The curriculum meets the five goals of transitional training identified in the consultation paper.<sup>13</sup>

### Option 1 – Concerns

Focus group participants who did not support Option 1 indicated that, in their view, the existing pathways are unequal, given that most law students would prefer to articulate. Option 1 attracted the lowest level of overall support in the focus groups. About one-tenth of those who expressed support for one of the options endorsed it.

Participants in the Call for Input who had concerns about Option 1 also mentioned the perceived “stigma” associated with the LPP. Critics of Option 1 also mentioned

- the number of licensing candidates who are working for minimum wage or less due to the oversupply of articling candidates;
- the power imbalance created between the candidate and the articling principal as a result of the excessive competition for available positions; and
- persistent discrimination in the profession that continues to impede racialized candidates from equal access to articling positions.

### Option 2 - Support

According to Stratcom’s analysis, Option 2 attracted the most overall support of the four options presented in the focus groups and was endorsed by about 40 percent of those focus group participants who indicated a preference for any of the four options. Supporters indicated that this option enabled the preservation of existing pathways to licensing, while addressing some of the issues identified in the consultation paper through the proposed enhancements.

There was very strong support for the proposal that candidates be paid an amount equivalent to the statutory minimum wage during articling or the work placement. Focus group participants mentioned that a required salary would also assist in addressing the discrepancy between the paid employment period in the LPP/PPD (four months) and the articling pathway (ten months).

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<sup>13</sup> See footnote 10 of this report for the five goals of transitional training.

Focus group participants were somewhat supportive of the measures to provide greater oversight of articling and work placements and a small group of participants favoured the proposal to make the barrister and solicitor examinations a prerequisite for transitional training.

### Option 2 – Concerns

The following concerns were expressed about the proposed enhancements:

- The introduction of a required salary could reduce the number of available transitional training positions, thereby exacerbating concerns about the sustainability of the licensing system.
- Clinics, public interest organizations and sole practitioners would be less able to comply with these new requirements than would other employers.
- The proposed audits could be onerous and resource-intensive.
- The proposal that candidates would be required to pass the barrister and solicitor examinations before progressing to transitional training was perceived as punitive for both candidates and employers. Candidates would face the prospect of losing a coveted transitional training position, while employers who had invested considerable effort and resources in selecting an articling candidate(s) would be required to make last-minute adjustments to cover their staffing needs.

### Option 3 – Support

Twenty percent of focus group participants found Option 3 attractive on the basis that it appears to address some of the inequities between the two pathways. Call for Input respondents (13 percent of individual respondents and three percent of organizations) mentioned the following rationales for their support of Option 3:

- It is the most consistent of the four with the modern realities of the job market.
- Given that most law schools currently offer a basic level of experiential learning, it is no longer necessary that transitional training be a pre-licensure requirement.
- It would establish a straightforward and seamless path to licensing.
- The current system is unsustainable, given that the demand for transitional training positions exceeds supply.
- The current pathways facilitate exploitation of licensing candidates who need to fulfill the transitional training requirement and Option 3 would address this issue.
- Option 3 would enable the Law Society to balance the need to reduce discrimination in hiring with the need to ensure that candidates acquire necessary practical skills.

### Option 3 – Concerns

Option 3 was unpopular with a large majority of focus group participants because it would eliminate transitional training as a mandatory element of the licensure process, including the socialization and mentorship opportunities associated with those experiences.<sup>14</sup>

Although some focus group participants endorsed the practice essentials course for those working as sole practitioners or in firms of fewer than six lawyers, a much larger group opposed the proposed course, since it would impose an additional cost on individuals working in an underserved sector of the legal services market. These participants described the proposed course as unfair, discriminatory, or unjustified as a result.

Some focus group participants were similarly critical of the notion that only lawyers entering sole practice or small firms would be subject to audits. These participants thought that the practice essentials course and the audits could discourage lawyers from choosing to work in these settings and had the potential to create a stratified profession.

Call for Input participants had similar concerns with Option 3, and also suggested that:

- If this option were to be implemented, there would still be concerns about discriminatory hiring practices at law firms.
- In order for this option to work, law schools would have to amend their curricula to further emphasize the acquisition of skills and competencies. It was not clear that law schools are prepared to make these changes; further, law schools operate in the context of a larger university and may not have complete autonomy with respect to the allocation of resources required to meet this goal.
- Experienced lawyers who move into sole practice or a small firm later in their careers should not be required to take the practice essentials course.

### Option 4 – Support

Option 4 attracted the same level of support in the focus groups as Option 3 (20 percent of those participants who selected one of the four options). As rationales for their support, proponents mentioned the benefit of a single consistent pathway to licensure, and ensuring that all candidates are exposed to the curriculum developed for LPP/PPD training course. Some considered Option 4 as the next best option if it were not possible for law schools to offer the LPP/PPD as part of the law school curriculum. Participants in the Call for Input made similar arguments in favour of

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<sup>14</sup> Stratcom - Options for Lawyer Licensing, *supra* note 8, p. 16.

Option 4. Fifteen percent of individual respondents in the Call for Input chose Option 4; no legal organization chose this option.

#### Option 4 – Concerns

Focus group participants perceived the removal of the work placement from the LPP/PPD as a significant drawback, given the opportunities presented to candidates to make connections with potential employers through their work placement and to acquire relevant experience that would assist them in their search for a full-time position.

Removing the work placement was seen as disadvantageous for a number of reasons, including the fact that mandatory work placements offer racialized, equity-seeking, and internationally-educated candidates a means of accessing the legal services marketplace. Critics also felt that mandatory work placements provide candidates with valuable real world exposure. Option 4 skeptics also mentioned the high proposed cost of an LPP for all (approximately \$15,000 plus H.S.T. per candidate per year), which they described as prohibitive, given significant student debt levels.

According to the Stratcom report, most supporters of Option 4 in the focus groups indicated that their support was contingent upon the addition of a work placement component. Some Call for Input participants who expressed their support for Option 4 also suggested that the work placement be retained.

#### Comments – Skills Examination

According to the Stratcom report, few focus group participants viewed the introduction of this examination as a measure that would improve the consistency of the training experience in the two transitional pathways. With only a few exceptions, candidates, law students, and new lawyers did not support the proposed new skills examination. LPP and IPC candidates and lawyers licensed in these pathways viewed the proposed skills examination as redundant. Rather than raising and/or standardizing measures of competency for new licensees, most viewed it as an unnecessary and costly additional hurdle to be overcome prior to licensure.<sup>15</sup>

With respect to the discussion about the proposed skills examination in relation to Option 3, there was interest and support for the idea that the introduction of the skills examination, together with the elimination of transitional training, might encourage law schools to deliver more experiential training opportunities.

Respondents to the Call for Input made the following comments in support of the skills examination generally:

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<sup>15</sup> Ibid., p. 13.

- It would be a useful way to raise the standards for lawyers entering private practice;
- It would be the best way to guarantee that candidates have acquired necessary skills during transitional training.
- Experiential learning in law school could prepare students for this examination.

Like their focus group colleagues, Call for Input participants said that the proposed skills examination would duplicate the LPP/PPD, and that candidates completing their transitional training through this pathway should not be subject to this requirement. The OFC suggested that the Law Society's consultation paper did not provide any factual evidence to justify the examination, assuming that transitional training continues to be a mandatory pre-licensure requirement. In the absence of such evidence, according to the OFC, this new requirement could be contrary to the principles set out in fair-access practices legislation.<sup>16</sup>

#### Option 5

Some focus group and Call for Input participants were not in favour of any of the four proposed options and described their alternative proposals. Most alternative proposals suggested greater law school involvement in experiential training, although there were a variety of suggestions about what this might look like. We have categorized these proposals as Option 5. While some simply asked for more experiential training in law school, others went further to suggest that the LPP/PPD be incorporated into the law school curriculum. Another suggestion was that the Law Society offer additional support to law schools seeking to develop Integrated Practice Programs similar to Lakehead University.

Those proposing Option 5 mentioned the following in support of their proposals:

- Law students would no longer be subject to a competitive job search for a required transitional training position.
- The power imbalance in existing articling and work placements would be addressed.
- Licensing costs incurred by candidates would be reduced.
- Experiential training in clinics would assist in meeting the public's need for access to legal services.

Some law faculties expressed the following concerns about changes to the existing curriculum:

- Significant resources are required to provide experiential learning opportunities for law students.

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<sup>16</sup> *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, S.O. 2006, c. 31, online at <https://www.ontario.ca/laws/statute/06f31>.

- While law schools play a role in the development of competent practising legal professions, the law school experience serves other pedagogical purposes, including developing the capacity for critique, reflection, ethical development, and service in the public interest.
- Additional consultations with law schools should be undertaken before the Law Society formulates any recommendations that would require law schools to offer more experiential learning opportunities.

A version of Option 5 was proposed by three faculty members of the Regulatory Committee of Faculty Council at Windsor Law. Articling would no longer be a component of the licensing process. All law schools would offer a mandatory practicum based on current clinical law programs using resources contributed by the Law Society and the profession. The summer after law school, all candidates would complete the LPP without the work placement component.

As part of this proposal, Ontario law graduates would no longer be required to write the Law Society's licensing examinations, on the basis that law schools are doing an appropriate job of assessing candidates' skills and knowledge. The Law Society would retain responsibility for ensuring that candidates have completed the requirements for licensure. Internationally-educated candidates could still be required to pass the licensing examinations.

This submission notes that the proposed mandatory practicum during law school would require law school clinical and experiential programs to be expanded, which would have the additional benefit of fulfilling the Law Society's access to justice mandate.

#### Synopsis of the Year 4 Pathways Evaluation

Since 2014, the Law Society has retained Dr. A. Sidiq Ali, Senior Evaluation Consultant at Research & Evaluation Consulting to assist in establishing a framework for, and then conduct an ongoing evaluation of, the effectiveness of the articling program and the LPP in preparing candidates for entry to the profession. In September 2018, Dr. Ali provided the Committee with the most recent evaluation of the two current pathways to licensing. The Executive Summary of Dr. Ali's August 2018 summary report, which informed the Committee's deliberations, is attached as **TAB 4.2**.<sup>17</sup>

As in previous reports, Dr. Ali concluded that both pathways continue to provide exposure to transitional training competencies, growth in practical skills development, and access to mentors and their feedback. The report also notes a change in perceptions of the LPP/PPD, specifically:

- An increasing percentage of candidates in the LPP reported that it was their first choice for experiential training (38% in Year One, 27% in Year Two and 40% in Years Three and Four). There is a growing sense among LPP/PPD candidates that this pathway is a superior means of achieving skills competency development.

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<sup>17</sup> Pathways to the Profession: Year 4 Evaluation Summary Report (August 21, 2018) (2017-18 Pathways Report).

- Candidates graduating from law schools outside Canada are more likely to report that the LPP was their first choice for transitional training; and
- Many respondents who report that the LPP/PPD was not their first choice of experiential training do so because they prefer to earn income for 10 months of articling as opposed to four months in the LPP/PPD work placement.

### C. Analysis of Options

#### Observations – Options 1 and 4

After careful consideration of the feedback received during the Call for Input and focus groups, the Committee has decided not to pursue Options 1 and 4. Instead the majority of Committee recommends that Options 2 be considered by Convocation. A minority recommends Option 3.

The Committee believes that Option 1 is not responsive to the current challenges facing the Ontario licensing system, including:

- the need to reduce the number of unpaid placements;
- the issue of unequal access to transitional training positions;
- Incidents of discrimination and harassment during transitional training, which could arise despite additional measures being undertaken by the Law Society to address these situations;<sup>18</sup>
- lack of consistency of articling experiences.

The Committee has also been persuaded by concerns raised by the profession during the focus groups and Call for Input about the financial burden on candidates of Option 4 (the consultation paper estimated the cost of this option to reach approximately to \$15,000, plus H.S.T., per candidate). None of the legal organizations expressed support for Option 4 during the Call for Input, and only 15.1 percent of individual respondents were in favour of it. Focus group participants expressed limited support for Option 4. The Committee has taken this feedback into consideration in concluding that Option 4 should not be further pursued.

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<sup>18</sup> The measures already adopted by the Law Society in response to the Articling Survey are described in the consultation paper and include engaging with law firms and legal departments to share best practices to address issues regarding harassment and discrimination; raising awareness of Law Society services and supports to assist individuals experiencing harassment and discrimination, including the Discrimination and Harassment Counsel and the Member Assistance Program; and reviewing and amending the Rules of Professional Conduct to ensure that the Rules are up-to-date and reflect the latest statutory changes and case-law developments. See pages 20-21 of the May 2018 consultation paper, *supra* note 4.

## Option 2 – Overview of Recommendations

As recommended to Convocation, Option 2 proposes that the two transitional training pathways would be retained, with the following enhancements:

- Candidates would be paid a required salary.
- The Law Society would measure, audit or otherwise monitor articling and LPP/PPD work placements to provide greater oversight.
- The Law Society would provide mandatory education and training for articling principals and LPP/PPD work placement supervisors.

The majority of the Committee concluded that Option 2 should be recommended to Convocation as a model worth consideration for many reasons. First, this option retains articling as the primary form of transitional training, building on the long-standing tradition that is followed in every Canadian jurisdiction. Further, recognizing the numerous benefits of the LPP/PPD identified by stakeholders during the consultation, Option 2 would also permit this pathway to licensing to be retained. Similarly, Option 2 reflects the practical training component that is common to most regulated professions. Second, the maintenance of articling and work placements is almost universally supported by the legal community. The majority of respondent individuals and legal organizations shared the view of some Committee members, that is: a period of practical employment experience is the most effective form of transitional training because it provides candidates with the opportunity to deal with real issues and actual clients in authentic settings. Third, the majority of the Committee notes that Option 2 provides many candidates with job opportunities and relationships with other lawyers that cannot be replicated outside a work environment.

The Committee also acknowledged the weaknesses in the current system, specifically the power imbalance that can lead to discrimination and harassment, the lack of consistency in transitional training, and barriers to entry that are not based on merit, such as a candidate's ability to accept an unpaid transitional training position. Recognizing that the Law Society must take better regulatory control of articling to support quality training in the public interest, the majority of the Committee recommends that Option 2 include the following enhancements:

- a required salary for candidates calculated according to a formula to be developed by the Committee;
- measurement, monitoring and audit;
- training and orientation for articling principals and LPP/PPD work placement supervisors.

### Required Salary

Summarizing the findings of the 2017 Articling Experience Survey conducted by Dr. Sidiq Ali of Research & Evaluation Consulting, the consultation paper noted that:

- Ten percent of articling candidates who had completed their articles, or were articling at the time of the survey, indicated that they were paid an annual salary of less than \$20,000 during their articling term.
- Candidates who were not paid at all are included in this group (four percent of those who had completed their articles, and three percent of those who were articling at the time of the survey, were not paid at all).

The 2017-2018 Pathways Evaluation found that while the percentage of unpaid work placements has declined over the four years of the LPP, 19 percent of LPP work placements were unpaid in 2017-2018 while 100 percent of PPD placements were paid.

The Committee is concerned that unpaid and underpaid articling positions and LPP/PPD work placements are a barrier to the completion of legal studies and entry to the profession for candidates from difficult economic circumstances, irrespective of merit. These placements may also reinforce the imbalance of power between candidates and principals and create opportunities for exploitation and mistreatment of candidates. To ensure that unpaid transitional training does not perpetuate unequal access to the profession, the Committee recommends that, where possible, articling and LPP/PPD candidates should be paid in accordance with Law Society requirements.

During the Call for Input, some legal clinics that currently provide legal services to vulnerable members of the public in areas such as disability, social assistance, and pension law, indicated that although they would prefer to be a position to provide a required salary to articling and LPP candidates, this is not currently possible given funding constraints. To address situations where the requirement may deprive candidates of good articles or work placements, the Committee is proposing that some articling principals or work placement supervisors may be eligible to apply for an exemption, as described below.

Individuals and entities subject to Law Society jurisdiction would be able to apply for an exemption from the required salary. The Committee proposes that the exemptions from the required salary should be available on a demonstrable basis that is appropriate in the circumstances.

Compliance with this requirement could be assessed during an audit, described below.

### Measurement, Monitoring and Audit

As an additional response to concerns about inconsistent learning experiences, discrimination, and harassment, the Committee proposes to audit both articling principals and LPP/PPD work placement supervisors. The audits would assess compliance with the following:

- efforts to ensure that the licensing candidate has been exposed to the experiential training competencies (described below);
- payment of a required salary as described above;
- obligations regarding avoidance of discriminatory practices in recruitment or assignment of work; and
- ethical obligations regarding harassment of licensing candidates.

Practice Management Reviews, currently conducted by the Law Society as part of its quality assurance programming, could also be expanded to examine these issues.

As a result of changes approved by Convocation Law Society in 2012, both candidates and articling principals are required to report to the Law Society regarding the candidate's experience and levels of achievement in relation to 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 also 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. As part of the LPP/PPD programs, candidates' acquisition of these skills and competencies is monitored and assessed.

An audit protocol in articling would allow the LSO to directly observe and validate that the required competencies are being fulfilled in articling placements, to be more visible and active in the articling process, and to potentially remediate marginal placements. If the Law Society audit revealed that an articling principal was not endeavouring to ensure candidates are exposed to the required competencies as set out in the experiential training plan, engaging in discriminatory practices, subjecting the candidate to harassment, or failing to pay the required salary, the Law Society could take action. The steps taken in response could include:

- providing support and guidance to principals;
- removing the principal;
- contacting the LPP provider regarding the concerns;
- initiating an investigation of licensee misconduct.

If the articling principal were removed as a result of the findings of an audit, the Law Society would assist the licensing candidate in finding another position. This would be consistent with the Law Society's licensing process policies, which already permit a candidate to assign his or her

Articles of Clerkship agreement from one principal to another during the articling term, as well as to apply for an abridgement based on compassionate grounds.

The structure of LPP/PPD work placements differs from articling, since the LPP and PPD are responsible for the recruitment of work placement supervisors. A similar regime would be established to enable the removal of a work placement supervisor in the event that the audit uncovered issues. The LPP/PPD would assist the candidate in finding another position.

#### Training and Orientation for Articling Principals and LPP Work Placement Supervisors

The Committee recommends that articling principals and LPP work placement supervisors be required to complete mandatory training and orientation programming on the following topics as another means of supporting quality transitional training:

- the duties of a principal under Rule 6.2-2 of the Rules of Professional Conduct (Rules) to provide the student with meaningful training, exposure, and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law;
- the prohibition on sexual harassment in Rule 6.3-3 of the Rules;
- the special responsibility of lawyers to honour the requirements of human rights laws in force in Ontario under Rule 6.3.1-1 of the Rules;
- the obligations of lawyers to ensure that their employment practices do not offend Rules 6.3.1-1, 6.3.1-2 and 6.3.1-3 of the Rules; and
- the obligations of a principal under Section 10.17 of the [Law Society's licensing process policies](#), including the principal's obligation to
  - instruct the candidate in the practice and profession of law to the best of the principal's ability (s. 10.17(d));
  - provide an articling experience that conforms to the experiential training competencies and requirements for candidates prescribed by the Society (s. 10.17(e)); and
  - be an exemplar having regard to all circumstances including, but not limited to, the experience, competence, ethical standards and professional conduct record of the licensee (s. 10.17(h)).

The orientation programs would be one to two hours long, and would be available online. They could also be eligible for substantive or professionalism CPD hours.

#### Impact on Articling Positions and Work Placements

The Committee recognizes that these measures could cause a reduction in the number of placements available, either articles or work placements. Principals and supervisors often consider supervising candidates as the fulfillment of a duty to the profession, not merely as a benefit to their practices. They may see these additional requirements as unduly burdensome or simply

unaffordable, in terms of time and money expended and some may stop hiring candidates. The Committee is also aware that it is not the role of the Law Society to regulate employment relationships between licensing candidates and their employers.

With respect to positions that subject candidates to discrimination, harassment and exploitation, the Committee believes that the Law Society should do what is feasible to prevent candidates from such abuse. Similarly, for those placements that do not offer candidates opportunities to develop experiential training competencies, the Committee believes that the Law Society must take action to identify these placements and address the deficiencies, in order to meet its statutory obligation to ensure the competence of licensees.

#### Barrister and Solicitor Examinations as a Prerequisite for Transitional Training

The Committee has carefully reviewed the feedback received in response to the consultation paper's proposal that candidates be required to pass the barrister and solicitor examinations before proceeding to transitional training. Law students, licensing candidates, lawyers, and most legal organizations were concerned that this enhancement would result in a lack of flexibility for licensing candidates who are increasingly balancing employment, academic, family, personal, and other circumstances. It could cause hardship to both individual candidates and employers if candidates were unable to begin their transitional training as anticipated. The OFC was also critical of this proposal.

In light of these comments, the majority of Committee members are of the view that it would be best for the Law Society to continue to maintain a flexible approach in this area. This proposal will not be pursued, and licensing candidates will continue to have three years to complete the licensing examinations after graduating from law school.

#### LPP/PPD

As noted above, Option 2 includes the continuation of both pathways: articling and LPP/PPD. The LPP offers effective transitional training and perceptions of its value are improving. In an environment where the number of candidates exceeds the number of articling positions, an alternative such as the LPP/PPD is essential to ensure that the licensing process is fair and that candidates are not denied licensure simply because they are unable to obtain an articling position.

Many participants in the focus groups and Call for Input expressed great appreciation for the program, indicating that the curriculum prepared them well for legal practice and the mentors were an invaluable source of help and advice. In addition, the PPD plays a crucial role in ensuring that lawyers are competent to provide legal services in French to meet access to justice needs of the Francophone community.

If Convocation were to choose Option 2, the LPP/PPD would no longer operate as pilot projects. The 2018-2019 LPP/PPD year is underway and arrangements have been made for both programs to continue in their current form for the 2019-2020 year. Following the completion of the 2019-2020 year, there may be changes to the way in which these programs are delivered. In their submission to the Call for Input, the Ryerson University LPP indicated that the program's costs could be lowered if the Ryerson LPP had a greater ability to manage the scheduling and structure of the program. The Committee encourages and supports efforts to reduce the cost of the Ryerson LPP.

Further, the Committee is concerned about the financial sustainability of the PPD, given the enrollment to date.<sup>19</sup> PPD enrollment has averaged 16.8 candidates annually over years 1-5 of the Pathways Pilot Project, ranging from 11 to 23 candidates enrolled in the program.<sup>20</sup> In light of these concerns, the Committee recommends that the Law Society and the University of Ottawa enter into discussions to address the cost and sustainability of the PPD.

### Option 3 – Overview of Recommendations

As recommended to Convocation, Option 3 proposes:

- Candidates would be licensed after they complete the barrister and solicitor licensing examinations.
- 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-licensure and depend on the career path of the new licensee, so that
  - Candidates who choose not to practise law and licensees practising in a firm 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 practice essentials course addressing practice management, and would be subject to audit within their first few years of practice. Licensees who begin their careers in a firm of six or more lawyers and then move into sole practice or a small firm would also be required to take the course.

Based on its review of the feedback received, an analysis of regulatory risk to the public, and mindful of the sustainability of the current universal transitional training requirement, a minority of the Committee is also recommending Option 3 to Convocation for its consideration. If implemented, Option 3 would result in profound change in the current licensing system, as it would involve the removal of the pre-licensure transitional training requirement for all. The

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<sup>19</sup> See Professional Development & Competence Committee Options for Lawyer Licensing: A Consultation Paper, *supra* note 4, p. 9 (table with enrollment information for the LPP/PPD).

<sup>20</sup> PPD enrollment for the 2018-2019 licensing term (year 5) as of November 21, 2018.

acquisition of competencies would be measured through the successful completion of the current barrister and solicitor examinations.

A minority of the Committee is of the view that Option 3 is most responsive to the increasingly diverse range of career paths followed by new lawyers. There are well over 50,000 lawyer licensees in Ontario. Approximately forty percent of lawyers are not actively practising law. Further, of the approximately 35,000 lawyers who are practising, approximately 10,300, or 30%, are performing roles in government, education, businesses and other settings where they may not directly advise the public.<sup>21</sup> It is appropriate that the licensing process be designed to focus resources on areas of greatest regulatory risk. Law Society 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>22</sup>

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 firm 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, a course on practice essentials (described below) 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, and application of ethical and professionalism principles). Finally, by eliminating transitional training from the licensing process, Option 3 would address the power imbalance that can lead to exploitation, discrimination and harassment, at least during the licensing process.

### Practice Essentials Course

In keeping with the concept that regulation should focus on areas of risk, the course would be primarily focussed on practice management and areas that most frequently give rise to complaints. A practice essentials course would provide an opportunity to proactively promote best practices in practice management from the outset, possibly offsetting the need for remediation later on as observed in practice management reviews.

Subjects to be covered in the course include:

- client service and communication;
- financial and practice management; and

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<sup>21</sup> Based on LSO data as of August 2018.

<sup>22</sup> Professional Regulation Division End-of-Year Report (31 December 2016), 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).

- the business of running a law practice.

Optional modules that would focus on particular areas of practice (real estate, estates and trusts, family law, criminal law, civil litigation, and corporate-commercial law) could also be added to the course. A combination of in-person and online delivery would be explored. The Law Society's development costs for the practice essentials course could be in the \$500,000-\$1,000,000 range, depending on the delivery mode and taking into account the content development, instructor supports, venues, and other activities that would be involved.

The course could also include skills assessments testing candidates' ability to perform essential lawyering tasks, such as writing an opinion letter or interviewing a client.

### Skills Examination – Overview

The May 2018 consultation paper proposed a new skills examination. If introduced, the skills examination would likely be computer-enabled, and would require candidates to perform written tasks simulating the activities that would be expected of an entry-level lawyer in a practice environment.

A skills examination is a “constructed response” assessment requiring a candidate to produce a correct answer or perform a task that demonstrates knowledge, skills, or abilities, permitting the evaluation of high-order thinking skills. Examples of constructed-response questions include

- “fill in the blank”;
- short and (long) essay answers;
- task or scenario-based simulations; and
- structured interviews, such as the Objective Structured Clinical Examinations, used in licensing examinations administered by Ontario's health regulatory colleges and Canadian medical regulators, among others.

The skills tested in the examination would be aligned with the Federation of Law Societies of Canada National Competency Profile as well as the skills and competencies developed for the two current licensing pathways. The skills examination could test candidates on one or more of the following:

- drafting an opinion letter;
- drafting an affidavit;
- conducting a negotiation;
- analyzing an ethical issue; and
- interviewing a client.

The Law Society would provide written materials to candidates to assist them in preparing for the examination. The written materials could include practice examinations and supporting documents. Candidates would have three opportunities to write the skills examination.

Skills Testing – Discussion

Irrespective of whether Convocation chooses Option 2 or Option 3, the majority of the Committee favours the inclusion of some form of skills testing in the licensing process. The Committee is considering two models of skills testing – integrated skills assessment and a distinct (or separate) skills examination. The table below summarizes the options under consideration in this area.

**MODELS FOR SKILLS TESTING**

	<b>Option 2 – Current Model with Enhancements</b>	<b>Option 3 – Examination-based Licensing</b>
<b>MODEL 1 – Integrated Skills Assessment</b>	<b>Skills Assessment</b> would take place during transitional training, would be administered by the articling principal or by the LPP/PPD, and would be a required component of the licensing process.	<b>Skills Assessment</b> would take place after licensure during the practice essentials course required for those practising as sole practitioners or in firms of five or fewer lawyers.
<b>MODEL 2 – Skills Examination</b>	A <b>Skills Examination</b> would be administered by the Law Society and be completed after the articling program or the LPP/PPD and would be a required component of the licensing process.	A <b>Skills Examination</b> would be completed after the barrister and solicitor examination and administered by the Law Society. It would also be a required component of the licensing process.

The skills examination would be consistent with the approach taken by legal regulators in other jurisdictions.<sup>23</sup> Some members of the Committee are of the view that the examination would be another step in the evolution of the Law Society's competence mandate, in accordance with

<sup>23</sup> The National Conference of Bar Examiners in the U.S. administers the Multistate Performance Test. Information about the number of U.S. jurisdictions administering the test, can be found on the National Conference of Bar Examiners website at <http://www.ncbex.org/exams/mpt/> and <http://www.ncbex.org/exams/mpt/preparing/>. The Solicitors Regulatory Authority in England and Wales is introducing a Solicitors Qualifying Examination (SQE) that will include a series of practical skills assessments testing candidates in various areas such as client interviewing and legal drafting. See <https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/sqe-overview/>. The other component of the SQE will consist of a multiple-choice assessment.

currently accepted best practices. The examination has the potential to raise practice standards and could also ensure consistent standards for all candidates for Law Society licensing, irrespective of the law school attended and pathway pursued to licensing.

Other members of the Committee raised concerns about the proposed examination, which could involve initial development costs to the Law Society in the range of \$700,000 to \$1,000,000 (excluding H.S.T. and indirect expense allocation) and result in additional fees of approximately \$1800 per candidate if implemented. These concerns included: the extent of Law Society resources that would be required to develop and administer the examination; the increased cost to be incurred by candidates, who have already indicated that they find licensing costs to be burdensome; and the possibility of unfairness, given that there could be significant differences in achievement in the examination based on the transitional training pathway chosen. Committee members were also concerned that some law schools might be unwilling to make the necessary adjustments to their approach to adequately prepare students for the examination. Finally, the 2018 consultation (both focus groups and Call for Input) revealed significant skepticism about the benefits of the examination.<sup>24</sup>

Given these issues, a majority of the Committee is also considering an alternative, less resource-intensive approach. Should Convocation choose Option 2, licensing candidates could be required to complete two or three skills assessments to be administered by articling principals who would report the results of the assessments to the Law Society. The purpose of these assessments would be to assess candidates' ability to complete tasks that an entry-level lawyer would be required to accomplish. The Law Society would provide principals with materials, including source documents, instructions, and marking rubrics. Tools for assessment could include drafting an opinion letter, preparing a proposal for settlement or agreement, or writing a legal memorandum.<sup>25</sup> Skills assessment would be one element of the Law Society's measurement and monitoring of articling. As part of the audits of articling placements, the Law Society would verify the principal's compliance with the requirement to administer the skills assessment. A majority of the Committee believes that this approach is consistent with the Law Society's statutory duty to ensure a proportionate approach to standards of learning and professional competence. Skills assessments would also be administered by the LPP/PPD.

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<sup>24</sup> As noted earlier in this report, only 17.4 percent of individual respondents during the Call for Input were in favour of such an examination, while only 17 percent of legal organizations expressed support for the idea. The majority of focus group participants did not view the proposed examination as an effective way of ensuring a consistent training experience between the two pathways, or reducing inequities in the licensing process.

<sup>25</sup> In the event that the required skills are assessed as part of the LPP/PPD training course, licensing candidates in the LPP/PPD would not be required to comply with these requirements.



Should Convocation choose Option 3,

- a skills assessment could take place during the practice essentials course.
- In the alternative, a skills examination could be administered by the Law Society and would be a pre-requisite to licensure.

The projected costs of a skills assessment model are likely to be significantly less than the cost of a formal skills examination. Development costs to the Law Society are likely to be in the range of \$250,000-\$300,000, and additional licensing fees are estimated at \$150-\$200 per candidate. Since the concept of a skills assessment has emerged as a result of stakeholder feedback and further dialogue, the Committee is recommending deferral of the matter of skills testing. During the upcoming months, the Committee will consider the benefits and concerns arising from the implementation of both the skills assessment and skills examination, and report to Convocation at a later date.

The recommendation to defer consideration of skills assessment and skills examination is not unanimous. A minority of the Committee is of the view that a skills examination should be implemented as part of either option for the following reasons:

- (i) A skills examination would be developed in conjunction with psychometricians, thereby ensuring a greater degree of rigour, fairness and objectivity than is the case with an assessment that would be administered by an articling principal.
- (ii) A skills examination is less problematic than an assessment, since articling principals may perceive new Law Society requirements to administer the assessments as an administrative burden, particularly in a sole practice or small firm.
- (iii) Stakeholder comments during the Call for Input regarding a lack of clarity about the proposed content of a skills examination should not be interpreted as an argument against developing a skills examination as a means of assessing entry-level competence and protecting the public.

#### Option 5 - Overview

As noted above, a number of consultation respondents suggested a greater degree of integration of experiential training into the law school experience. These respondents and many others point to the very significant investment that today's law students make long before they are called to the bar. Typically, a new licensee has undergone eight years of study and training, composed of four years in an undergraduate degree program, three years of law school and approximately one year in the licensing process. This process means that students often graduate with more than \$100,000 in debt. However, according to the reports of many candidates, even those with paid

articling positions, their articles often lack the desired guidance, mentoring and structured learning. Candidates often enter the practice of law feeling unprepared and unqualified.

While a percentage of new lawyers may not be practising, the majority of new lawyers provide legal services, either in private practice or as corporate counsel. Moreover, non-practising lawyers often use their lawyering skills in unconventional contexts, to the benefit of their employers. New lawyers and their clients could benefit from an education and training system that saw both law school and transitional training as part of a continuum that aims to produce competent licensees committed to advancing the cause of justice and the rule of law. Ultimately, the client bears the burden of inadequate training. In addition, both the Law Society and the legal academy are grappling with the challenges posed by the rapid changes taking place in society and the profession and the need to find new ways to serve clients of modest means.

With so much at stake for both the public and licensees, the Committee recommends that the Law Society reach out to the academy and explore areas of collaboration with respect to integrating more experiential training into the law school experience. The Committee notes that all law schools are offering an increasing number of experiential learning opportunities and Lakehead University has successfully incorporated the IPP into the law school curriculum.<sup>26</sup> Moreover, through the DOL, some members of the legal academy have invited the Law Society to engage in a dialogue in the coming months regarding the future of legal education.

While recognizing that law schools and the Law Society have separate roles, the Committee believes that much could be accomplished if all participants in the legal education continuum begin to discuss their common challenges in an effort to identify solutions.

## Implementation

### A. Cost

The estimated development costs and candidate fees (excluding H.S.T.) of Option 2 and Option 3 can be summarized as follows. Licensing fee projections assume a continuing subsidy from the profession in the amount of \$1,000,000.

**Option 2** – The cost of developing new quality assurance protocols (monitoring, training and supports) for all articling and LPP/PPD work placements are projected at \$200,000 to \$300,000. Once implemented, the protocols are likely to result in a fee increase of approximately \$175 per candidate, which would be added to the current licensing fee of \$4710. Under Option 2, the total per candidate licensing fee is projected at approximately \$4900.

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<sup>26</sup> The 2017 DOL materials include a chart summarizing experiential learning opportunities, and may be accessed at <https://lsdialogue.ca/wp-content/uploads/2017/03/Dialogue-Topic-1-EN.pdf>



Option 3 – Licensing fees would vary depending on the category of practice:

- Non-practising lawyers and lawyers entering workplaces of six or more would continue to pay the current licensing fee, less the cost of the transitional training requirement, for a total licensing fee of approximately \$1900.
- Lawyers in sole practice or in a firm of fewer than six lawyers would be required to pay the current licensing fee (less the cost of the transitional training requirement) and the practice essentials course fee of approximately \$2500, for a total licensing fee of approximately \$4400.

Future reports to Convocation will include more detailed information about timing, resource, and cost impacts of implementation.

The projected costs of the skills examination and skills assessment models have been outlined above at pages 29-30. Given that further information about the benefits, challenges and resource implications of the two models is required, the Committee is recommending deferral of consideration of skills testing at this time.

### **B. Timing and Reporting**

The design of the enhancements proposed by Option 2 and the skills examination and assessment will require additional consideration. As a result, the earliest these changes could be implemented would be for the licensing cohort that begins on May 1, 2021. If Convocation chooses Option 3, timelines for implementation will be determined and reported to Convocation.

After Convocation has determined the matters outlined in the motion, the Committee will return to Convocation for input and decisions related to implementing the chosen option and the skills assessment or skills examination. This will include more detailed information about timing, resource, and cost impacts.

As is the case with other Law Society initiatives, in the event that Convocation chooses Option 2, once the enhancements are in place, there will regular reports to the Committee and Convocation from time to time enabling the efficacy of the enhancements to be assessed.