



**Submissions to Professional Development & Competence Committee's
Report on Enhancements to Licensing Process**

May 10, 2016

A2Justice Working Group on Articling

WORKING GROUP MEMBERS

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I. INTRODUCTION

1. The Professional Development & Competence Committee (PD&C) presented a report to Convocation on April 28, 2016, proposing enhancements to the licensing process (the proposal; attached at Schedule A). The proposal will be returned for a decision at Convocation on May 26, 2016. The A2Justice Working Group on Articling contacted Policy Director Jim Varro about submitting comments and feedback on the proposal. Mr. Varro asked that written submissions be provided by May 10, 2016, in order that the submissions be circulated and discussed at PD&C's next meeting before the May Convocation.
2. The following document is the The A2Justice Working Group on Articling's submission concerning the PD&C proposal.

A2Justice: Who We Are

3. The A2Justice (A2J) Coalition was established in 2014 by volunteer law students, lawyers, and community members with a common interest to increase access to justice and to decrease barriers to the profession that law students, articling students, and new lawyers face. Formed as a subgroup of A2J, the A2J Working Group on Articling was delegated the task of corresponding with the Law Society of Upper Canada (LSUC or Law Society) regarding policy and decision-making processes about articling and licensing. The A2J Working Group on Articling's principal goal is to establish permanent, meaningful external consultation in the Law Society's policy for decisions related to articling and licensing.
4. The A2J Working Group on Articling has identified four key areas of advocacy:
 - i) **Improving the quality of the articling experience, including the comprehensiveness of experiential training and expected working conditions:** In concept, the articling experience should be comprehensive enough to equip the licensing candidate to practice law upon call to the bar. Currently, completion of the required Experiential Training Plan may provide guidance to the student and principal as to what the articling experience should include. Despite this, notwithstanding the differences between fields of practice, the content of the articling experience often varies wildly between different articling placements. Not uncommonly, an articling student may be tasked with research and memorandums for 10 months, only to find upon call to the bar that they have insufficient skills to actually practice law. Moreover, the Law Society provides no guidance for appropriate work hours for articling students. While the regulation of the contract between student and employer may be outside its purview, the Law Society should be

obliged to consider the well-being of articling students if articling is a prerequisite to becoming licensed.

- ii) **Assessing current and future levels of licensing fees for candidates:** Recently, licensing fees were significantly increased in relation to the cost of the new Law Practice Program; the increased fees applied to all articling students, whether or not they were enrolled in the LPP. Any changes to licensing fees must consider the diverse financial positions of licensing candidates. Increases in licensing fees are disproportionately onerous for articling students who must pay the licensing fees themselves. Whereas licensing fees may be paid by employers for articling placements with large firms, articling students in articling placements with sole practitioners, small firms, joint articling placements, or alternative articling arrangements must often pay licensing fees themselves. Moreover, the unequal burden of licensing fees is heightened by fact that articling positions with sole practitioners, small firms, legal clinics, etc. are often lower paying compared to positions with larger firm or even unpaid.
- iii) **Increasing the number of articling positions and remuneration during articling:** While the Law Practice Program now provides an alternative to articling, the shortage of articling positions is a continuing problem. Because of this shortage of articling placements, some students are forced to take lower paying or unpaid positions in order to become licensed, particularly in fields of law with higher proportions of sole-practitioners or legal clinics. The quality of an articling placement is not commensurate with the level of remuneration it pays; an articling student may find a comprehensive articling experience, but at the cost of proper compensation. The LSUC should consider creative solutions to encourage more practitioners to become articling principals, including bursary-type funding to sole practitioners, small firms, and legal clinics to provide articling placements, and granting professional development credits to articling principles for taking on articling students.
- iv) **Making licensing examination results transparent and reviewable:** The current licensing examination process is insufficiently transparent for licensing candidates. Pass/fail rates and information as to how examination sections and questions are weighted should be made available to candidates. There is no review or appeal process for candidates who fail an examination. As well, the effectiveness of the current examinations in testing candidates' knowledge of the law is dubious and calls into question the purpose of bar examinations.

II. PRELIMINARY COMMENTS RELATING TO PD&C REPORT

5. At the outset, we would like to outline some preliminary considerations, which flow from the mandate and perspective of A2J and that engage directly with the discussion and rationale of PD&C's proposal.

Current model of public consulting with LSUC is not accessible or meaningful

6. One of the predominant concerns of the A2J Working Group on Articling relates to creating a discussion with the Law Society around issues relating to articling and licensing. A2J stemmed from a sense that the process of lawyer training and the practical bridge from law school to the practice of law was arbitrary and the regulatory framework around its implementation and management was quite opaque and inaccessible.
7. While the by-laws of the Law Society and the minutes and sessions of Convocation are open to the public, the lead up to Convocation within respective Committees is protected by a cloak of confidentiality. Access by the general public, members of the Law Society and stakeholders is currently feasible only at specific moments determined by Convocation in consultation with the Committees. We are certainly appreciative that Diana Miles and the PD&C Committee have opened up an opportunity for A2J to provide comments on the PD&C Report; however, our initial foray into communication with the LSUC on the vitally important question of 'Enhancement to the Licensing Process' reflects a nominal opportunity for meaningful consultation. This form of 'passive' consultation – in which interested external stakeholders must be able to actualize the opportunity to make submissions within a prohibitively short timeframe, unsolicited and without prior notice – is unacceptable.
8. While the A2J Working Group on Articling has agreed to provide substantive comments on the PD&C proposal, it must be understood that our submission is not an endorsement of the process or framework for consultation that has been approved by Convocation on the vital issue of enhancing licensing requirements.

Proposed Period of Consultation is "Tokenism"

9. As several benchers mentioned during the April 28th Convocation – the time for consultation allotted on the Report was too short. In practical terms, for A2J, we have been provided with a narrow window between April 29th and May 10th to provide substantive comments on a proposal with quite specific deliverables within specific time periods. This proposal aims to significantly change the licensing process while reiterating of several concerning principles of pedagogy that require review and reconsideration.

10. We understand that the PD&C Report has been in deliberation within the Committee for approximately 10 months under the auspices of the newly elected roster of PD&C benchers in April 2015. In this regard, we emphatically agree with those Benchers who noted during the April 28th Convocation that the period for public consultation is too short. Given the magnitude of the proposed changes, we believe that a public consultation period that amounts to less than two weeks for a proposal generated after 10 months of discussion smacks of “tokenism” and effectively illustrates that the proposal submitted is a *fait accompli* that does not merit meaningful input from affected groups, constituencies, and the Ontario public.
11. Our preliminary comment, therefore, is that the time period must be increased to seriously discuss the merits of the PD&C proposal. For organizations such as A2J that are run by a team of volunteers, adequate time to respond must be given. At a minimum, we propose that six months should be allotted for such consultation, and that during this time period the LSUC must devote resources to consulting with articling students themselves, newly called lawyers, the public, interest groups, and equity seeking groups – such as those who are members of the Equity Advisory Group (“EAG”) and LSUC members at large.
12. The reason for the need for such broad based consultation is that we believe that the PD&C’s proposal raises serious changes to the licensing process and rationalizes its approach through an unproven and untested view of what constitutes enhanced competency and efficiency and through a “revalidation” of the current model of examinations. The thrust of the proposal is aimed at condensing licensing examinations that cover substantive areas of law as a threshold requirement for licensing. Such an approach, in our view, inappropriately extols the efficacy of the current model of examinations, while it simultaneously devalues experiential learning and reaffirms the dissonance between practical skills and examination based evaluation.

Lack of evidence to support proposed changes

13. We believe that PD&C’s contention that under the current model of licensing examination “point in time” assessments are “...an important tool for determining whether candidates have demonstrated entry level competence necessary for licensing” (PD&C Report para 15) is simply not accurate as a matter of logic and unproven from an evidence-based perspective. As discussed below, the current Barristers and Solicitors Examinations, which are based on a multiple choice examination review of substantive areas of law, may not bear at all upon areas of practice of lawyers and do not simulate the practical environment of articling or the practice of law in Ontario.

14. Here, we note the following:

- there is no evidence that pass and fail rates on the current examinations was ever captured, reviewed and correlated with candidate performance;
- there is no indication that articling student input was considered relative to the appropriateness of the learning environment and the need for supports; and
- there is no indication or evidence that other measures of providing in-classroom or other pedagogical methods of conveying substantive information was ever considered.

Failure to fulfil Convocation’s intention with respect to examining the threshold for licensing

15. At its core, we note that the Committee’s failure to consult has resulted in a narrowly focused report that diverges from Convocation’s message in its failure to adequately and fully examine the threshold for licensing. It is our understanding that Convocation did not seek a perfunctory proposal on streamlining the licensing process, but rather, the task that is required is one of seriously examining whether the licensing threshold is responsive to the nature and rigors of the profession.

16. At paragraph 17 of the PD&C Report, it is noted that the proposed Practice and Procedure Exam (PPE) is “a revalidation process rather than a *de novo* developmental process”, which is capable of being implemented in the 2017-2018 licensing year. In other words, PD&C seeks to appropriate the substance and approach of the current Barristers and Solicitors examination and to synthesize these, rather than to reassess the logic and principles behind the examinations themselves. Whereas the Report rationalizes its approach of synthesizing the two existing examinations by virtue of drawing on Convocation’s priority of examining “...the extent to which the threshold for licensing needs to be changed”, (PD&C Report para 19) we believe that no examination whatsoever has occurred.

17. The current PD&C proposal outlines that the PPE can be implemented within the proposed PD&C budgetary allocation for 2016 (para 20(a)) with additional funds required to cover development of the and Practice Skills Examinations (PSE) in 2017 and 2018 (para 20(d)). However, there is no transparency whatsoever as to whether other models or approaches to examining the threshold for licensing were considered and assessed for their financial viability. To this end, we note that there is a serious need for increasing transparency in terms of how funds are sought to be allocated and why other less conservative methods of changing licensing threshold were not pursued.

18. In the end, A2J is extremely concerned by the possibility that the current exercise of re-examining the licensing threshold may have been motivated by cost savings at the expense of modernizing the licensing method to more meaningfully test core competencies and candidate's ethics. Convocation should adopt the best, not necessarily the most expedient, method for determining the licensing threshold. Equally, we believe that the financial viability of different approaches to licensing should be transparently discussed at Convocation.

III. RECOMMENDATIONS ON PD&C's PROPOSAL

A 3-year time limit and restriction to only one attempt at licensing is unreasonable

19. The proposed 3-year time limit to satisfy all licensing requirements and restricting candidates to only one attempt at completing the licensing process could unfairly disadvantage law school graduates considering the current state of the job market. Typically, 3 years may very well be sufficient time to meet all of the licensing requirements; however, if a candidate is unable to timely secure an articling position, fails multiple exams, or must take time off due to health, finances, or family obligations, they could easily run out of time to become licensed.

20. If candidates are not permitted sufficient time to obtain articling placements, account for re-writing of exams, and tend to personal matters, they risk losing the significant investment in time and money – upwards of \$60,000 to \$100,000 – representing their legal education. This is an unconscionably severe penalty for students in an employment market where there are simply not enough articling positions for candidates to secure placements quickly.

Licensing examinations are ineffective at gauging competency or preparing candidates for legal practice

21. The Law Society should undertake a study of the effectiveness of licensing examinations as a tool for assessing the competency of candidates and consider abolishing it in its current format. The Society should also design the examination based on actuarial data, rather than designing it in response to an administrative change in the articling regime.

22. Each year, thousands of candidates in Ontario work in teams to prepare for the examinations by mechanically updating indexes to conform to the updated materials received from the LSUC, which total approximately two-thousand pages. For two seven-hour examination sessions, candidates clerically thumb-through the materials and fill out multiple-choice

answers. Anecdotally, many candidates complain that they retain very little information from this period of self-study and suspect that success on these examinations correlates more with their ability to locate answers rapidly using their index than their command of the substantive material. Candidates are also assessed in areas of law in which they may never practice. Increasingly, this period of study also results in financial hardship for candidates holding record student debt by preventing them from articling.

23. The examination model, while perhaps an important administrative mechanism of assessing “examination-based performance”, fails to test applied and practical skills of lawyers in a dynamic environment of practice. Lawyers do not reason or function according to the confines of a complex multiple choice test. Moreover, for articling students, the application of analytical reasoning to new areas of law does not require substantive knowledge of detailed rules in specific areas of law. Such substantive information may have no bearing upon the applied work of an articling student, given his or her niche of articling training and will not determine the candidate’s ability to perform.
24. The Law Society needs to consider statistical data on the current examinations. If the current or proposed examination is effective, there should be a negative correlation between examination scores, disciplinary action and LawPro claims: ie. lawyers who score poorly have more issues with their competency. If there is no correlation, then the exam is not testing competency and is testing some other extraneous variable, such as the quality of candidates’ indices of the bar materials. If the examination is not statistically effective, it should be re-designed from the ground-up.
25. In our view, an effective exam is one that would assess the competency of candidates based on *performance metrics*: meaning that the format should assess, by proxy, the candidates’ performance on common tasks and situations encountered in the every-day practice of law. Candidates are currently not assessed on the most basic skills required for a successful legal practice.
26. An effective examination model should also reflect the increasing importance of written work and research skills in the practice of law. Candidates should be assessed on the quality of their applications, factums, correspondence, and memos, to name a few. This is an excellent opportunity for the Law Society to assess candidates based on documents which are regularly drafted by lawyers and are more advanced than those the candidates were exposed to at law school.
27. The content of the examination should also be harmonized with the law school curriculum. It is incumbent upon the Law Society to ensure that only qualified candidates are called to the

bar; however, re-testing candidates in areas where they have already passed law school examinations on the subject is not an effective way to do this. There are larger problems with the pathways to the profession if the Society cannot rely on the schools to test students' core competencies. Therefore, the Society should coordinate with the law schools to provide a process which results in as little redundancy as possible and focuses on an assessment performance metrics.

28. Finally, the current and proposed examinations do not complement the articling experience. The Law Society's assessment of the candidate should be integrated within the articling process. This is already done effectively by Societies in other provinces; as discussed below.

Duration of articling term should not be decreased

29. The PD&C proposal characterizes the reduction of the articling term from 10 months to 9 months with a new three-month abridgement structure, as a "...procedural rather than substantive change". While it is evident that the reduced term explicitly affects the procedure for licensing, the Committee's approach in reducing the articling term, in our view, represents an important and substantive change by virtue of the simultaneous elevation of the PPE as a front-end threshold requirement for licensing along with a curtailment of practical experience to the student, which can only be gained through the practical component of articling.
30. The principal purpose of articling in the licensing process is to ensure candidates undergo and benefit from experiential training. Once called to the bar, the candidate is deemed to be qualified to practice law. The Law Society should carefully consider how much training should be required in order for a candidate to be licensed. As a note, regulating bodies in other common law jurisdictions such as the United Kingdom and Australia require candidates to attain more pre-certification practical experience than that of the LSUC.
31. A2J firmly opposes any reduction of the licensing term, which it believes is a vital component of teaching and allowing for all aspects of the principal objectives of articling training including learning, professional competence and professional conduct. To this end, A2J advocates an integration of experiential learning and testing within the term of articling, rather than effectively cutting it off at both ends through standardized examination. Like the Alberta model which mandates monthly testing, we believe that professional ethics and competence can be imparted during a rigorous period of articling, which must be maintained at least at 10 months. There is no transparency around the Committee's view that less practical training will provide better or equally competent lawyers.

32. Moreover, the Committee's approach reflects an overarching approach that using modified standardized tests at the front end and back end of the articling training process will enhance the licensing process. Such an approach effectively subordinates the practical component of articling, while deeming new testing to represent a surrogate for experience. Testing should not be applied at the expense of experience – which must remain the backbone of licensing and which fundamentally distinguishes licensing from law school. Reducing the duration of the articling term also poses financial consequences to articling students, who would be losing one month of remuneration.

PPE Examination should not be a barrier to beginning experiential training

33. A2J is of the view that passing the PPE Examination should not be a requirement for beginning experiential training. The point-in-time assessment is an arbitrary measure of a student's ability to learn in a fashion that instead serves to extend the classroom focus of law school, which has traditionally focused on examinations valued at 100% of one's course mark. Given this similarity, A2J is extremely concerned about the prominence and necessity given to a front-end examination that is used as a threshold requirement to access the experiential learning component of articling.
34. Given the current challenges for candidates in seeking articling, any delay in commencing the experiential component of the licensing process would place an unfair burden on candidates. Candidates will have invested much time and resources into obtaining the prerequisite law degree and securing articles or an equivalent experiential component to the licensing process. These steps should be sufficient for demonstrating entry level proficiency to the licensing process, whereas the PPE Examination and experiential component should only be a prerequisite for the profession.
35. Additionally, the financial burden of the licensing process has greatly increased in recent years, as has tuition for many law degrees in Ontario and across Canada. Making the PPE Examination a prerequisite for the remunerated experiential portion would potentially add a tremendous financial barrier to many candidates in delaying their opportunity to be gainfully employed following their studies. Many candidates will have student loans which typically only allow a certain grace period following the completion of law school before repayment becomes due. If the experiential component was pushed further into the year due to rewriting the PPE examination, this could potentially lead to dire financial circumstances for candidates. This would especially be true for those candidates without the means to support themselves should they have to rewrite or to delay an examination.

36. Candidates should be permitted to concurrently complete all the different licensing requirements within the allotted time. If they require a rewrite or if they need to delay the PPE examination for personal reasons, this would not necessarily affect their ability to meet the other licensing requirements and the licensing process would not be undermined.

PPE as a prerequisite to articling hinders predictability for articling principals and employers

37. The corollary of this financial burden to students is that employers, especially sole practitioners and small firms, will encounter important financial and administrative barriers where candidates are not able to begin at an agreed upon date. Employers should be able to benefit from the predictability of having candidates begin working when they are available and budgeted for. Employers who offer yearly articling programs would not benefit from this predictability and this would likely create difficulties in budgeting for articling positions and reduce available positions. This also runs contrary to promoting access to justice in small communities and communities in need, which have been identified as areas where more articling is needed.

38. As for candidates, their articling offers could be revoked if they fail the exam and if the employer has no use for them to begin articling at a later date. Employers often require students to begin and end their employment at certain times throughout the year, depending on workplace needs such as accommodating other staff and firm workload. Failure of one candidate to commence their articling on-time could shift entire hiring periods and start dates for subsequent students working at the same firm.

Disconnect in implementation periods

39. Another issue is the timing of the implementation for the PPE and PSE. The PPE is to be implemented over the articling year 2017/2018 while the PSE is to be implemented over the articling year 2018/2019. The report addresses the different timelines by explaining that the PSE will require a more in-depth developmental process, yet there is no available data to suggest that in-depth development and additional resources to formulate the PSE are necessary.

40. This disjointed timeline is a concern because different articling cohorts will be evaluated based on different standards. The PSE and PPE are introduced as a packaged evolution from the current examination process, yet at least one cohort will only write the PPE and not the PSE based on current timelines. This raises questions as to the overall necessity of the PPE, as the 2017/2018 cohort will be taking only the PSE.

IV. ADDITIONAL RECOMMENDATIONS

Candidates should be able to practice immediately after completion of licensing requirements

41. The proposal has overlooked another issue at the end of the licensing period: the need to eliminate the gap in time between the period of successful completion of all licensing stages, and the Call to the Bar ceremony/granting of the license to practice. At present, licensing candidates who complete their licensing requirements are not able to practice law until they attend their Call to the Bar ceremony, unless they continue to work under the supervision of an articling principal.
42. For candidates, this policy oversight can lead to economic strain as they must often bridge that time period with contract work at a student wage, or settle for an interim period or unemployment. For example, if a candidate completes all licensing requirements in January of a given year, they have to wait through an interim period of six months until they attend their Call to the Bar Ceremony in June.
43. As a remedy, we recommend that the LSUC adopt a policy similar to that of the Law Society of British Columbia, wherein immediately after successful completion of all licensing requirements, candidates are granted practice certificates which allow them to practice law on the condition that they attend a Bar Call ceremony within one year. This effectively allows candidates to immediately begin working as sole practitioners, associates, etc instead of as students in the interim period before the Bar Call ceremony.

A practical learning component is more effective for learning than examinations

44. As the LSUC has identified the need to work to enhance entry level standards and assessment of those standards (page 631 of proposal), we recommend that the LSUC adopt a practical learning component or bar course similar to that of the Law Society of British Columbia's (LSBC) Professional Legal Training Course (PLTC), or the Law Society of Alberta's (LSAB) Canadian Centre For Professional Legal Education (CPLED) Program. These courses should replace the current Barristers and Solicitors exam, and Ethics and Professional Responsibility course, and should replace the proposed PPE and PSE examinations.
45. The way in which both the LSBC and LSAB instruct and assess competency ensures candidates are more qualified for practice compared to the LSUC's current multiple choice

exam-based method. LSBC's PLTC course is a 10 week legal practice, procedure, and skills course which covers areas of professional competency, including a combination of knowledge and skills, through examinations and assignments and includes ethics and practice management.

46. The LSAB's CPLED Program is offered once a year and consists of three one-week modules delivered in the classroom, six modules delivered online, and the completing of an Ethics and Professionalism Competency Evaluation. Students research, analyze, write, draft, debate, present, and discuss a number of real life situations while taking part in the program.
47. A bar certification course will ensure a uniform and practical level of competence across the cohort of licensing candidates. Through the bar certification course, the law society would ensure that candidates are instructed and evaluated on certain core skills. This would be preferable to the current model that relies on speed-based multiple choice tests and articling principals to ensure certain skills are taught through experiential training.

**Submissions to Professional Development & Competence Committee's
Report on Enhancements to Licensing Process**

SCHEDULE A



TAB 9

**Report to Convocation
April 28, 2016**

Professional Development & Competence Committee

COMMITTEE MEMBERS

Howard Goldblatt (Chair)
Jeffrey Lem, Vice-Chair
Barbara Murchie (Vice-Chair)
Raj Anand
Fred Bickford
Jack Braithwaite
Robert Burd
Gisèle Chrétien
Dianne Corbiere
Teresa Donnelly
Ross Earnshaw

Joseph Groia
Vern Krishna
Michael Lerner
Marian Lippa
Virginia MacLean
Sandra Nishikawa
Jonathan Rosenthal
Andrew Spurgeon
Joanne St. Lewis
Gerald Swaye
Sid Troister
Jerry Udell
Anne Vespry
Peter Wardle

**THE REPORT IS PROVIDED FOR INFORMATION ON APRIL 28, 2016
AND FOR DECISION AT CONVOCATION ON MAY 26, 2016.**

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Sophia Spurdakos 416-947-5209)**

COMMITTEE PROCESS

1. The Committee met on April 6 and 14, 2016.
2. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Jeffrey Lem (Vice-Chair), Raj Anand, Fred Bickford, Jack Braithwaite, Robert Burd, Gisèle Chrétien, Teresa Donnelly, Ross Earnshaw, Joseph Groia, Vern Krishna, Michael Lerner, Marian Lippa, Sandra Nishikawa, Jonathan Rosenthal, Andrew Spurgeon, Gerald Swaye, Sid Troister, Jerry Udell, and Anne Vespry participated on April 6, 2016. Staff members Priya Bhatia, Diana Miles and Sophia Sperdakos also participated in the meeting.
3. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Jeffrey Lem (Vice-Chair), Fred Bickford, Jack Braithwaite, Rob Burd, Gisèle Chrétien, Dianne Corbiere, Teresa Donnelly, Ross Earnshaw, Joe Groia, Michael Lerner, Marian Lippa, Virginia MacLean, Sandra Nishikawa, Jonathan Rosenthal, Andrew Spurgeon, Gerry Swaye, Joanne St. Lewis, Sid Troister, Jerry Udell and Anne Vespry participated on April 14, 2016. Staff members Diana Miles, Sharon Greene, Denise McCourtie, Elliot Spears and James Varro also participated in the meeting.

DECISION

ENHANCEMENTS TO LICENSING PROCESS

Motion

4. That Convocation approve the proposal respecting enhancements to the Licensing Process set out at [TAB 9.1](#).

Matter under Consideration

5. In October 2015, benchers approved the 2015-2019 Strategic Plan establishing priority areas for policy development and governance over the bencher term. Among its top priorities were competence-related matters (Strategic Priority #1), including those respecting the licensing process, as follows:

The Law Society will focus on enhancing licensing standards and requirements and their assessment...for lawyers and paralegals...

6. Since October 2015, the Professional Development & Competence Committee (the "Committee") has undertaken focused examination of licensing requirements for lawyers and seeks Convocation's approval of the proposal set out at [TAB 9.1](#).
7. This Report is provided to Convocation for information in April 2016 and for decision in May 2016.

Rationale

8. Enhancing licensing standards and requirements is one of Convocation's top priorities. It is therefore important to consider policy issues as early in the bencher term as possible so that effective implementation can be undertaken within the 2015-2019 term.
9. The proposal reflects the Strategic Priority #1 that Convocation approved in the fall of 2015 and reflects policy decisions already made as part of that Strategic Priority.

Key issues and Considerations

10. In the Priority Planning Committee's Report to Convocation on December 4, 2015, in which it detailed the components of the 2015-2019 Strategic Plan, it noted with respect to licensing,

As newly qualified lawyers and paralegals enter a challenging and evolving professional environment, the Law Society has identified a need to work to enhance entry-level standards and assessment of those standards.

Part of this exercise will involve reviewing and, if required, revising the profile of the entry-level competent lawyer and paralegal and determining the extent to which the threshold for licensing needs to be changed. The adequacy of the entry level examinations for licensing those who meet entry level standards and whether skills testing should be considered are among the issues that may be explored.

This activity would take place contiguously with the evaluation of the current Pathways Pilot Project to ensure that any increased threshold becomes part of the assessment process...

11. In developing its approach, the Committee considered the following factors:
 - a. The lawyer Licensing Process consists of a number of components that together are intended to address an integral part of the Law Society's mandate to ensure that all persons who practise law in Ontario meet standards of learning, professional competence and professional conduct.
 - b. To ensure that each of the components of the lawyer Licensing Process promotes competence, candidates should only move through the process if they have successfully completed the requirements of each step. In this way the Law Society is better able to measure the effectiveness of the process and the meaningful demonstration of competence.
 - c. A fair licensing process allows for reasonable opportunity for candidates to successfully complete the licensing requirements over a reasonable period of time. At the same time, it is essential that the number of times a candidate may attempt to complete requirements and the allowable period within which to do so do not negatively affect the validity and defensibility of the process.
 - d. As licensing processes develop to reflect an evolving understanding of competence measurement, the role of experiential learning and assessment of skills in licensing processes continue to gain importance. Entry level competence is enhanced by experiential learning and exposure to the Canadian legal practice context.

12. The Committee also notes that it will consider the Pathways Pilot Project commencing in September 2016 with a review of the evidence available at that time. Convocation will be determining next steps relating to the pilot, as contemplated in the October 2012 Pathways Report, which provides that Convocation will "determine whether the pilot project should end, become permanent or result in a different approach."¹

¹ Pathways Report October 2012, Convocation, November 22, 2012, p.6.

Discussion

(a) Licensing Examinations and Licensing Requirements

13. The first area on which the Committee has focused its attention in considering Convocation's Strategic Priority #1 is on the lawyer licensing examinations.
14. The current Barrister Examination and Solicitor Examination were developed when the Law Society moved away from its earlier examination process. The Committee considers that it is now appropriate to evolve its assessment approach as follows:
 - a. In place of the Barrister Examination and the Solicitor Examination the Law Society will develop a single Examination. Like the two current Examinations the focus will remain on practice and procedure, but the parameters will be revalidated to establish and confirm the appropriate benchmark to be achieved for entry level competence. The focus will be on those competencies in the practice and procedural areas whose frequency and criticality are of the highest importance for entry level practitioners. It will be known as the Practice and Procedure Examination (PPE) and will take place before the experiential component of the licensing process.
 - b. An additional Examination will be developed, characterized by its emphasis on practice skills as well as practice management, professional responsibility and ethics. Its introduction reflects both the October 2012 Pathways Report's provision that an experiential assessment be developed for the licensing process and the increasing emphasis being placed on skills-readiness of candidates upon licensing. It will be known as the Practice Skills Examination (PSE) and will take place after the experiential learning component of the licensing process.
15. In the Committee's view, these point-in-time assessments are an important tool for determining whether candidates have demonstrated entry level competence necessary for licensing. By adapting and enhancing the nature and type of assessment on an ongoing basis, the Law Society demonstrates a commitment to a meaningful process that addresses developments in professional assessment.
16. As was the case with the development and ongoing monitoring of the current Barrister and Solicitor Examinations, the proposed PPE and PSE will undergo a rigorous developmental, review and validation process. Advisory Groups, made up of exemplary practitioners from a cross-section of practice areas and firm sizes in Ontario will assist the process to ensure fair and defensible licensure.
17. The Committee has considered the most appropriate timing for the introduction of the two Examinations. The PPE will require less developmental work, given that it is a revalidation process rather than a *de novo* developmental process. In the Committee's

view the PPE can be in place for first writing in the licensing year² 2017-2018. This will also allow for revisions to the licensing examination materials that candidates receive.

18. The PSE will require a more in-depth developmental process to assess for demonstration of skill in completing complex multi-dimensional legal work, such as ability in problem solving, aptitude and decision making, identification and resolution of ethical dilemmas, legal research, written communication, client communication, organization and management of legal issues and tasks. Study and preparatory supports will be developed and provided. Development of this assessment tool will involve funding over a number of budget years to manage the process. In the Committee's view, the PSE should be introduced for the licensing year 2018-2019.
19. As discussed above under Key Issues and Considerations, an effective examination process is not only about the content of what is assessed, but about the formal framework of the process. In committing to an enhanced licensing process, Convocation determined to examine, among other things, the extent to which the threshold for licensing needs to be changed.
20. In the Committee's view successful completion of the PPE should be a prerequisite to moving to the next stage of the licensing process, namely the experiential learning component. The current approach, which entitles candidates to advance to the experiential learning phase, even though they have failed the licensing examination or not yet attempted it, undermines the competence-based philosophy that should underpin the process. The Committee recommends that there should be an opportunity for an unsuccessful candidate to write a supplemental examination in the period before the experiential learning component traditionally begins. But the Committee is also satisfied that successful completion of the PPE is an important enhancement to the process that reflects Convocation's commitment to Strategic Priority #1.
21. The validity and defensibility of the licensing process requires a balancing of standards and fairness. Fairness provisions recognize that there are exigencies that may affect candidates' performance or the timing of their completion of the licensing process. At the same time, however, it is essential that the opportunities to complete the licensing process not be so drawn out as to undermine the validity of the assessment or the licensing process overall.
22. The Committee is of the view that it is fair to continue the current process that allows candidates the opportunity to attempt each Examination three times and to have three years overall within which to complete the entire licensing process. The proposal recommends, however, that candidates who are still unsuccessful by the end of the three-year process, should not, in the normal course, be entitled to register for the licensing process a second time.

² The licensing year is calculated from May in one year to April 30 in the next.

(b) Experiential Components

23. The October 2012 Pathways Report established a three-year pilot project with an articling component and a Law Practice Program component.
24. As part of its consideration of enhancements to the licensing process, the Committee has had discussions about the evolving importance of experiential learning and skills preparedness within the licensing process.
25. The Law Society has traditionally afforded candidates opportunities to seek abridgments to the articling experiential requirement, where their previous experiential qualifications merit this. To that end, it is recommending adjustments to the licensing protocols related to articling to reflect Convocation's Strategic Priority #1, as follows:
 - a. Internationally trained candidates will continue to be eligible for abridgment policies related to prior practice experience to a maximum of three months. To ensure they receive some experiential training in the Canadian context to enhance their competence, the exemption from the experiential learning requirement for those international candidates with a minimum of 10 months of common law experience will be discontinued. This adjustment offers greater assurance of experiential learning that contributes to the candidates' acculturation to the Canadian legal context.

Concerning this recommendation, a number of Committee members expressed the different view that there may be some circumstances in which the extensive experience and number of years of practice of an international candidate in a common law jurisdiction are such that it would be appropriate to consider an exemption from articling.

- b. The number of experiential learning programs in Canadian law schools and skills training opportunities for law students are increasing and the range of learning is expanding, providing students with important exposure to skills that can enhance their competence. The Committee is of the view that where certain criteria relevant to the licensing process requirements are met, the articling requirement could be abridged by three months where,
 - i. prior skills training has been attained in a program the Law Society accredits; and
 - ii. the Articling Principal approves the abridgment.

The introduction of such a process will require the development of accreditation criteria for eligible programs and discussions with interested stakeholders to refine the approach. It is the Committee's view that the addition of a carefully developed experiential abridgment process could be a meaningful and valuable

addition to licensing. The sooner work on the accreditation processes is undertaken, the more expeditiously these can be implemented as part of Convocation's Strategic Priority #1. The Committee's recommendation is that the policy be approved, with developmental work to begin with the 2017-2018 licensing year.

- c. In the Committee's view, reducing the articling term from 10 months to nine months will better integrate the program with the three-month abridgment structure. In the Committee's view a one month reduction is a procedural rather than substantive change, since it will not affect the competencies or requirements for articling.

Financial Impact

26. No funding is required in the 2016 budget year. It is anticipated that funding for the proposals would be as follows:
 - a. Funding for development of the new practice and procedure examination (PPE), can be accomplished within the approved PD&C budget, in the estimated amount of \$200,000, with the majority of those funds expended in 2016.
 - b. An additional examination writing session to enable the opportunity to write early supplementals and be prepared to begin the experiential learning component will be included in the current operational expenses and will not require any additional funding.
 - c. Funding for the evaluation process for Pathways has already been allocated.
 - d. Given the complexity of the practice skills examination (PSE) development will begin in 2016 using available staffing and supports. Additional funding required to support this development will be included in the 2017 and 2018 budgets and is estimated to be \$500,000 to \$700,000.
 - e. Funding required to support additional accreditation and abridgment processes related to any changes to the Articling Program, including the opportunity to complete a nine month or a six month placement, will be included in the budget for 2017 and will be equivalent to one full-time equivalent (FTE) staff person.

LICENSING REQUIREMENTS: PROPOSAL TO CONVOCATION

Licensing Process Enhancements:

(a) Approved for the overall Licensing Process beginning in the licensing year 2017-2018

1. To provide a fair opportunity for candidates to satisfy their licensing requirements, candidates will continue to have three years to complete all licensing requirements.
2. To reflect that three years is a fair time frame within which to complete all licensing requirements, candidates will **not** be entitled to register for the licensing process a second time following failure to complete the requirement in three years.
3. All candidates will continue to be required to meet good character requirements, as set out in the Law Society application process.

(b) Approved for the licensing year 2017-2018

4. A new practice and procedure examination (PPE) will be introduced as the first assessment component of the “entrance to licensing” requirement. This will replace the current Barrister and Solicitor Examinations.
5. To ensure that only candidates who have demonstrated the requisite entry level competence in practice and procedure advance to the next phase of the licensing process, candidates will be required to pass the PPE Examination **prior** to beginning experiential training.
6. To provide a fair opportunity for candidates to satisfy their licensing requirements, while ensuring that the licensing process assesses entry level competence, candidates will continue to have three opportunities to pass the PPE Examination. Two examination sittings will be offered prior to the traditional starting dates for experiential learning and be held in May and July, and it is anticipated that additional opportunities to write the examination will continue to be offered in October and March of each licensing year.
7. Adjustments to the duration of the articling term will be introduced to make the articling term nine months. A developmental process will begin to permit up to a three-month abridgment of articling, reducing the placement to six months in length. Such an abridgment will be available in circumstances in which,
 - a. prior skills training has been attained in a program the Law Society accredits; and

- b. the Articling Principal approves the abridgment.

Establishment of accreditation criteria for eligible programs and discussions with interested stakeholders to refine the approach will be part of the developmental process.

- 8. The current performance assessment components of the articling program and the articling Professional Responsibility test will be continued.
- 9. Internationally trained candidates will continue to be eligible for abridgment policies related to prior practice experience to a maximum of three months. To ensure they receive some experiential training in the Canadian context to enhance their competence, the exemption from the experiential learning requirement for those international candidates with a minimum of 10 months of common law experience will be discontinued.

(c) Approved for the licensing year 2018-2019

- 10. A practice skills examination (PSE) will be added to licensing requirements and will be taken after completion of experiential learning. Given the complexity of this assessment component, development of the PSE will begin in 2016 and continue through 2017 and 2018 for introduction in the 2018-2019 licensing year.
- 11. Candidates will be required to pass the PSE Examination **prior** to being entitled to complete their licensing process.
- 12. To provide a fair opportunity for candidates to satisfy their licensing requirements, while ensuring that the licensing process assesses entry level competence, candidates will have three opportunities to pass the PSE Examination. Examination sittings will be offered three times per licensing year. The dates of those sittings will be determined in the development process and will coincide as closely as possible with candidate experiential training completion dates.