



TAB 5

**Report to Convocation
October 24, 2013**

Professional Development & Competence Committee

COMMITTEE MEMBERS

Janet Minor (Chair)
Jacqueline Horvat (Vice-Chair)
Barbara Murchie (Vice-Chair)
Alan Silverstein (V-Chair)
Raj Anand
Jack Braithwaite
Robert Burd
Mary Louise Dickson
Adriana Doyle
Ross Earnshaw
Larry Eustace
Howard Goldblatt
Vern Krishna
Michael Lerner
Dow Marmur
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Joseph Sullivan
Gerald Swaye
Robert Wadden
Bradley Wright

**Purpose of Report: Decision
Information**

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

TABLE OF CONTENTS

For Decision

Articling Enhancements and Experiential Assessment..... **TAB 5.1**

In camera Matter..... **TAB 5.2**

COMMITTEE PROCESS

1. The Committee met on October 10, 2013. Committee members Janet Minor (Chair), Jacqueline Horvat (Vice-Chair), Barbara Murchie (Vice-Chair), Alan Silverstein (Vice-Chair), Raj Anand, Jack Braithwaite, Robert Burd, Adriana Doyle, Ross Earnshaw, Larry Eustace, Howard Goldblatt, Michael Lerner, Dow Marmur, Judith Potter, Nicholas Pustina, Joe Sullivan, Gerry Swaye, Robert Wadden and Bradley Wright attended. Staff members Diana Miles and Sophia Sperdakos also attended.

DECISION

PATHWAYS REPORT IMPLEMENTATION: ARTICLING ENHANCEMENTS AND EXPERIENTIAL ASSESSMENT

MOTION

2. That Convocation approve the implementation of performance-based evaluations in the Articling Program that mirror the expected completion of skills and tasks competencies in the Law Practice Program (“LPP”), along the lines outlined in the Proposal at [TAB 5.1.2: Skills Experiential Assessment in Articling](#), deferring consideration of the optimal focus and format of the Final Skills/Culminating Assessment until more information is available about learning outcomes in the articling program and the LPP.

Articling Enhancements

3. The Articling Task Force Pathways Report recommended a pilot project consisting of two components - a Law Practice Program (“LPP”) and an articling requirement.
4. Pursuant to the Report’s recommendations, during the pilot project, the 10-month articling requirement will continue with its current administrative structure, but with an additional focus on developing measures designed to enable a more useful evaluation of the articling program merits at the end of the pilot project. This will include enhanced documentation for articling principals and candidates to complete during the articling period.
5. To assist with implementation of Convocation’s recommendation, the Law Society has retained the Law Society’s Licensing Process psychometricians, The Performance Assessment Group (PAG), to undertake a number of activities related to the development of a reliable and valid assessment tool for the articling program.

6. The Report outlining the activities PAG has been retained to undertake on behalf of the Law Society is set out at **TAB 5.1.1: Enhanced Evaluation of Articling** for Convocation's information.
7. The focus of this aspect of articling enhancements will be on monitoring the exposure of articling candidates to the critical articling goals and objectives for entry level practice (taken from the official Articling Goals and Objectives Lawyering Skills Listing). The report addresses the need to enhance the reporting and tracking mechanisms in the program - upgrading them psychometrically by adding behavioural ratings systems for scoring purposes on the depth of exposure achieved.
8. Through this approach the Law Society will update and psychometrically modernize previous articling evaluation tools and make the tool accessible on-line, allowing for more effective tracking and use of the data.
9. At the same time, there will continue to be a requirement to complete a formal Training Plan. As well, the standardized Articling Goals and Objectives will continue to be used as one of the underpinnings of articling and the LPP and other experiential development, along with the National Admission Standard competencies.

Experiential Assessment

10. In addition to the development of the LPP and the enhancement and improved evaluation of the articling program the Pathways Report also provided for a final skills/culminating assessment ("the experiential assessment") that candidates in both streams would be required to complete as part of the licensing process. This is in addition to successful completion of the current Licensing Examinations (Barrister and Solicitor) that will continue to be a requirement for licensing.
11. The Pathways Report did not define the specific approach to the experiential assessment, but its recommendation anticipated that the experiential assessment would be developed and approved by Convocation prior to the implementation of the pilot project in 2014-

15. The PD&C Committee is tasked with the responsibility of proposing the experiential assessment for Convocation's consideration.
12. In the first instance, a working group of the PD&C Committee (Pathways Working Group #2) considered the issues related to the experiential assessment. This included meetings with two psychometric and assessment professionals with expertise in regulated environments that apply a performance-based assessment model of assurance. They provided options papers and made presentations to the working group to assist considerations of the assessment process. The working group and the Committee considered the goals of any assessment process, the cost implications, the time needed to develop an appropriate model and issues related to the optimal focus and format of the experiential assessment.
13. The experiential assessment is one part of a complex and multi-layered implementation process. The Committee is strongly of the view that the overall success of the pilot project requires a careful consideration of how best to proceed with each component. After careful analysis of the information it has received, the Committee is of the view that more time is required to implement the overall or culminating experiential assessment component of the Pathways Report.
14. To further the ability to determine the focus and format of the experiential assessment it is essential to implement performance-based evaluations in the articling program that mirror the expected completion of skills and tasks competencies in the LPP. This will level the field among candidates in advance of the introduction of the experiential assessment.
15. The performance appraisal system would focus on four critical core competencies whose demonstration and assessment is expected as part of every articling program and which will ideally bring the articling experience closer to approximating the LPP experience. During the course of the pilot project the PD&C department will work with principals to ensure that the skills within the core competencies can be addressed in a variety of

articling settings including barrister or solicitor-based practices, in-house settings, government settings, and others in additional non-private practice settings, etc.

16. The Committee's proposal is that the Law Society should spend the first three (3) years of the Pathways Pilot Project implementing the LPP and enhancing the Articling Program as discussed here, and should defer consideration of the optimal focus and format of the Final Skills/Culminating Assessment until more information is available about learning outcomes and an informed decision can be made.
17. The detailed reasons and discussion for this proposed approach are set out at **TAB 5.1.2: Skills Experiential Assessment in Articling**.



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Pathways Pilot Project: Enhancement of the Evaluative Process in the Articling Program

Prepared by:
Diana C. Miles, Director
Professional Development and Competence

April 2013

Enhancement of the Evaluative Process in the Articling Program

The final report of the Articling Task Force states that during the pilot project the 10-month Articling Program will continue with its current administrative structure and with a focus on developing measures designed to enable a more useful evaluation of the program merits at the end of the pilot project, specifically including enhanced documentation for Principals and candidates to complete during the articling term.

This information report details the plans for development of an enhanced evaluative process in the Articling Program.

Following discussions between the Director, PD&C and the Law Society's Licensing Process psychometricians, The Performance Assessment Group (PAG), the Law Society retained these assessment specialists to undertake the following activities.

- Thorough review of the evaluation documents currently used in the articling program;
- Provision of recommendations on the development of a reliable and valid assessment tool for the articling program (see Appendix 1);
- Preparation of a Work Plan for the development of the recommended tool (see Appendix 2); and
- Provision of consultation and facilitation services during the development of the tool.

Retaining PAG for development of the tool provides the Law Society with the ability to leverage their extensive knowledge of the Licensing Process during the development of the new evaluative tool for the articling program. PAG was involved with the initial development and validation of the skills and task competencies that form a part of the Law Society's Competency Profile for licensing for lawyers. They also continue to work extensively with the Law Society on the ongoing development and validation of the competency profiles and substantive and skills requirements as they have evolved since the inception of the current Licensing Process. They are best placed to assist us quickly and cost efficiently to turn this knowledge into a valid and useful rating and evaluation system for the articling program.

PAG's first deliverable was a report on the *Enhancement of the Evaluative Process in the Articling Program* (see Appendix 1). The report discusses the considerations surrounding similar types of assessment tools; and more specifically, strategies are identified to enhance the face validity of the assessment tool that was discontinued in 2009 and recommendations are made for improving the rating process. Further to this report, PAG then submitted a Work

Plan to the Director outlining key steps to be undertaken for development of the tool. This plan can be found at Appendix 2.

In addition to this work on the substance of the evaluation activities of the articling program, the PD&C Department is also working in tandem with PAG and our internal business analysts to ensure that the final evaluative tool will be fully electronic. Principals and candidates will access the evaluation system online. The online nature of the new rating system will also allow the Law Society to effectively and efficiently use the results to provide aggregate statistical information and reporting when required internally or for use by the PD&C Committee or others in their deliberations.

The new assessment tool is expected to be complete by January 31, 2014 and will be implemented online by August 2014, in time for the 2014-15 Licensing Process articling candidates to begin their articling terms.

Enhancement of the Evaluative Process in the Articling Program

**Prepared for
The Law Society of Upper Canada**

**Prepared by
PERFORMANCE ASSESSMENT GROUP**

April 2013

1. Introduction

The Articling Task Force, established in May 2011, proposed a pilot project (approved in November 2012) that will create a new Law Practice Program (LPP) as an alternative to articling in the preparation of candidates for licensure. Given that demand for articling placements has exceeded supply for several years, there is an identified need to create a program that offers candidates a comparable experience, thereby providing everyone with an opportunity to participate in this important component of the licensure process.

The new LPP process will involve a 3 to 5 year pilot project of transitional training that is scheduled to begin in the 2014-2015 licensing period. The LPP will be offered as an alternative to the articling program during this time and a final assessment will be developed to ensure each candidate, regardless of their chosen path, successfully completed the “required transition to practice competencies” prior to licensure. Finally, the Articling Task Force also recommended that the two paths to licensing be “monitored, assessed, and compared”. The purpose of this paper is to propose an effective strategy to this end for the Articling Program. Parallel assessment of the LPP will be considered once the content of the LPP program has been developed.

2. Assessment and the Articling Program

The current articling program is designed to ensure that each student has successfully completed the required transition to practice competencies expressed in the Law Society’s **Articling Goals and Objectives**.

Assessment of the effectiveness of the articling program in its current form will involve gathering information about the perceived experiences of the students and principals in the articling program. Given the unstructured nature of the articling process, it must be assumed that articling experiences vary widely across, and even within, placement settings. As a result, a formal assessment tool is required to measure these experiences from both perspectives, and to be able to track which placements are effective, which ones meet the Law Society’s minimum standards, and which ones require improvement. In addition, such data will be of paramount importance for analyzing the overall value of the licensure prerequisite in light of the goals of transitional training and identifying opportunities to effect positive changes to the format or focus of articling that may allow the program to more closely align with those goals.

3. The Foundation

A requirement of a valid assessment is to clearly define the outcomes to be measured (Cascio & Aguinis, 2005). Therefore, in order to compare the experiences of all students, the fundamental issue is to define what is to be compared. A key starting point is the existing Articling Goals and Objectives.

The Articling Goals and Objectives were designed to reflect the entry level competencies of the Law Society licensure examinations (prior to 2011) which provide consistency throughout the licensure process. However, this list encompasses 66 unique goals and objectives which, when used to design the previous assessment form, resulted in 178 questions being asked of students and principals. Not surprisingly, this process was met with some resistance due to the onerous nature of the task. Effective assessment requires a balance between the amount of information collected and the demands that it places on the participants. When the form becomes too long and time consuming, proper attention to detail can suffer and a cursory effort may ensue (Cascio & Aguinis, 2005).

To overcome this limitation, the PERFORMANCE ASSESSMENT GROUP has proposed a review process whereby a working group of content experts who are knowledgeable in the articling process will rate entry level competencies contained in the Articling Goals and Objectives and the Federation of Law Societies National Admission Standards (NAS), Skills and Tasks Competencies (sections 2 and 3) in terms of their criticality and the frequency with which they are required in practice. Based on these ratings, a significantly shorter list of core goals and objectives will be developed. The working group will also consider the wording of each statement for clarity and accuracy and identify other goals and objectives that may have been overlooked in previous efforts. Once finalized by the group, the new list of goals and objectives for the articling process will serve as the foundation for subsequent tool development.

4. Creating an Effective Assessment Tool

One of the goals of the proposed articling program assessment tool is to overcome the limitations of past assessments. Given that the past articling assessment was discontinued in 2008 due, at least in part, to perceptions of the task being burdensome, an informed reduction in the number of goals and objectives to be assessed has been proposed. To further encourage acceptance from the individuals who will be completing the assessment tool, the PERFORMANCE ASSESSMENT GROUP proposes the creation of rating scales that incorporate **Behavioural Anchors** reflecting performance standards for the goals and objectives being assessed. Known as Behaviourally Anchored Rating Scales (BARS; Smith & Kendall, 1963), the scales for each objective or goal are normally presented vertically (this is optional) with scale points ranging anywhere from 1 – 5 to 1 – 9. It is an assessment method that combines the benefits of narrative descriptions of performance (“critical incidents”), and quantifiable ratings representing poor, acceptable, and good performance. The following rating scale based on the objective “Attended with a

lawyer at the initial interviews with new clients” is provided for illustrative purposes using a 5-point scale:

Attended With a Lawyer at the Initial Interviews With New Clients		
	⑤	Consistently attended initial interviews with new clients and was actively involved in all discussions
Attended initial interviews with new clients on a regular basis and participated in the discussions	④	
	③	Attended some initial interviews with new clients with minimal participation
Occasionally attended initial interviews with new clients but did not participate	②	
	①	Did not attend initial interviews with new clients

Research surrounding BARS suggests that they add face validity to the rating process when raters can readily identify with the statements provided as anchors to the rating scales which leads to perceptions of scale effectiveness (Kingstrom and Bass, 1981). As a result, the quality of the anchors is critical and it will therefore be extremely important to identify working group members who are familiar with not only the goals and objectives of the articling program, but how these goals and objectives translate into actual performance measures across typical articling experiences.

5. Developing BARS

In order to properly construct BARS, the following general steps are required (Smith & Kendall, 1963):

1. Data related to effective and ineffective behavior on the job are collected from people with knowledge of the job using the critical incident technique (Flanagan, 1954).
2. These data are then converted into performance dimensions by sorting them into homogeneous groups. Definitions for each group of behaviors are then created.
3. To ensure the homogeneity of the groups, subject matter experts (SMEs) are asked to re-translate the behavioral examples back into their respective performance dimensions. Behaviors where there is a low level of agreement are discarded. This re-translation process helps to ensure that behaviors are readily identifiable with their respective performance dimensions.

4. The retained behaviors are then scaled by having SMEs rate the effectiveness of each behavior. These ratings are usually made on a 5- to 9-point Likert-type scale.
5. Behaviors with a low variability in ratings are retained while behaviors with a higher variability are discarded. This step helps to ensure SME agreement about the rating of each behavior.
6. Finally, behaviors for each performance dimension, all satisfying the re-translation process, are used as scale anchors.

6. Using the Results of the Assessment Tool

As suggested above, the primary purpose of the proposed assessment tool will be to monitor the effectiveness of the articling program and ensure it is achieving the goals of transitional training. The results may also be used to compare and report on the experiences of the articling candidates and the LPP candidates with the goal of providing evidence that, from the perspective of the students (and principals), candidates in both programs are meeting the required competencies comparably. Analyses can also be conducted within each program. For example:

- Are articling students from large law firms having similar experiences with those in small firms?
- Are the experiences comparable in firms specializing in different areas of law?
- Do rural firms do a better job than urban firms?

The number of comparisons is only limited by sample size and the number of demographic variables collected on each firm. If a parallel tool is developed for the LPP, the rating scales would need to reflect the content of the program (education delivered, rather than articling experienced provided), however given both programs would be expected to share the same goals and objectives, there should be a reasonable degree of comparability between the two programs to allow for similar tools.

7. Conclusion

As the Law Society moves in a new direction with its articling program, it will be important to ensure that the assessment tool is not only aligned with critical entry level competencies and objectives, but that it acknowledges and allows for the variance that is inherent in the current articling framework. Through a rating process that involves a shorter, more critical list of goals and objectives, the PERFORMANCE ASSESSMENT GROUP believes it will be possible to improve rating participation, which will produce the data required for a more thorough assessment of the program and ultimately lead to enhanced experiential training for lawyer candidates.

REFERENCES

- Cascio, W. F., & Aguinis, H. (2005). *Applied Psychology in Human Resource Management*.
- Flanagan. (1954). The critical incident technique. *Psychological Bulletin*, 51.
- Kingstrom & Bass. (1981). A critical analysis of studies comparing behaviorally anchored ratings scales (BARS) and other rating formats. *Personnel Psychology*, 34, 263–89.
- Smith & Kendall. (1963). Re translation of expectations: An approach to the construction of unambiguous anchors to rating scales. *Journal of Applied Psychology*, 47, 149–55.
- Zeddick, S. (2010). *APA Handbook of Industrial and Organizational Psychology*.

Work Plan for Enhancement of the Evaluative Process in the Articling Program

**Prepared for
The Law Society of Upper Canada**

**Prepared by
PERFORMANCE ASSESSMENT GROUP**

April 2013

PHASE I: Summary Paper

A 2-3 page *Report on Enhancement of the Evaluative Process in the Articling Program* (see Appendix 1) will be prepared by the PERFORMANCE ASSESSMENT GROUP and will discuss the considerations surrounding similar types of assessment tools. Specifically, strategies will be identified to enhance the face validity of the assessment tool that was discontinued in 2009 and recommendations will be made for improving the rating process.

PHASE II: Finalization of Articling and the Law Practice Program Goals and Objectives

To promote a reliable and valid rating instrument, the goals and objectives of the program must be clearly stated and incorporated into the tool. The PERFORMANCE ASSESSMENT GROUP will work with select members of the Law Society to clearly define the goals and objectives of the articling program. As part of this process, this working committee will consider the measurability of each goal/objective and the criticality of each one. A second purpose of this process will be to determine if it is reasonable to reduce the number of goals/objectives in an attempt to streamline the rating process. A criticism of the previous tool was that it took too long to complete. In total, 178 questions were asked of raters which likely contributed to resistance to using the tool. The PERFORMANCE ASSESSMENT GROUP will attempt to address this limitation by ensuring the tool only assesses the goals/objectives that are most critical for ensuring a meaningful rating experience for the articling candidates as well as the participating principals.

To this end, is the PERFORMANCE ASSESSMENT GROUP proposes a 1-day meeting be held with subject matter experts chosen by the Law Society as being most familiar with the program and its goals and objectives. Starting with the existing goals and objectives, participants will be asked to rate the criticality of each one prior to the meeting. The PERFORMANCE ASSESSMENT GROUP will analyze the pre-meeting ratings and use them to guide the 1-day review process. We believe that by having the ratings completed prior to the meeting, we will complete this comprehensive review in 1 day.

PHASE III: Tool Development

Based on a literature review, the PERFORMANCE ASSESSMENT GROUP proposes that the assessment tool in question incorporate a form of Behaviourally Anchored Rating Scales, primarily due to the benefit of their face validity for raters. One of the limitations to the prior assessment tool

was resistance from those who had to complete it. Feedback on the tool suggested it was onerous by raters. The proposed tool will be streamlined as discussed above and incorporate “anchors” that describe examples of behaviours at various points on the scale. These anchors will allow raters to focus on the behaviour being assessed and provide a reference for where observed behaviours fall on each scale. This, coupled with fewer questions with clear instructions, should enhance buy in and cooperation.

To this end, it is proposed that two 2-day meetings be held to develop the anchors for the assessment tool. The first 2-day meeting will consist of committee members nominated by the Law Society as being familiar with the articling program and the range of articling positions currently available to candidates and what they will be required to do in each stream. Principals, past articling candidates, and Law Society representatives could all play a role in this stage of the process. During each meeting, participants will be divided into groups to develop five behavioural anchors for each goal/objective representing varying levels of performance. Once developed, the anchors will be reviewed by the entire group and finalized. The second 2-day meeting will consist of different participants, with similar qualifications, who will be asked to take the anchor statements in a scrambled form and assign them to the appropriate goal/objective. Called “reverse translation”, this process helps ensure that the anchors created are unique to each goal/objective. Their second task will be to refine the anchors where necessary and finally, allocate them to the appropriate rating position on each scale. At the conclusion of the second meeting, the PERFORMANCE ASSESSMENT GROUP will use these ratings and anchors to create a tool for pilot testing purposes, along with instructions.

PHASE IV: Pilot Testing

The PERFORMANCE ASSESSMENT GROUP will design the pilot test experience to acquire both qualitative and quantitative feedback on the initial tool. The focus of the pilot testing will be an assessment of the ease of use of the tool, and whether it measured appropriate behaviours. In addition, pilot test participants will be encouraged to recommend wording and/or content changes. The Law Society will administer the tool to appropriate individuals and the PERFORMANCE ASSESSMENT GROUP will conduct the subsequent analyses and summaries. If feasible, the PERFORMANCE ASSESSMENT GROUP recommends that the form be computerized to assist the pilot test participants in their task and to ensure legibility of their responses and ratings.

PHASE V: Assessment Tool Finalization

In the final phase of this project, a 2-day meeting will be held with a select group of past meeting participants (ideally based on their effectiveness in previous stages) to review the pilot test findings and make final changes to the assessment tool. At the conclusion of this meeting, the PERFORMANCE ASSESSMENT GROUP will make final editorial and formatting changes to the assessment tool and forward it to the Law Society for final approval.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

PATHWAYS PILOT PROJECT PROPOSAL FOR EXPERIENTIAL ASSESSMENT

PREPARED BY:

Diana C. Miles

Director, Professional Development and Competence

416-947-3328

dmiles@lsuc.on.ca

September, 2013

Pathways Pilot Project

Proposal for Experiential Assessment

Executive Summary

The Pathways Pilot Project has a significant number of changes that have been approved for development. It is extremely challenging to make so many changes all at one time without risking deficiencies in some of those changes, regardless of the expertise and money applied to the development process. If there are real or perceived deficiencies in any one of the components, the entire licensing process will be in jeopardy. It is proposed that the Law Society should acknowledge that there is a need to engage in incremental development of some of the Pathways Pilot Project components in order to assure the greatest success of the whole.

Arguably, the priority component for implementation is the new Law Practice Program (LPP). Without its successful introduction, the Law Society is facing a serious barrier to entry issue. It is important that the Society support the implementation of the LPP by thoroughly monitoring and managing the relationship with and the work of the providers by engaging in proactive leadership and focusing on the implementation and evolution of the LPP.

The second most critical change in this new process is the need to properly define learning outcomes in the Articling Program, and ideally to also measure performance of candidates in that process in a manner that has some level of reliability.

The Final Skills/Culminating Assessment is the one component whose immediate implementation is in question as a result of the priorities of the new licensing model. This proposal will suggest that the Law Society should spend the first three (3) years of the Pathways Pilot Project implementing the Law Practice Program and enhancing the Articling Program, and should defer consideration of the optimal focus and format of the Final Skills/Culminating Assessment until more information is available about learning outcomes and an informed decision can be made.

Assumptions and Success Factors

- Articling Program is maintained as one of the transitional training paths toward licensing
- A Law Practice Program (LPP) is provided for those who are unable to find an articling placement or who prefer to complete a training program
- The experiential components of the licensing process should address consistent outcomes if the option to choose one or the other is to be considered defensible (to avoid the notion that the simulated environment is sub-standard, or that the articling experience provides inconsistent training and/or assessment of performance)
- The Law Society wishes to gain reasonable assurance that the experiential components of licensing achieve defined learning outcomes focused on the competencies that have been validated as the highest priority for entry-level assurance
- To gain that assurance, both experiential processes (LPP or Articling) should integrate a formal evaluation(s) of competencies that directly assess defined learning outcomes necessary for entry-level practice
- Proposals for the LPP have now been received and it is clear that the program(s) will integrate and assess the core competencies that have been determined to be foundational to entry-level practice, as confirmed by the validation of competencies undertaken nationally and included in the National Competency Profile approved by Convocation of the Law Society.

Input, Issues and Challenges

A. Form and Function

The Working Group of the PD&C Committee responsible for considering the recommendation for the implementation of a Final Skills/Culminating Assessment has received information on the critical need to ensure that any such assessment process is reliable, valid and fair in order to be defensible.

The reality of assessing skills competencies is that they are most validly assessed in a process of testing that includes the demonstration of those skills through task-based activities. The assessment processes with the highest level of validity and defensibility will therefore be those that involve in-person, active demonstration of a skill. The gold-standard example of such a testing system would be an objective structured clinical examination involving standardized clients and multiple (as many as 30 but potentially as low as 8- 10) stations where the opportunity to demonstrate skills through a highly structured series of task-based activities is provided.

The Working Group has also heard from expert psychometricians that the ability to assess licensing candidates in such a complex process will be significantly challenging for the legal profession in Ontario for a number of reasons, with the most significant being:

- The volume of candidates (2000+) that would have to be assessed
- The candidates' lack of prior exposure to the testing format

The working group found the apprenticeship and performance assessment approach of the accounting professions to be compelling. The culture of the accounting professions has evolved over many years and places an emphasis on strong alliances between the supervisor and the apprentice, focusing on the provision of supportive training environments that formally confirm acceptable achievement of competencies based on a competency profile provided by the Regulator. The profession is taking responsibility for 'raising' the next generation of accountants.

The Working Group acknowledges that this is not so for the law profession. The focus on the achievement of core skills in the articling phase is perceived to have diminished to the point where many have questioned the need for work placement requirements. Much of this concern stems from the Law Society's lack of control over articling and the inability to assure that critical entry-level skills and tasks are actually integrated into the learning, demonstrated and assessed.

Experts in the application of examination frameworks for professional licensure have indicated that the ability of a final testing process to be defensible, valid and acceptable to test takers and the profession is significantly dependent upon candidates having the benefit of exposure to the assessable tasks and testing modalities. Ideally, candidates will have the opportunity to demonstrate their ability to complete the entry-level tasks to the satisfaction of a supervisor in a safe and risk-free formative learning environment, prior to being independently tested by the Regulator.

The Working Group must also take into consideration the reality of the scheduling of the new licensing process components. This includes the LPP with a 17-week work placement (which may be offered more than once per year and may require staggered work placements in each offering to ensure availability of those placements) and the completion of the two licensing examinations. With so many components being undertaken by candidates at staggered times during each licensing year, scheduling will require that any final skills assessment process be offered at least twice per year, if not more, to provide candidates with the opportunity to complete their licensing process on a timely basis.

B. Costs

The Working Group is also being provided with a costing for a Final Skills/Culminating Assessment process. As discussed and approved by the group, the proposed process has been modeled after a modified unified final examination process that is used in the accounting profession. It includes additional video-enabled behavioural assessments in order to address the 'in-person' nature of legal competencies without necessarily embarking upon a full scale clinical assessment with standardized clients (actors) and testing stations.

To summarize that information: the cost of one offering per year of a modified unified skills examination process is estimated to be approximately \$3 million (including HST, but not including any indirect allocations of operational expenses). There are virtually no economies of scale for such an examination process. All costs of ongoing content development, space rental and set up, examination process and administration must be replicated for every offering of the examination. This includes the development of brand new case-based test questions, video-enabled behavioural client simulations and all of the learning outcomes and scoring rubrics required to support the assessments. Hence, the cost of engaging in what has been determined by the Working Group as the most defensible, fair and acceptable final skills assessment scheme is likely to translate into a cost of approximately \$6 million for two sessions per year.

Such a cost will result in a fee of \$3000 per candidate just for the final test to be paid by candidates only, or perhaps partially through a subsidization from the profession. Added to this will be the costs for the licensing examinations and licensing supports of \$2800 (today's fee and may be subject to change). Based on the proposals received, it appears that the LPP costs will be in the range of approximately \$1500 to \$2000 per candidate equalized across 2000 candidates (assuming the Law Society requires no significant change to the proposals as presented). This results in an overall fee for licensing in the range of \$7500 per candidate and represents an increase of 168% over the current fee, or an increase of \$4700 per candidate. If a contribution from the profession is approved, potentially in the range of \$1 million as has been discussed previously, the fee per candidate will be reduced to approximately \$7000 each, representing an increase of \$4400 per candidate.

C. Implementation

Expert psychometricians and others who have worked in the field of in-person licensure assessments have advised the Working Group that mounting such an effort for this group of legal learners will be a daunting task that will be subjected to significant ridicule if it is not completed at the level of a 'gold standard' fully defensible process. They have also provided their opinions that the development process for such a final culminating assessment, given the large scale of the project, is unlikely to be completed in the timeframes that have been set out

in the Articling Task Force Report unless it is significantly diminished in its scope which then brings into question the defensibility and value of undertaking such an assessment.

The Director of PD&C and the Pathways Operational Team have also had a further opportunity to review all of the information related to the proposed final assessment with psychometricians and licensure examination providers and technicians. The Team is of the opinion that it is very unlikely that the Law Society will be able to produce the required high quality assessment model in time to hold the first assessment in mid 2015.

The Director is also of the opinion, based on the proposals for the LPP, that the Final Skills/Culminating Assessment model that is being contemplated by the Working Group at this time appears to result in a significant level of duplication of assessment as between the LPP and this proposed examination. Further, the Director is of the opinion that the proposed Final Skills/Culminating Assessment scheme will be unable to match the level and value of the assessments that will have already been undertaken in the LPP. On the assumption that the Law Society will continue to maintain significant control over both the curricula and the assessments applied in the LPP, the need to test LPP candidates at the end of their licensing processes appears to be superfluous and an unnecessary cost and effort for these candidates. The proposed final assessment is unlikely to add further training value or provide any greater level of assurance of the competence of these candidates for entry-level practice.

Reconciling Task Force Recommendations with Implementation of the Pilot Project

There will now be two pathways for the training and achievement of skills and tasks competencies required for licensing.

In the proposed Law Practice Program (LPP), candidates will be expected to undergo assessments throughout the process. This has been confirmed by the proposals that have now been received by the potential providers. Periodic assessment ensures the reinforcement of the learning outcomes. Each component of the training would likely provide multiple opportunities to have the candidates prove their abilities and fulfil the competency requirements. LPP candidates will receive significant exposure to, demonstration and assessment of, all required entry-level competencies.

In the articling term, there have never been any formal assessments of tasks and skills with the exception of a Professional Responsibility test. Prior to 2009, there were performance evaluations required in mid-term and at end of term. These evaluations were to be based on the Training Plan filed by the Principal. The performance evaluations were removed in 2009 in an effort to increase placements by reducing the burdens upon the Principals. Under the recommendations of the Articling Task Force, as approved by Convocation, the Law Society has

reversed that decision and is now required to establish significantly enhanced evaluation systems for the Articling Program.

The first part of this articling enhancement involves establishing a psychometrically validated behavioural rating system to ascertain the skills and tasks competencies to which the candidates have received some exposure during the articling term. This rating process will prioritize the critical experiential competencies, as confirmed by subject matter experts from the profession through focus groups and psychometric validation processes. The rating tool will be an online evaluation that will be completed by the Principal and the candidate and will allow the Law Society to finally and formally confirm “what” is actually happening in the articling placements and to determine if the perceived concerns over potential lack of validity of the learning processes in some placements are borne out. Based on information that the Society receives every year from candidates, and that will likely be confirmed through the online rating tool to be introduced as part of the pilot project, it appears that there are some placements that are clearly inadequate training opportunities and do not meet the minimum expectations.

However, there is a component of the proposed articling enhancements related to “how” the candidate is performing in the articling placement that has yet to be addressed. This has always been a significant gap in the Law Society’s ability to assess the competence of licensing candidates. Although almost all Principals sign off on the candidates’ certificates of fitness to practice at the end of the articling term, there has been no means for the Society to confirm those opinions or, in fact, to gain assurance that entry-level competence in the expected tasks and skills were actually demonstrated.

The Articling Task Force addressed this deficiency by acknowledging the fact that it was, at this time, difficult to confirm articling placements as valid and defensible experiential training opportunities due to the inconsistency of the placements and the inability to control the training. A means of addressing this gap was proposed in the form of a final assessment which would see all candidates having to do a final test, regardless of the experiential training path chosen (LPP or Articling). Essentially, the solution at the time of the Task Force deliberations, **and without the benefit of the information that is now available for decision-making about implementation**, was to accept the perceived deficiencies of articling and force assessment through an independent testing requirement controlled by the Society. It is important to note that the Task Force Report also indicated that any such testing methodology that the Law Society applies to evaluate skills training experiences should address the fundamental “in-person” nature of the learning or it will risk being labelled inadequate for the purpose.

PROPOSAL: Skills Assessments in Articling

Objective: to address the need to enhance articling systems and Law Society oversight, to integrate appropriate performance measures into that experiential training activity, and to move the pilot project forward to develop an appropriate nexus between the LPP and Articling Program that will support a future final, culminating, valid and defensible skills assessment.

Solution: implement performance-based evaluations in the Articling Program that mirror the expected completion of skills and tasks competencies in the LPP in order to level the field in advance of the introduction of a culminating test, deferring the implementation of the Final Skills/Culminating Assessment.¹

This interim step will begin the process of addressing many of the concerns and risks raised with respect to the articling process and its apparent lack of consistency and defensibility as an appropriate measure of candidate competency prior to licensing.

It is proposed that certain skills and tasks competencies will be formally integrated into the Articling Program and will require the Principal and the candidate to engage more fully in the activity of mentor/learner and formal performance management and assessment.

It is acknowledged that the addition of such obligations to the Articling Program may have the effect of reducing the number of articling placements because some Principals may not be inclined to support such an effort. But there is a significant opportunity at this early stage of developing a new licensing regime to move all components of the process to higher quality levels. Those articling placements / Principals who are not committed to being fully engaged in the ongoing competence development of the profession will pull out of the system. This is a positive result that will refine and improve the quality of the work placement platform. And with the implementation of the new LPP alternative, the potential of a declining number of articling placements no longer results in a potential barrier to entry. Candidates have a means of completing the process even if the number of articling placements decreases as a result of the Regulator asserting more control over learning activities within articling.

In support of this formalized performance management activity, articling Principals will be provided with performance feedback and mentoring training via a learning event (webcast or archived video presentation with supporting written documentation), expectations for learning outcomes and the assessment rubrics for each skill or task with explanations for scoring the performance of the candidate, and instructions on how to define a successful demonstration of

¹ The development of a Training Plan for the placement and the use of the Articling Goals and Objectives to support the evaluation of the scope of achievements during the placement will continue to be an integral part of the process.

each required competency. And, of course, the Law Society licensing team will always be ready to assist.

If the candidate does not demonstrate the skill or task at an appropriate level of competency then the Principal/law firm will be expected to ensure that the candidate is given additional opportunities to engage in the demonstration of the competency to the satisfaction of the Law Society's requirements as assessed by the supervisor.

The Law Society will provide performance rating checklists for Principals to complete that will be psychometrically established and validated to ensure that the Principals are consistently assessing performance. These will also include an opportunity to provide qualitative feedback in the form of performance commentary. All completed learning outcome rubrics and performance ratings will be required to be shared with the candidate and filed with the Law Society.

The Plan: Integrating Performance Assessment into the Articling Program

During the three (3) year pilot project, it is proposed that candidates be required to demonstrate certain core entry-level competencies during their articling term, as confirmed by their articling Principals. These core activities are derived from the competency profile of skills and tasks that has now been approved by Convocation as the national objectives upon which all training and assessment should be modeled going forward.

Specifically, the National Admission Standards competency profile provides the following list of Tasks that an entry-level lawyer candidate is expected to be able to perform at a minimally competent level at the licensing stage of their experiential development as a lawyer (either during articles, during an alternative to articles, or during a formal licensing assessment):

Section 3.1 **General Tasks**

- s. 3.1.1 **Ethics, professionalism and practice management** – identify and resolve ethical issues, use conflict management systems, identify need for ILA, use time tracking/limitation reminder/bring forward/ trust and general accounting/client records and files/practice checklists/billing and collection systems
- s. 3.1.2 **Establishing a Client Relationship** – interview potential client, confirm who is being represented, confirm client's identity, confirm who will be providing instructions, draft retainer/engagement letter, document client consent/instructions, discuss and set fees and retainers

- s.3.1.3 **Conducting a Matter** – gather facts through interviews, searches and other methods, seek additional expertise when necessary, develop case strategy, identify mode of dispute resolution, conduct due diligence, draft opinion letter/demand letter/affidavit/statutory declaration/written submission/simple contract or agreement/legal accounting/release, impose/accept/refuse trust condition or undertaking, negotiate resolution of dispute or legal problem
- s. 3.1.4 **Concluding Retainer** – address outstanding client concerns, draft exit/reporting letter

Section 3.2 **Adjudication/Alternative Dispute Resolution**

- s. 3.2.1 Draft pleadings, draft court orders, prepare or respond to a motion or application, interview and brief a witness, conduct simple hearing or trial

In performing these tasks, the following skills are also expected to be exhibited by the entry-level candidate at a minimally competent level at the licensing stage of their experiential development as a lawyer (either during articles, during an alternative to articles, or during a formal licensing assessment):

- Section 2.1 **Ethics and Professionalism Skills** – identifying ethical issues and problems, engaging in critical thinking about ethical issues, making informed and reasoned decisions about ethical issues
- Section 2.2 **Oral and Written Communication Skills** – eliciting information from clients and others, explaining the law, obtaining instructions
- Section 2.3 **Analytical Skills** – identifying client’s goals and objectives, identifying due diligence required, identifying and evaluating the appropriateness of alternatives for resolution of the issue or dispute
- Section 2.4 **Research Skills** – conducting factual research, conducting legal research including identifying legal issues, selecting relevant sources, using techniques of legal reasoning and argument, identifying/interpreting/applying results of research, effectively communicating results of research

Section 2.5 **Client Relationship Management** – managing client relationships, developing legal strategy in light of client’s circumstances, advising client, maintaining client communications, documenting advice given to and instructions received from client

Section 2.6 **Practice Management Skills** – managing time, delegating tasks and providing appropriate supervision, managing files, managing finances, managing professional responsibilities

The following tasks and skills would become part of the performance requirements in the Articling Program. These tasks and skills have been chosen because they represent the top priority tasks and skills in the national competency profile and are also considered to be achievable in **any** articling placement that is capable of validly supporting the Law Society’s experiential training requirements and assessments. If an articling placement / Principal is unable to provide the candidate with appropriate exposure to these core skills and tasks, then the Law Society is in a position to reconsider the acceptability of the placement.

It is proposed that the performance reviews and assessments in articling will be limited to the four (4) activities set out below. Following the pilot, further activities for formal assessments could be added if the integration is successful and it was deemed appropriate or necessary to do so².

Task Competency	Skill Competency	Competencies to be Assessed
Establishing Client³ Relationship	Interviewing a client	<ul style="list-style-type: none"> ✓ Interviewing to understand client’s needs ✓ Eliciting information from client ✓ Advising client in light of client’s circumstances ✓ Documenting advice given to client and instructions received from client ✓ Managing client expectations

² The Law Society currently has in place an exemption for articling for those candidates with a minimum of 10 months practice experience in a common law jurisdiction. It is proposed that the exemption requirements will be revised slightly to require the applicant to prove the completion of the above-noted tasks and skills through confirmation of their referees. They are already required to provide references and backup information, but that backup may now require additional proof of completion.

³ In this context, client may have a number of different meanings. The term is used generally to refer to the authorizing individual in the situation/file/interaction. For instance, a private client, in-house counsel in an organization, Ministry employees in a government setting, or others in non-private practice environment, etc.

<p>Conducting Matter: Matter Management</p>	<p>Draft an opinion document</p>	<ul style="list-style-type: none"> ✓ Identifying client’s goals and objectives ✓ Gather facts and identify applicable areas of law ✓ Conduct legal research and analysis ✓ Assessing possible course of action and range of likely outcomes ✓ Developing legal strategy in light of client’s circumstances ✓ Identifying and evaluating appropriateness of alternatives for resolution of issue or dispute
<p>Conducting Matter: Advocacy</p>	<p>Representation of client in an appearance or through an alternative dispute resolution mechanism</p>	<ul style="list-style-type: none"> ✓ Effectively formulating and presenting well-reasoned and accurate legal argument, analysis, advice or submissions ✓ Advocating in a manner appropriate to the legal and factual context ✓ Conducting a motion, application or simple hearing before an adjudicative body ✓ OR ✓ Negotiating the resolution of a dispute or legal problem in a formal ADR process, or other representation in a solicitor-type practice
<p>Ethics, Professionalism and Practice Management</p>	<p>Successful completion of Professional Responsibility Assessment and exposure to/use of law firm/legal practice management systems</p>	<ul style="list-style-type: none"> ✓ Identifying ethical issues and problems ✓ Engaging in critical thinking about ethical issues ✓ Making informed and reasoned decisions about ethical issues <p>Exposure to and/or use of systems supporting:</p> <ul style="list-style-type: none"> ✓ conflict management ✓ tracking, limitation reminder and bring forward ✓ trust and general accounting ✓ client records and files ✓ billing and collection

All articling placements will require that a formal training plan be prepared and filed with the Law Society, which will include a more extensive review of anticipated activities within the placement related to the Articling Goals and Objectives and National Admission Standards Competency Profile. In addition, all candidates will continue to be required to complete the Law Society’s online Professional Responsibility and Practice Course during the articling term. That online course places an emphasis on practice management matters and will assist to support training and exposure to practice issues.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*