



TAB 3

**Report to Convocation
November 28, 2014**

Professional Development & Competence Committee

Committee Members

Howard Goldblatt (Chair)
Barbara Murchie (Vice-Chair)
Alan Silverstein (Vice-Chair)
Raj Anand
Constance Backhouse
Jack Braithwaite
Robert Burd
Mary Louise Dickson
Ross Earnshaw
Larry Eustace
Peter Festeryga
Susan Hare
Vern Krishna
Michael Lerner
Marion Lippa
Virginia MacLean
Dow Marmur
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Joe Sullivan
Gerald Swaye
Peter Wardle

**Purpose of Report: Decision
Information**

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

TABLE OF CONTENTS

Decision

Deemed Call to the Bar Process **TAB 3.1**

Information

Licensing Process Financial Assistance **TAB 3.2**

COMMITTEE PROCESS

1. The Committee met on November 12, 2014. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Alan Silverstein (Vice-Chair), Constance Backhouse, Jack Braithwaite, Robert Burd, Mary Louise Dickson, Ross Earnshaw, Susan Hare, Michael Lerner, Marian Lippa, Virginia MacLean, Dow Marmur, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Joseph Sullivan and Peter Wardle attended. Staff members Priya Bhatia, Diana Miles and Sophia Spurdakos also attended.

DECISION

DEEMED CALL TO THE BAR PROCESS

Motion

2. **That Convocation expand the deemed call to the bar process to allow candidates to select their preferred call format either by way of a deemed call or attendance at a live call ceremony to begin in May 2015 for candidates registered in the 2014-15 Licensing Process year.**

Rationale

3. A review of the activities within the Licensing Process began in tandem with the changes to be implemented in preparation for the new components of the Pathways to the Profession Pilot Project. All aspects of the Licensing Process from the application form through to the format of the calls to the bar and the paralegal receptions were taken into consideration during the review.
4. The proposal to expand the deemed call to the bar process affirms the continuation of the live call to the bar ceremony, while at the same time providing licensing process candidates with increased flexibility to be licensed to practise at a time that best suits their personal and career requirements. Candidates would no longer be limited to being called in January, June or September and would have the option to be called any month that Convocation meets. This has become increasingly important since the Law Practice Program (LPP) ends in April, roughly two months earlier than the Articling Program, and to accommodate some candidates' life circumstances that make attendance at the call ceremony difficult.
5. The key issues for Convocation's consideration are set out in the Report of the Executive Director, Professional Development & Competence, at [TAB 3.1.1: Deemed Call Proposal](#).



TAB 3.1.1

Call to the Bar Process – Enhanced Option for Deemed Call

Diana C. Miles, Executive Director
Professional Development and Competence
dmiles@luc.on.ca

October 2014

PURPOSE OF REPORT

A review of the activities within the Licensing Process began in tandem with the changes to be implemented in preparation for the new components of the Pathways to the Profession Pilot Project. All aspects of the Licensing Process from the application form through to the format of the calls to the bar and the paralegal receptions were taken into consideration during the review.

An analysis of the scheduling, format and scope of all licensing components, the profile and needs of all groups of licensing candidates, the program policies, procedures and processes, including receipt, storage and sharing of information and technology applications has been undertaken as well as a review and validation of the current licensing examination and processing activities.

The objectives for the review were to:

- Improve fairness and accessibility practices to promote increased flexibility for candidates to be licensed;
- Identify efficiencies in the licensing process operations to control costs and make the best use of staff resources;
- Position the operations of the licensing process to best manage change associated with the evolution of licensing in Ontario; and
- Maintain and continue to support a rigorous, fair, valid and defensible licensing regime.

This report addresses the call to the bar process.

Call to the Bar Process

All eligible lawyer licensing candidates are required to attend a call to the bar ceremony in person as the final step in their licensing process. At the call, candidates are presented with the Degree of Barrister-at-Law by the Law Society, a Court Certificate of Qualification and are sworn to the oath.

As a result of the steadily increasing number of candidates being licensed to practise law in Ontario each year, it is expected that reliance on formal call to the bar ceremonies as the sole means of finalizing licensing requirements will not be sustainable in the coming years without a significant increase in cost to be borne by candidates.

This chart shows the estimated growth in the number of candidates in the Licensing Process who will be called to the bar in the coming years.

At the current annual rate of growth of approximately six percent (6%) each year, over 3,000 candidates would be eligible to be called in 2020.

Year	Number of candidates eligible to be called to the bar
2013	2,010
2014	2,131
2015	2,259
2016	2,395
2017	2,539
2018	2,691
2019	2,852
2020	3,023

Historically there have been seven call to the bar ceremonies each year: five ceremonies in Toronto (three in June, one in January and one in September), a June ceremony in Ottawa and a June ceremony in London. The following chart outlines the number of candidates called at each formal ceremony in 2013.

Month	Location	Candidates called to the bar
January	Toronto	189
June	Ottawa	219
	Toronto 1	395
	Toronto 2	372
	Toronto 3	391
	London	75
September	Toronto	238
	TOTAL	1,879

Candidates have the option to be called to the bar only three months of the year: January, June or September.

The majority of candidates (62%) choose to be called to the bar at a June ceremony in Toronto. Roy Thomson Hall is the venue for the call ceremonies in Toronto and has a capacity of 400 candidates for each ceremony. The Law Society has been getting close to reaching this capacity in recent years. In 2014, there was an average of 386 candidates called at each June ceremony in Toronto.

As a result of the increasing number of candidates, the Law Society has added a fourth call ceremony in Toronto in June 2015 at an estimated cost of at least \$42,000. This cost includes an estimated \$22,000 for venue and facilities costs and an estimated \$20,000 for Convocation and judiciary participation. Convocation and judiciary participation includes Bencher expenses, ceremony events (luncheons and dinners) and Bencher remuneration.

Anticipating close to 2,700 candidates ready to be called in 2018, an additional fifth call ceremony in June in Toronto will be required for that year and a minimum of six June ceremonies in Toronto will be required by 2020. Each of these additional call ceremonies will result in an expected cost to the Law Society of at least \$42,000 each and will likely produce an increase in licensing fees for the candidates and members. Although the increasing number of candidates may be able to support some or all of venue and facilities cost increases, it will not cover the entirety of staffing increases required to sustain this growth in ceremonies. The costs of bencher and judiciary participation will increase and is not covered by candidate fees; these costs are covered by member fees as part of Convocation and Bencher budgets.

In 2013, the costs related to call ceremonies were over \$340,000. The costs are split between venue and facilities costs, at approximately \$150,000; overhead and staffing of approximately \$30,000 specifically related to preparation for and actual ceremony activities; and an additional minimum amount of \$160,000 in costs per year related to Bencher and judiciary participation.

Adding more call ceremonies in the future will require additional staff in the Professional Development and Competence Department to manage the planning and preparation of call ceremonies. Processing of candidates to ensure eligibility for a June call to the bar while simultaneously planning five high profile and prestigious call to the bar ceremonies in three different cities in one month is a tremendous amount of work that occurs in a very short timeframe. A number of staff in the Licensing and Accreditation and Director's Office of the PD&C Division work many overtime hours to ensure candidates meet the requirements for licensure and that the ceremonies run smoothly. The cost of additional full-time equivalent staff will be borne by candidates. Each new junior staff member results in an increased cost to candidates of approximately \$25 per candidate.

In addition, more call ceremonies in the future require additional willing and available Benchers to fulfil the quorum at each of the ceremonies. Therefore, along with the increase in the number of ceremonies, the cost for Convocation and judiciary participation will also increase with costs borne by members.

Expansion of Administrative Deemed Call

The deemed call process was introduced in 2003 to facilitate the entry of mobility and transfer candidates to practise law in Ontario.

The process is as follows: a candidate takes the oath before a notary or commissioner, documentation is filed with the Law Society, and the candidate's name is listed in the motion for call to the bar as part of Convocation materials. Once this motion is passed, the candidate is licensed to practise law and receives his or her licensing and court certificates.

In 2013, 113 candidates were licensed through the deemed call process. As of September 30, 2014, 73 candidates have been licensed through this process.

The deemed call for other than mobility transfer candidates is not formally communicated to candidates as it is an exception established through policy developed to support candidates experiencing extenuating circumstances. Approval of requests to receive a deemed call are granted by the Executive Director, Professional Development and Competence based on justifiable circumstances generally related to hardship or difficulties and or supported under human rights legislation.

Law Societies in both the United Kingdom and Australia, licensing systems now most closely aligned with Ontario's move to Pathways, do not require attendance at a call to the bar ceremony in order to be able to be admitted to the profession and begin to practise law.

Law societies in Canada hold one or more formal call to the bar ceremonies each year and many offer options for candidates to be called if they are not able or prefer not to attend a call ceremony. Options include the ability to arrange for a regional call ceremony, to be called by video conference or by phone, and in some jurisdictions candidates may request and arrange for an individual call to the bar with one of the courts.

The proposal to expand the deemed call process in Ontario affirms the continuation of the live call to the bar ceremony, while providing licensing process candidates with increased flexibility to be licensed to practise at a time that best suits their personal and career requirements. Candidates would no longer be limited to being called in January, June or September and would have the option to be called any month that Convocation meets.

The average age of candidates at the time of call is 31. Many candidates have competing priorities such as family and jobs and would appreciate the flexibility to choose whether to be called by the deemed call process at the time that best suits their life circumstances, or to attend a call ceremony in person.

In addition, the licensing process has not had a residency or citizenship requirement for many years and there are candidates who are, under the current policies, required to fly in from international locations, at great expense and disruption, in order to attend a call ceremony. This recommendation is particularly important at a time when the profession and candidates are struggling to find and sustain experiential learning and when the licensing process has two

separate pathways which take place at different times of the year. An expanded deemed call process would greatly facilitate the new Pathways to the Profession process.

Since the Law Practice Program (LPP) ends in April, roughly two months earlier than the Articling Program, LPP candidates are likely to be eligible for a call earlier than the articling candidates. If an expanded deemed call process is approved, the Professional Development and Competence Division will create an early filing option for LPP candidates so that LPP candidates do not have to wait to be licensed and can begin practising as soon as possible.

An expansion of the deemed call process to allow candidates to select their preferred call format, whether a deemed call or attendance at a call ceremony, supports the objectives set for the review of the Licensing Process including creating efficiencies and controlling or reducing costs, evolving the system in response to the changing licensing environment and candidate demographics, and improving accessibility and supporting the need for accommodation by introducing more flexibility.

INFORMATION

LICENSING PROCESS FINANCIAL ASSISTANCE

Issue

6. In November 2013 the Committee undertook to consider the issue of financial assistance, including a bursary, for licensing candidates during the LPP or articling and to report to Convocation in the fall of 2014.
7. The Committee has concluded that the Law Society's current repayable allowance program should continue to apply to unpaid articling and Law Practice Program (LPP) candidates and be promoted to ensure candidates are aware of it and that its repayment may be forgiven in certain circumstances discussed further below.

Rationale

8. The Committee's consideration of the issue flowed from its report to Convocation in November 2013. Convocation approved a \$1 million lawyer licensee contribution for the 2014-2015 licensing process to reduce the costs to licensing candidates. Concurrently, the Committee undertook the following in the body of its Report:

Over the coming months, as the PD&C Committee continues to work on the Pathways Report implementation, it will also explore the creation of a bursary program and report its findings to Convocation in the fall of 2014. With additional information and details respecting candidates, which will become available over the coming months, the Committee will be in a position to consider this issue and make recommendations.

9. The Committee exploration flowed from the possibility that despite the lawyer licensee contribution some candidates could nonetheless experience financial issues. Although final information about unpaid LPP work placements is not yet available the Committee is satisfied that it has sufficient information to report to Convocation. As of mid-November Ryerson has secured 227 placements. Of those 91 are paid, 73 are unpaid and the issue of payment has not yet been determined for 63 placements. The University of Ottawa has 19 candidates and has secured the placements, all paid. For both Ryerson and Ottawa, the process of matching candidates with potential placements is ongoing.
10. The Committee discussed two approaches to financial assistance:
 - a. Approach 1: Affirm that payment for work placements and articling placements is not guaranteed and confirm that the criteria and processes of the current repayable allowance program are also applicable to those in financial need in unpaid LPP work placements and articles who wish to apply. The amount is capped at the

current amount of \$5,000 per candidate per year to a maximum of \$10,000. The loan is forgivable in certain circumstances.

- b. Approach 2: For the duration of the pilot project, establish a needs-based bursary open to licensing candidates actively engaged in the licensing process, including those in unpaid LPP and articling positions, using the same needs-based eligibility criteria currently in place for the Law Society's repayable allowance program, but capped at \$5000 in total per eligible candidate.
11. Having considered the terms of the current repayable loan program, the financial assistance Convocation has already provided to candidates, and the potential cost of a needs-based bursary, the Committee is of the view that the current repayable allowance program remains the appropriate source of financial assistance for those with unpaid articles or work placements who meet the criteria.

Key Issues and Considerations

12. Convocation did not require that LPP work payments must be paid. Those registered in the LPP were aware of this from the outset.
13. Lawyer licensees have already contributed \$1 million to the cost of the licensing process. The overall costs of the LPP have been apportioned among all licensing candidates.
14. The repayable allowance program is a forgivable loan of last resort for those who demonstrate need and have exhausted other sources of funds. Candidates do not have to begin repaying the loan until the third year from their date of call to the bar. Repayable allowance recipients may apply for forgiveness of repayment on compassionate grounds, such as medical disability or inadequate income.
15. Neither the continuation of the repayable allowance program nor the introduction of a needs-based bursary would likely have financial implications in the first year (2014-15) of the pilot project as there are sufficient funds in the segregated repayable allowance fund to cover likely amounts. It would be difficult to anticipate costs, however, particularly for a needs-based bursary, in the second and third year of the pilot project.

DISCUSSION

Key Background Information

16. The issue of financial assistance stems from the ongoing implementation of the Pathways pilot project that Convocation approved in November 2012 as follows:

There will be a transitional training pilot project, proposed to begin in 2014-15, with an articling component and a Law Practice Program ("LPP") component. The pilot project will be for three years, to be extended for up to an additional two

years if the Law Society determines that there is insufficient evidence to properly evaluate the pilot project after three years.

17. The LPP consists of a four-month skills program and a four-month work placement requirement. Articling continues as a 10-month program.
18. It appears possible that approximately 40% of LPP work placements may be unpaid. This percentage may drop somewhat, but unpaid placements will likely exist. Final numbers will not be known until January 2015. It also appears likely that there are approximately 50 unpaid articling placements that would need to be factored into any financial calculation respecting financial assistance.¹

Approach 1

19. Convocation discussed the issue of paid and unpaid placements when the Task Force presented its report in November 2012 and again in November 2013 when Convocation approved a \$1 million lawyer licensee contribution for the 2014-2015 licensing process to reduce the costs to licensing candidates.
20. Although Convocation made it clear that every effort should be made to ensure paid placements, it determined at that time not to require them as a condition of the LPP providers being awarded the contracts. The existence of the LPP has made it possible for a significant cohort of law school graduates who might not otherwise have had the opportunity to be licensed to complete their requirements. Convocation recognized that the risk of requiring payment as a condition of awarding the LPP contract could undermine the goal of the pilot project if not all placements were paid.
21. It is currently open to lawyer licensing candidates, including those in unpaid placements and articles, to apply to the Law Society's repayable allowance program. Its purpose is to assist those who experience difficulty in obtaining financial assistance elsewhere to meet their educational costs. It is a loan program of last resort for those who demonstrate need and have exhausted other sources of funds. It is premised on acceptance that in general the Law Society does not, nor should it, financially subsidize those seeking to be licensed. It is in place to act as a back-stop in the event candidates have no other options.² The applicant must have exhausted all other sources of funding available to her or him, including student loan programs.
22. The criteria to be assessed in considering a repayable allowance application are,
 - a. debt load;

¹ It is not possible to accurately monitor how many unpaid articling placements exist because the issue of salary is the subject of agreement between the candidates and their Principals, with no requirement for salaries to be reported to the Law Society's Licensing and Accreditation office.

² To be eligible for the repayable allowance program the applicant must "be enrolled in the Licensing Process and must be scheduled to sit the licensing examination(s) or scheduled to commence the Law Practice Program/Articling Program. Candidates are not eligible to apply if the scheduled examination date or the Law Practice Program/Articling program start date is more than 3 months away."

- b. assets;
 - c. inability to obtain financial assistance elsewhere;
 - d. employment status;
 - e. articling or LPP salary or payment;
 - f. number of dependents;
 - g. expenses; and
 - h. personal and household income.
23. Pursuant to the Law Society's commitment to equity and diversity, the repayable allowance program also gives additional consideration to "individuals from the following communities, which are currently under represented in the legal profession in Ontario:"
- a. Aboriginal Peoples
 - b. Francophone
 - c. Racialized Community
 - d. Lesbian/Gay/Bisexual
 - e. Transgender/Transsexual
 - f. Persons with Disabilities
 - g. Mature candidates (40 years of age and older)
 - h. Single Parents
 - i. Candidates with Dependents and a Low Family Income

Approach 2

24. The Committee undertook to consider the bursary issue out of Convocation's concern for the potential financial burden to candidates in the LPP, particularly if their work placements were to be unpaid. In discussing the issue of financial concerns for candidates in November 2013, the Committee undertook to consider the bursary issues as part of its overall consideration.
25. In considering the issue, the Committee noted that Law Society may, pursuant to paragraph 62 (0.1)22 of the *Law Society Act*, pay bursaries to licensing candidates based on financial need and specified criteria. In its view, if a bursary were to be introduced, the well-developed criteria used in the repayable allowance program should be used.
26. To consider the financial and other resource implications of a bursary program the Committee made calculations based on the following assumptions:
- a. Any bursary must be needs-based and apply the criteria currently in place for the repayable allowance program.
 - b. Based on current information, approximately 40% of LPP work placements may be unpaid. This percentage may drop somewhat, but unpaid placements will likely exist. Final numbers will not be known until January 2015.

- c. Based on estimates only, approximately 50 articling placements are unpaid at this time (this is considered to be a mid-range estimate and relates only to currently existing unpaid articling placements.)
 - d. In this calculation, bursaries would be capped at \$5000 per eligible candidate, with a likely average bursary estimated at approximately \$3000.
 - e. The current repayable allowance loan program has seen 42 applicants in 2014, with 38 applications granted. The calculation below is based on an estimated 90 applicants if the repayable allowance program becomes a bursary program, using the same criteria and considerations as the current repayable allowance program.
27. Ninety applicants receiving an average bursary of \$3000 would require an allocation of \$270,000. As set out above, under the current repayable allowance program there is a segregated fund with \$100,000 allocated annually. Using the \$336,000 currently in the repayable allowance program restricted fund and the \$100,000 funding currently included in the 2015 budget would allow the bursary in 2015 to be resourced if those funds were moved into a restricted bursary fund. No new funds would need to be allocated for 2015.
28. Each remaining year of the pilot project any bursary fund would need to be topped up to meet anticipated needs, based on the previous year. If the assumptions set out above were altered, the financial requirements to fund a bursary would need to be recalculated.
29. In the Committee's view it would be necessary to commit to any needs based bursary for the duration of the pilot project. The most efficient way to implement a bursary program would be to convert the repayable allowance program into a bursary program with a new restricted fund.
30. Implementation of the conversion of the repayable allowance program into a bursary program would require both the PD&C Division and the Finance Division to develop further administration processes to accept, assess and fulfil payment approvals. This would have implications at the front end of the process when the allocation decisions are made and at the back end of the process respecting appropriate paperwork, such as T-4 slips, for candidates who were assisted. Depending upon the number of candidates affected, both divisions would be required to redirect workflow on an immediate basis at points in 2015. The evolution of candidate financial assistance from a repayable loan to a bursary may result in a higher number of applicants which could significantly increase administration requirements.
31. The PD&C and Finance Divisions discussed the staffing implications of a conversion to a bursary and agreed that the administration could be completed by reallocating staff, which may affect the timeliness of interactions in certain other areas of the Licensing and Accreditation and Finance Departments.

Continued Applicability of Repayable Allowance Program Confirmed

32. Based on the historic allocations from the current repayable allowance program, the current balance in the fund and the continuation of the annual contribution to the fund of \$100,000 there would in all likelihood be sufficient funding for the balance of the pilot project if the source of financial assistance remains the current repayable allowance program.
33. This is in contrast to a bursary. With no repayment obligation it is likely the number of applications for bursaries would exceed those for a loan. While no new funds would be necessary in 2014-15, it is likely that it may be necessary to increase the annual \$100,000 allocation in years two and three of the pilot project. The full financial cost to the Law Society of a bursary program would only be known once the actual number of candidates deemed eligible to apply have done so and are provided with assistance.
34. The work placements run for four months. The repayable allowance program already exists to be used as a backstop for those unable to meet the financial burden of the four-month period. It is based on need and the obligation to seek all other sources of funding before turning to the Law Society.
35. Given the relatively brief period in issue, the repayable allowance program for which there is already an infrastructure, makes sense as the vehicle to provide assistance. This is particularly true because it does not require recipients to begin repaying until the third year after their call-to-the-bar and allows those in continued need to seek relief from repayment. The program's history has demonstrated a generous application of the relief from payment provisions.
36. Closer to the dates for commencement of the work placement portion of the LPP the repayable allowance program will be more actively promoted to ensure candidates are aware of it.
37. In addition, the Law Society will monitor the pilot project for the rest of its three-year term as was approved in the Pathways Report and make recommendations on the matter of financial issues as part of its overall evaluation.