



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

## **Report to Convocation September 22, 2016**

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### **Professional Development & Competence Committee**

#### **COMMITTEE MEMBERS**

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Jacqueline Horvat (Vice-Chair)  
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**Purpose of Report: Information (September 22, 2016)  
Decision (November 9, 2016)**

**Prepared by the Policy Secretariat  
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## **EXECUTIVE SUMMARY**

### **Introduction**

This Report addresses the evaluation of the Pathways Pilot Project (consisting of the Law Practice Program and the enhanced Articling Program) and the recommended enhancements to the lawyer licensing process.

The licensing issues that the Law Society has addressed over the last number of years, and with which the Committee has been specifically faced, are complex and multi-layered. They have been addressed in the context of increasing numbers of licensing candidates, both from Canadian law schools and the National Committee on Accreditation (“NCA”), a rapidly changing legal landscape, pressure on the articling structure, equity and diversity issues, renewed emphasis within the Law Society around competency and standards, examinations, transitional experiential learning, rising law school tuition, licensing costs and the length of the legal education and licensing process. Moreover, myriad perspectives on the issues have resulted in principled disagreement on an appropriate approach.

### **Pathways Pilot Project**

Convocation directed the Professional Development & Competence Committee (the “Committee”) to conduct an evaluation of the Pathways Pilot Project (the “pilot”) and to make recommendations respecting what should occur at its conclusion. Originally, the Articling Task Force conceived a five-year pilot. It amended the motion in its October/November 2012 Report, which Convocation approved, to reduce the length to three years.

A pilot project is by its very nature a previously untried process whose lifespan is predefined, but whose operation and results are unknown at the outset. It provides an opportunity to investigate a new approach and its merits with all the inherent challenges, understanding that its performance and viability must be the subject of a critical lens and knowing that its permanence is not to be presumed. The Articling Task Force believed that an alternative to articling must be explored, but was reluctant to entrench an approach without an opportunity to weigh the outcomes. It also understood that in three years that exploration would be evaluated to consider its effectiveness as a means of transitional training, the acceptance or otherwise of the alternative and cost and equity issues. By adopting a three instead of five year timeline, Convocation was reflecting a desire to explore without entrenching, while preserving the possibility for extending the evaluation timeline in certain circumstances.

For all the reasons discussed in this Report, the Committee, based on the views of nine of the 14 members, has concluded that the pathway of the pilot known as the Law Practice Program (LPP), despite many positive features, including the excellent program design and delivery by both LPP providers, does not appear to be providing an alternative to articling that has gained acceptance by candidates and the profession and that is sustainable in the long term.

The Committee recommends that the LPP end following the completion of Year Three (2016-2017). The complexity of the decisions to be made were reflected in the Committee’s discussions. Members have held a diversity of, and evolving, views on the issues, some of which are outlined in the Report. Three of the Committee members do not agree with the recommendation and two abstain.

The Committee recommends that the component of the pilot known as the enhanced Articling Program remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.

The Committee has developed a number of additional recommendations for strategies to address issues that continue to exist in transitional experiential training. Serious attention, effort and collaboration in the areas identified below can address some of the issues that the pilot has revealed or confirmed:

- **Continued use of LPP program content, networks, professional placements etc. in other contexts so that the invaluable resources are not lost.** The English and French LPP have each been developed to address their context, size and setting. In the short life of the pilot project each has integrated meaningful program content with impressive physical and human resources and networks of professionals who have supported and assisted the programs and acted as supervisors, instructors and mentors. From the outset, the French LPP has developed a particular focus on the enhancement and broadening of the ability to offer quality legal services in French across the province and to facilitate the development of mentors and role models within the Francophone bar. Based on the recognition of linguistic dualism, the program provider and the Law Society understood from the outset that the French LPP skills content should be developed to support these goals. Similarly, the English LPP has developed a rigorous program with valuable and distinct content and networks of lawyers engaged with the process. It has successfully found work placements for hundreds of candidates. Most of the placements were with those who had not previously taken an articling candidate. Effort should be made to make use of the English and French LPP resources.
- **Consideration of the National Committee on Accreditation (NCA) process, readiness for licensing issues and exploration of bridging programs for internationally-educated candidates.** The Law Society is committed to a vibrant, competent and diverse profession that in turn supports the diversity of the Ontario population. For this to be feasible, in addition to an NCA process that is effective and relevant, internationally-educated candidates must have reasonable expectations about their ability to succeed in the Ontario legal market. They must also be assisted to meet with success through a combination of supports, resources and information exchange that will provide an opportunity to integrate into the legal culture and the ability to prepare to be successful in Ontario's lawyer licensing process. The Law Society has no ability to address issues related to the level of preparedness for licensing that international law degrees provide, but it must have a role in managing expectations of candidates related to what is necessary to succeed in the licensing process and the Ontario market. Indeed, management of expectations is important for all candidates wherever educated. As the market for lawyers continues to change and as pressures on the legal practice model continue, Canadian law school educated and internationally-educated candidates should be provided with meaningful information about the nature of that market as early as possible, so they can make meaningful choices. The LPP has developed a rigorous program whose content may serve other possible purposes, including being utilized in a bridging program for internationally-educated candidates. The Law Society should explore possible approaches to voluntary and robust bridging programs for internationally-educated candidates to enhance their readiness for licensing in Ontario.
- **Attention to issues of fairness, including the Articling Program's impact on equality-seeking candidates and its accessibility and objectivity.** The Committee continues to have concerns with aspects of the Articling Program, some of which the pilot has reinforced. These relate to fairness, including the impact on equality-seeking groups and the hiring process, consistency and coverage of required competencies, working conditions and the dearth of certain types of articling positions, particularly in the field of social justice. Because of low take-up of the LPP, the alternative pathway was unable to convincingly address placement shortages. Post LPP

shortages will continue to be an issue. The Law Society must continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, accessibility and objectivity. The Law Society commitment to serving a diverse Ontario public and to advancing a diverse profession that meets the public's varied needs and access to justice in under-served communities is equally important in the context of transitional experiential training. Development of a fund to be used to support the above mentioned priorities in the context of transitional experiential training should be explored. The exploration will include an analysis of possible sources for funding, such as the Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-served communities and appropriate job locations.

## **Licensing Process Enhancements**

The Law Society's mandate to regulate in the public interest begins with the licensing process. Unlike law school education, licensing is primarily a regulatory process, protecting the public by admitting only those who demonstrate competence. The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest.

The recommendations related to licensing examinations, the formal framework of the licensing process and requirements around articling reflect the Law Society's Strategic Priority #1, which states that the Law Society will focus on enhancing licensing standards and requirements and their assessment. The process for assessing readiness must be fair and defensible, but the Law Society's regulatory priority of competence-based licensing is clear.

In furtherance of this priority, the Committee recommends the introduction of two new licensing examinations. The single Practice and Procedure Examination (PPE) will replace the current Barrister Examination and Solicitor Examination. 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 take place before the articling component of the licensing process and successful completion will be a prerequisite to proceeding to articling. The second licensing examination, to be known as the Practice Skills Examination (PSE), will measure candidates' capability to apply their practice and analysis skills following their completion of articling.

Under the current approach, a candidate is eligible to write each examination up to three times and has three years to complete the entire licensing process. These requirements will remain in place. Candidates who are still unsuccessful by the end of the three-year process will not, in the normal course, be entitled to register for the licensing process a second time. All these requirements are subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the Law Society's *Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*.

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. The current and proposed approach, all subject to the duty to accommodate, balance these considerations.

The Committee also recommends that internationally-educated candidates licensed in a common law jurisdiction with at least three years of practice experience that addresses the Law Society's articling competencies may be exempted from articling. This is an increase from the current eligibility requirement of 10 months, to reflect a commitment to enhanced standards. The Law Society will continue to track the level of experience of internationally-educated candidates, examination performance data and information that will be gleaned from discussions and exploration of bridging programs, to determine whether the exemption recommendation is effective. Exempted candidates will continue to be required to complete an intensive three-day program on professional conduct and practice management as a mandatory component of the licensing process. All other internationally-educated candidates will continue to be required to complete the articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies, in accordance with the Law Society's protocols. If the new recommendation is approved by Convocation, it would apply on a going forward basis, beginning with the licensing year 2017-2018.

Finally, the Committee recommends that the Law Society explore a process to permit up to a three-month abridgment of articling where prior skills training has been attained in a program the Law Society accredits. Among other factors the exploration will consider the possible risks and benefits of such an approach and the nature of accreditation criteria for eligible programs. In the interim, the 10 month articling requirement will continue. The exploration will include collaborative discussions with interested stakeholders. The place of skills training or experience in the pre-licensing context has been evolving steadily since the late 1970s and early 1980s when many considered it could have no role to play in the development of lawyers, except in the articling context. Few accept that position today, but each stage on the road to licensing, beginning in law school defines how skills training fits its priorities. The recommendation seeks to expand the conversation.

## **Conclusion**

The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest. In respect of lawyer licensing, Strategic Priority #1 states that the Law Society will focus on enhancing licensing standards and requirements and their assessment for lawyers. At the same time, the Law Society seeks to ensure a process that is fair, accessible and objective.

The Pathways Pilot Project has been an important part of the efforts to examine and address licensing requirements and fairness. The evaluation of the project has revealed the complexity of the issues and the difficulties inherent in determining the way forward. All the Committee members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.

The proposed enhancements to the lawyer licensing process reflect the Committee's commitment to address Convocation's Strategic Priority #1 respecting enhanced licensing standards and requirements and their assessment.

## **Motion**

- 1. That Convocation approve that the pathway of the Pathways Pilot Project known as the Law Practice Program (LPP) end following completion of Year Three (2016-2017.)**
- 2. That Convocation approve that the pathway of the Pathways Pilot project known as the enhanced Articling Program remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.**
- 3. That Convocation approve the following steps:**
  - a. The Law Society will explore with the University of Ottawa, the French LPP Advisory Board and other stakeholders who wish to be involved, ways to continue to build on the groundwork laid by the French LPP.**
  - b. The Law Society will explore ways that the English LPP resources may continue to be used, including but not limited to,**
    - i. adapting work placements developed during the LPP to the articling context wherever possible and appropriate; and**
    - ii. integrating relevant human and other resources from the English and French LPP into the Law Society's Coach and Advisor Initiative;**
  - c. The Law Society will explore approaches to voluntary and robust bridging programs for internationally-educated candidates who wish to enhance their readiness for licensing in Ontario. This exploration will include attention to uses to which LPP program content can be put.**
  - d. The Law Society will explore, within the transitional experiential training context, the development of a fund to be used to support the priorities of a diverse profession that meets the public's varied needs and to enhance access to justice in under-serviced communities. The exploration will include an analysis of possible sources for funding, such as the Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-serviced communities and appropriate job locations.**
  - e. The Law Society will continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, including the impact on equality-seeking groups and hiring, accessibility and objectivity.**



- for the licensing process a second time following failure to complete the requirement in three years;
- iii. the requirements in (i) and (ii) will continue to be subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the *Law Society's Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*; and
  - iv. all candidates will continue to be required to meet good character requirements, as set out in the Law Society application process.
- d. Approved for the licensing year 2018-2019,
- i. a new practice and procedure examination (PPE) will be introduced as the first assessment component of the "entrance to licensing" requirement, to replace the current Barrister and Solicitor Examinations;
  - ii. 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 transitional experiential training;
  - iii. 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 transitional experiential training 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.
- e. Approved for the licensing year 2018-2019,
- i. a practice skills examination (PSE) will be added to licensing requirements and will be taken after completion of transitional 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;



- ii. **candidates will be required to pass the PSE Examination prior to being entitled to complete their licensing process; and**
- iii. **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 transitional experiential training completion dates.**

### **Context of this Report**

- 5. Convocation directed the Professional Development & Competence Committee (the “Committee”) to conduct an evaluation of the Pathways Pilot Project (the “pilot”) and to make recommendations respecting what should occur at the conclusion of the pilot. Originally, the Articling Task Force conceived a five-year pilot. It amended the motion in its October/November 2012 Report, which Convocation approved, to reduce the length to three years, for the following reasons:

One of the concerns expressed in discussions was that a five year pilot project, given the time it needs to both develop it and then evaluate it was a very long time for a pilot and might, in fact, have the unintentional effect of entrenching it and not really treating it as the pilot that it was intended to be. It was the intention all along to evaluate as soon as possible and was agreed that if it doesn’t take five years, it shouldn’t take five years.<sup>1</sup>

- 6. Pursuant to the motion, the pilot could be extended for up to an additional two years if this was deemed necessary to enable a fair and appropriate evaluation.
- 7. This Report provides the Committee’s analysis and recommendations respecting the pilot and includes material that supports that analysis, including on the two methods of transitional experiential training (Law Practice Program (LPP) and the Articling Program) and on issues around the viability and sustainability of the LPP, including financial implications. The Committee’s analysis includes discussion of whether it has sufficient information on which to make recommendations at this time.
- 8. This Report also addresses recommendations the Committee made in April 2016 respecting enhancements to the licensing process (the “April Report”). Given the

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<sup>1</sup> Transcript. Convocation. November 11, 2012. p. 25.

Committee's recommendations respecting the pilot, the earlier April Report is further contextualized as part of next steps in the licensing process.

9. The licensing issues that the Law Society has addressed over the last number of years, and with which the Committee has been specifically faced, are complex and multi-layered. They have been addressed in the context of increasing numbers of licensing candidates, from both Canadian law schools and the National Committee on Accreditation ("NCA"), a rapidly changing legal landscape, pressure on the articling structure, equity and diversity issues, renewed emphasis within the Law Society around competency and standards, examinations, transitional experiential learning, rising law school tuition, licensing costs and the length of the legal education and licensing process. Moreover, myriad perspectives on the issues have resulted in principled disagreement on an appropriate approach.
10. As is described in this Report, the Committee has concluded that the pathway of the Pathways Pilot Project known as the Law Practice Program (LPP), despite many positive features, including the excellent program design and delivery by both providers, described further below, appears not to be sustainable in the long term and should end following the completion of the pilot in Year Three (2016-2017). The pathway of the Pathways Pilot project known as the enhanced Articling Program should remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training. The Committee makes additional recommendations for strategies to address issues that continue to exist in the Articling Program. Finally, the Committee recommends that, with some changes, the proposed enhancements to the licensing process recommended in the April 2016 Report should be adopted.
11. The recommendations reflect the conclusions of a majority of the Committee members.<sup>2</sup> The complexity of the decisions to be made were reflected in the Committee's discussions. Members have held a diversity of, and evolving, views on the issues, some of which are outlined in the Report.
12. All the members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.

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<sup>2</sup> The specific breakdown of the Committee members' views with respect to the question of sufficiency of evidence to evaluate the pilot and the recommendation respecting the LPP are set out later in the Report.

13. The information underlying and supporting this Report is critically important and the Committee urges that it be used to contribute to the ongoing analysis of and refinements to the licensing process that will continue to be sought, developed and implemented.

## **Background**

14. Since the fall of 2015, the Committee has been engaged in considering a number of issues related to lawyer licensing, in the context of,
  - a. the Law Society's approved Strategic Priority around lawyer licensing standards; and
  - b. its obligation to evaluate the Pathways Pilot Project.
15. 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...
16. 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...
17. In April 2016, following a consideration of licensing examinations and other components of the licensing process, the Committee provided Convocation with a Report on enhancements to the licensing process (the "April Report"), which made a number of licensing-related recommendations, but did not address the evaluation of the Pathways

Pilot Project. In May 2016 Convocation determined to combine consideration of the recommendations with those flowing from the evaluation of the Pathways Pilot Project.

18. The Pathways evaluation was among the recommendations Convocation approved in the October/November 2012 Articling Task Force Report (“Pathways Report”), establishing a pilot project, as follows:
  - a. 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.
  - b. During the pilot project data designed to enable an evaluation of the project will be collected and any necessary refinements or other policy issues related to this will be considered in the Professional Development & Competence (“PD&C”) Committee.
  - c. The formal review of the pilot project will commence in the final year of the pilot and be completed by the end of that year with a proposal for next steps provided to Convocation for its consideration. The implementation of the pilot project will continue during the course of the review. Convocation will then determine whether the pilot project should end, become permanent or result in a different approach.
19. Pursuant to By-Law 3, the PD&C Committee’s mandate includes providing policy options to Convocation on,
  - the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing.
20. In exercising its mandate and developing each of its policy recommendations the Committee regularly considers,
  - a. the Law Society’s duty to protect the public interest;
  - b. that standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized;<sup>3</sup>
  - c. the professional context within which licensing occurs;
  - d. access to justice for the people of Ontario;

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<sup>3</sup> *Law Society Act*, s 4.2

- e. diversity in the legal profession;
  - f. the Law Society's Strategic Priorities;
  - g. licensing and the legal education continuum;
  - h. the sustainability of licensing options;
  - i. the need for fair, transparent and defensible processes;
  - j. financial considerations; and
  - k. national regulatory initiatives.
21. Approximately 2,350 newly-registered candidates are now participating in the licensing process. Approximately 1,750 are Canadian law school educated licensing candidates. Approximately 600 are internationally-educated candidates, of whom approximately 35% (200+) are Canadian-born candidates who received their law school education outside of Canada and return to become licensed in Ontario.

### **Evaluating the Pathways Pilot Project**

22. A pilot project is by its very nature a previously untried process whose lifespan is predefined, but whose operation and results are unknown at the outset. It provides an opportunity to investigate a new approach and its merits with all the inherent challenges, understanding that its performance and viability must be the subject of a critical lens and knowing that its permanence is not to be presumed.
23. The Articling Task Force believed that an alternative to articling must be explored, but was reluctant to entrench an approach without an opportunity to weigh the outcomes. It also understood that in three years that exploration would be evaluated to consider its effectiveness as a means of transitional training, the acceptance or otherwise of the alternative and cost and equity issues.<sup>4</sup> By adopting a three instead of five year timeline, Convocation was, in the Committee's view, reflecting a desire to explore without entrenching, while preserving the possibility for extending the evaluation timeline in certain circumstances.
24. One of the purposes of the evaluation process approved as part of the pilot was to capture quantitative and qualitative data to assist in determining how well the components of the pilot are achieving their stated goals and to gain insight into the needs and perceptions of candidates, instructors, Articling Principals and others involved in the process.
25. At the same time, however, the evaluation was to consider contextual issues such as candidates' and the profession's acceptance of the approaches to transitional training, costs, long term viability/sustainability of the LPP pathway and readiness of candidates for licensing. The ability of each pathway's content to further candidates' competency development was clearly important, but only one part of the evaluative equation.

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<sup>4</sup> Pathways Report. October 2012, paragraph 37.

## Consultant's Evaluation Report - Years One and Two (the "Evaluation")

26. The English and French LPP were individually designed and implemented. Both have clearly met the Law Society's specifications related to the competencies to be addressed and assessed, but impressively each design has also specifically and imaginatively determined how best to realize the goals within the context in which the programs operate.
27. **TAB 2.1: LPP Overview**, setting out descriptions<sup>5</sup> of the structure and approach of the English and French LPP, reveal the sophisticated and practical nature of each. But beyond the description of the LLP framework, the Committee has been impressed at how each provider has breathed life into the programs and, remarkably, done so in a very short time. This reflects the expertise the two providers have brought to the design and implementation. The LLP providers have also,
- a. furthered alliances and partnerships with members of the profession, judges, and lawyers with a view to,
    - i. furthering the advancement of French language legal services in the case of the Ottawa LPP; and
    - ii. developing expanded and new networks for work placements in both the English and French LPP;
  - b. created rigorous programs that provide systematic and consistent exposure to all the required competencies; and
  - c. advanced principles of practice management in practical training, useful to sole or small firm practice.
28. The Law Society retained Research and Evaluation Consulting (RaECon) with Dr. A Sidiq Ali, a scientific psychometrician acting as the Senior Evaluation Consultant, to develop the appropriate tools for capturing the required data. Applying the tools, Dr. Ali has now provided the Law Society with his Report (the "Evaluation") considering the 2014-2015 and 2015-2016 data. The Evaluation is set out at **TAB 2.2: Evaluation**. It reflects the evaluation process Convocation approved in February 2014.
29. The following data collection tools have been developed and implemented for the Pathways evaluation:
- a. Law Practice Program Entry Survey
  - b. Law Practice Program Withdrawal Survey

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<sup>5</sup> The information appears in the Evaluation at pages 18-21 and is taken from Ryerson University's and the University of Ottawa's annual reporting to the Law Society.

- c. Law Practice Program Focus Group Protocol
  - d. Articling Program Focus Group Protocol
  - e. Law Practice Program Exit Survey
  - f. Articling Program Survey for Candidates
  - g. Articling Program Survey for Principals
  - h. Law Practice Program Post-License Survey for New Lawyers
  - i. Law Practice Program Post-License Survey for Employers of New Lawyers
  - j. Articling Program Post-License Survey for New Lawyers
  - k. Articling Program Post-License Survey for Employers of New Lawyers
30. The Committee's mandate is to evaluate the pilot overall, with the LPP comprising one pathway and the Articling Program comprising the other.
31. The Evaluation speaks to both the English and French LPP, so that the Committee has been able to examine the similarities and differences. Overall, however, the Evaluation provides collective findings about the LPP.
32. The Evaluation is detailed, relies on relevant information, in keeping with the approved evaluation process, and after two years reflects consistency in data and information that the Committee overall is satisfied is unlikely to be markedly different following the third year.
33. The Evaluation focuses on four questions:
- 1. Does the Law Practice Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
  - 2. Does the Articling Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
  - 3. How does each pathway, LPP and Articling, support the licensing candidates' opportunity to obtain the transitional experiential training requirement of the licensing process?
  - 4. Is one Pathway, LPP or Articling, more effective in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
34. In answering these questions the Evaluation has kept in mind,
- a. the five goals of transitional training that the Articling Task Force established:
    - 1. Application of defined practice and problem solving skills through contextual or experiential learning.
    - 2. Consideration of practice management issues, including the business of law.
    - 3. Application of ethical and professionalism principles in professional, practical and transactional contexts.

4. Socialization from candidate to practitioner.
5. Introduction to systemic mentoring;

and

- b. the requirement that each pathway be designed and implemented to be fair, accessible and objective, the meaning of which is defined in the Evaluation.<sup>6</sup>

35. The Evaluation observes that the goals for competency development in each pathway are the same, but the way each aims to achieve the goals differ substantively. Each must be evaluated on its own merit and then compared wherever that may be possible. In particular, the Evaluation has noted that,

it is a challenge to disentangle the sources (program structure and/or delivery) of marked differences in program outcomes (e.g. calls to the Bar, hire-backs, first year practice). Still at this juncture we see some trends in aspects of program delivery and outcomes beginning to emerge.<sup>7</sup>

36. In developing its recommendations, the Committee has paid particular attention to the Evaluation findings under the four questions, summarized here.

### **Effectiveness of Each Pathway to Provide Transitional Training (Questions 1 and 2)**

37. In considering the effectiveness of each pathway to provide transitional experiential training in defined areas and with a focus on fairness, accessibility and objectivity, the Evaluation has found the following:
- a. Both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. The LPP provides more systematic and consistent exposure to all the required competencies than is the case in articling. Thus far, complete competency coverage in articling placements has proven difficult, especially in non-law firm settings and where work contexts may be more limited in their focus.
  - b. Both the LPP and Articling Program show high participant ratings for value and effectiveness of the programs in addressing the five goals of transitional training. Generally, the pathways are seen as delivering fair, objective and accessible transitional, experiential training, though some aspects are not viewed as fair.

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<sup>6</sup> Evaluation, pages 16 and 17.

<sup>7</sup> Evaluation, page 2.



- c. Overall, candidates in both pathways are considered to have met or exceeded competency expectations in the pathways' defined areas, based on LPP provider and Articling Principal assessments. It is however the case that the LPP candidates and program face a number of challenges around fairness, accessibility and objectivity that are greater than those faced within the Articling Program. Given the newness of the program, the Evaluation notes the role that a lack of awareness and understanding may play, but sees some trends emerging. It also notes a certain degree of negative perceptions from candidates.
- d. Respecting *fairness*, there is a perception among candidates and some Articling Principals that the LPP is viewed as second-tier transitional experiential training with stigma attached to those who complete it. It is important to note that this does not speak to the actual quality of the LPP, but about perceptions that exist and persist.
- e. Responses to questions about the LPP work placements, as contrasted with articling, raised a sense of unfairness among around the LPP work placements focusing on,
  - i. the lack of choice in work placements – candidates were offered a single placement;
  - ii. the significantly shorter time for hands-on learning in the “real world” and networking exposure;
  - iii. the reduced opportunity to develop a relationship with supervisors and to prove oneself worthy of responsibility and hire back; and
  - iv. serious discrepancy in percentage of LPP candidates paid for placements (70-73%) as against articling candidates (90%).
- f. The Evaluation states that further perceptions around unfairness of the LPP over articling relate to metrics around,
  - i. withdrawal from the LPP program, particularly among those educated in Canada (15-18% versus approximately 1% for articling). Just short of two-thirds of the withdrawal survey respondents are candidates educated in Canada; only one-third of the respondents to the LPP Entry Survey received their legal education in Canada. The Evaluation posits that “at this point, Canadian law school graduates in the LPP (less than half the LPP population over two evaluation cohorts) withdrew from the LPP at almost twice the proportion as their internationally-educated counterparts.”

- ii. fewer LPP candidates were called to the bar in June 2015 (59% of LPP candidates versus 91% of articling candidates) and June 2016 (57% of LPP candidates versus 92% of articling candidates.) Just under 60% of candidates in the LPP reported that they expect to be called to the Bar in their originating licensing year, compared to just over 90% of the candidates in the Articling Program. So, almost a third fewer candidates by proportion in the LPP than in the Articling Program planned to be called to the Bar during their originating licensing year.
  - iii. lower hire-back statistics exist for those in the LPP. Of those who expected to be called to the Bar in their originating licensing year, about one-third of candidates in the LPP expected to be hired back, compared to almost half of the candidates in the Articling Program (34% of those who responded to a survey in Year One; 32% Year Two) versus articling (48% in Year One; 47% in Year Two).
- g. Accessibility to a pathway is defined in the Evaluation as being “reachable, attainable, easily understood, and meeting the needs of people from a variety of backgrounds and a variety of characteristics, including: ethnicity, race, abilities, disabilities, age, gender, language abilities; and preferred learning styles and abilities.”<sup>8</sup>
- i. The Evaluation notes that the LPP was not the first choice for almost two-thirds of the LPP candidates in Year One and for almost three-quarters of the candidates in Year Two.
  - ii. Despite this, the LPP is serving proportionally more candidates than the Articling Program from each of the following demographic categories: internationally-educated, racialized, age 40+ and, at least in Year One, Francophone.<sup>9</sup> In Year One the LPP had one-third (33%) of its enrolled candidates identifying as racialized as compared to just over one-fifth (21%) of the enrolled candidates in the Articling Program (a difference of 12%), and the *Age 40+* category with 17% of candidates in the LPP and just 2% of the candidates in the Articling Program identifying themselves this way (a difference of 15%). These discrepancies grew in Year Two, with 32% of the LPP reporting themselves to be racialized compared to 18% for the Articling

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<sup>8</sup> Evaluation, page 17.

<sup>9</sup> For both evaluation cohorts, there are virtually equal proportions of the candidates in the pathways that identify themselves as LGBT. But in Year Two, there are now a greater proportion of Francophones in the Articling Program than the LPP (5% to 2%, respectively), and also there are essentially the same proportion of candidates that describe themselves as Aboriginal (2%) across pathways and both evaluation cohorts.

Program (now a difference of 14%); and 19% of the LPP in the *Age 40+* category compared to 2% for the Articling Program (now a difference of 17%).

- iii. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school, and these respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school graduate colleagues.<sup>10</sup>
- iv. The vast majority (89% in Year One and 91% in Year Two) of the articling candidates graduated law school in same year as their enrollment in the licensing process, while about half (46% in Year One and 58% in Year Two) of the candidates in the LPP graduated in the same year as their enrollment in the licensing process. Further, about one-tenth (11% in Year One and 10% in Year Two) of the candidates in the LPP graduated from law school three years or more previous to their enrollment in the licensing process, compared to just about 1% of those in the Articling Program in both evaluation cohorts.
- v. There are proportionally more lawyers from the Articling Program than from the LPP who are practising law in their first year (82% versus 67%) and 25% (41 lawyers) of the LPP new lawyers are practising as a Sole Practitioner, compared to 6% from the Articling Program (86 lawyers). Further, 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business* as compared to 48% of the new lawyers who articulated and are working in this capacity.<sup>11</sup>
- vi. Given the available data, any negative financial impact would be greatest on the candidates in the LPP, as these candidates earn money for four months, versus their colleagues in the Articling Program who earn for 10 months. Further, there is a considerably greater proportion of placements in the LPP than the Articling Program that are unpaid. Many articling candidates

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<sup>10</sup> Evaluation, page 84.

<sup>11</sup> Evaluation, page 5.

have their licensing process fees paid and are provided paid time off to prepare for and write the licensing examinations. The Focus Group data indicates that many candidates in the LPP had to take part-time jobs to supplement their income during the licensing process and still others in the LPP were told they would not be able to keep a part-time job during the training course, giving up part-time jobs to complete the LPP.<sup>12</sup>

- vii. Articling Program Focus Groups in both cohorts reveal a perception that out-of province or out-of country candidates are disadvantaged in accessibility to articling positions. Candidates also felt that the search process puts those who are interested in social justice/child protection work at a disadvantage, as there is a deficit of paid opportunities and effective job search resources.
- h. Both pathways contain components of objectivity in the performance appraisal of candidates, more so in the LPP than in the Articling Program. However, there is a lack of standardization in how competencies are assessed between each pathway. Moreover, there is a lack of assessment rigour in the process across both pathways, evidenced by the fact that the “sign-off” of readiness for practice in this part of the licensing process is left to Articling Principals and the LPP providers, rather than the Law Society.

### **Supporting Candidates’ Opportunity to Obtain the Transitional Experiential Training Requirement (Question 3)**

- 38. In answering this question the Evaluation highlighted the following findings that to date,
  - a. the LPP has served proportionally more internationally-educated, racialized, Francophone and Age 40+ candidates than the Articling Program. Slightly more than half (51% on average) of the candidates in the LPP are internationally-educated candidates.
  - b. for almost two-thirds of the candidates in the LPP, it was not their first choice for transitional experiential training. Graduates of Canadian law schools, who make up slightly less than half of the LPP candidate population, withdraw from the LPP at twice the frequency of their internationally-educated counterparts.
  - c. about 1 in 7 candidates in the LPP withdraw compared to 1 in 100 in the Articling Program. To the extent information is available on why

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<sup>12</sup> The impact of the tuition fees on all candidates will be discussed below, under financial viability.

candidates withdraw it appears that locating an articling job is a significant reason, as are financial obligations. There continue to be perceptions of stigma related to completing the LPP rather than articling, but there is little data yet from employers and post-licensed graduates on whether the perception is correct.

- d. Complete competency coverage in articling is difficult, especially in non-law firm placements. The LPP is more consistent and complete in its coverage.

#### **Effectiveness of One Pathway over the Other (Question 4)**

39. Each pathway has its own structure, delivery and assessment tools. However, the Evaluation has made some important findings under effectiveness:

- a. Within each pathway candidates over the two years are overall meeting or exceeding expectations in their respective programs. However, “a lack of performance assessment commonality makes a comparison of pathway effectiveness based on candidate performance in the defined areas of skills and tasks invalid. In other words, it is very difficult, if not impossible, under the current measurement model to make an apples to apples comparison between the two pathways of candidate performance in the competency areas.”<sup>13</sup>
- b. The Evaluation also notes that “to judge the effectiveness of one *pathway* over the other in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice will rely not just on perceptual measures, which are subjective, but on some key performance metrics such as hire-back rate and rate of being called to the Bar, which are measures of the purposeful end-products of the licensing process. Ultimately, this *purpose* of the pathways delivery we believe cannot be extricated from the delivery itself. Therefore, these metrics are the goal of the licensing process and the only common metrics in this vein between the programs. Having said that, it is then clear that after two years of the *Pathways* project, data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice.”<sup>14</sup>
- c. The Evaluation then concludes by noting,

However, we do not have to make this determination now, especially since we have post-licensing data from just one cohort at this juncture. But would it be surprising if we made the same

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<sup>13</sup> Evaluation, page 140.

<sup>14</sup> Evaluation, pages 140-141.

determination after three years of this study? This evaluator's opinion is no, based on the common, key metrics. How much of an advantage do candidates in Articling have over their LPP colleagues in being prepared for the call to the Bar and being hired-back, based on the structure of the pathways and not on competency development within each pathway? It is very difficult to disentangle these data to conclusively determine how many more candidates from articling than from the LPP we should expect to be called to the Bar and hired back, based on the advantages of the structure of their pathway versus the structure of the LPP. So perhaps, we need to re-visit the wording of this evaluation question, Question #4 from our Evaluation Framework, or at least define more clearly how, or with what data, we may best answer this question."<sup>15</sup>

## **Committee Analysis**

### **Sufficiency of Information on Which to Evaluate the Pilot Project**

40. The Committee's first consideration is whether it has sufficient evidence to properly evaluate the pilot project, such that an extension for up to an additional two years is not necessary.
41. After careful consideration of the information received in the course of the Committee's fact gathering, ten of the 14 members are of the view that there is sufficient evidence to properly evaluate the pilot. The Committee feels it is essential to reflect some of the discussion around this issue and the different perception of, or at least questions around, sufficiency, expressed by four of its members.
42. If, as Convocation decided, the pilot was to be evaluated in its third year, the evaluation would have to be based on two years of evidence and information. The question the Committee has asked is whether conclusions can reasonably be drawn from this amount of evidence or whether more time is required to be in a position to do so.
43. With two years of information, the Committee is unanimously of the view, discussed in greater detail below, that both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. The Committee agrees that it does not require further information on either pathway to be able to evaluate those components of the pilot.
44. The more complex discussion to be undertaken as part of the evaluation is whether the LPP is likely sustainable in the longer term and whether it is accomplishing the outcomes for which it was introduced. The Committee members have canvassed the factors that speak to the issue of sustainability and outcomes.

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<sup>15</sup> Evaluation, page 141.

45. For four Committee members, the information currently available appears insufficient to allow for conclusions to be reached. In their view it is necessary to ask more questions and allow more time for the LPP pathway of the pilot to operate so as to better determine whether some of the concerns around sustainability and outcomes can be resolved by the passage of time. To the extent there are doubts about the sustainability of the LPP they think that as the data suggests that candidates for equality-seeking groups are continuing to encounter difficulty accessing the Articling Program,<sup>16</sup> and that for some equality-seeking candidates the LPP allows them entrance to the licensing process, that it would be advisable to consider, explore and possibly put in place alternatives before ending the current pilot. They are also of the view that more weight should be given to the positive features of the LPP pathway, by allowing more time to consider them.
46. The Committee's recommendations in this Report, however, reflect the significantly more prevalent view of 10 of its 14 members that there is already sufficient evidence around the important contextual issues that must be considered in evaluating the pilot. The patterns and preliminary findings that are emerging after two years are consistent from year to year. Early data available from the third year, such as registration, is also consistent with the pattern. The likelihood of substantially different information being available if the pilot were to be extended a year or even two is minimal. Given the serious implications of extending the pilot, discussed below, it is prudent and advisable to provide recommendations to Convocation now.
47. Convocation must be taken to have known that any evaluation of a three-year pilot program would face the reality that the program did not have a long time to establish itself. Nonetheless, it directed such an evaluation and the Committee has assumed responsibility to assess the pilot as it exists.

### **Evaluation of the Pathways Project**

48. The recommendation to end the LPP pathway at the conclusion of the pilot is that of nine members of the 14 member Committee. Three members disagree and two abstain.

#### **a) Effectiveness as Transitional Experiential Training**

49. While focus groups in each of the pathways revealed some discontent on aspects of the administration and substance of the programs, overall the Evaluation has concluded that both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. Candidates in both pathways rate generally high levels of effectiveness and value of their program.

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<sup>16</sup> See paragraphs 139-140 of this Report.

50. As mentioned at the outset, the Committee has paid particular attention to the noteworthy efforts both providers of the LPP, Ryerson University for the English program and the University of Ottawa Faculty of Law (Common Law) for the French program, made to develop well-designed, coherent and interesting programs in a very short period of time and their willingness to respond to feedback for the second year of the program. Similarly, a significant number of lawyers, law firms, judges and provider staff have assumed significant roles as mentors, advisors, teachers and work place supervisors and offered support for the LPP in numerous ways. There has also been positive feedback among candidates, lawyers, mentors, lecturers and others. The LPP has demonstrated that transitional experiential training can be delivered effectively in ways that differ from the traditional articling format. Indeed, in some ways the LPP delivery is superior to the Articling Program for consistency and attention to sole and small firm practice realities.
51. The Committee has considered the role that the enhancements and new evaluative measures to the Articling Program have played in the pilot. While candidates and principals have been critical of the usefulness of the enhancements the Committee has noted that the use of BARS-based measurement tools<sup>17</sup> is providing a more systematic understanding of the competencies being addressed, the gaps in coverage and the reasons for these. Moreover, Articling Principals appear to be more engaged in the actual assessment of candidates in Year Two than in Year One. As well, some new information is emerging through the surveys about why lawyers participate in the Articling Program.<sup>18</sup> Unfortunately, however, low response rates in certain areas minimize the usefulness of the data.
52. Given the fundamentally different structure of each pathway, however, it is not possible to determine, based on content and implementation alone, whether one provides that exposure, growth and access significantly more effectively than the other or results in candidates who are better and competently equipped to serve the public. Moreover, since it is not the Law Society, but the LPP providers and their assessors and Articling Principals who determine whether candidates meet the competencies, there is an absence of standardization in how competencies are assessed, as well as subjectivity in how performance is evaluated. Articling candidates are also spread out over more than 1000 settings, in contrast to the LPP, which for at least part of the time is confined to two locations, lending itself to more consistent observation.

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<sup>17</sup>The Behavioural Anchored Rating Systems (BARS) were developed with the assistance of exemplars from the profession, who came from a variety of practice areas and practice settings (private law firm, in-house, government, etc.). The BARS provide a scale of expected achievements in each critical skill or task for five key skills competency areas. Raters, or principals and their designates, are asked to assess each articling candidate's completion of the skill or task based on the rating system. The system includes a "not applicable" response for those situations in practice where a particular skill or task may not be achievable as it is not a common activity in that milieu.

<sup>18</sup> *Recruitment*, as firms utilize the candidates in articling positions to fill their hiring needs for entry to practice lawyers at post-call; *Responsibility*, as respondents felt they had a duty to help train and deliver new lawyers into the profession; and to a much lesser extent *Rates*, as the pay rate that candidates are remunerated at are below what a first-year associate lawyer earns, so it makes economic sense to some firms to hire articling candidates to perform many of the tasks a first-year lawyer would be expected to complete.



53. Finally, while candidate perception of the value of the skills training and experiences to the development of their competency is a critically important component of the evaluation, and one Convocation sought to address, it remains a subjective measure with all the limitations that implies.
54. However, the program content is only one aspect of the factors the Committee must consider. In the Committee's view, the Evaluation's finding that performance metrics are relevant in assessing the two pathways, is correct. It is clear that after two years of the pilot, performance metrics data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice.
55. In addition, as the Committee has sought to evaluate the pathways, it has had to recognize and pay attention to certain critical realities around sustainability and pilot outcomes that have presented themselves in the pilot over the first two years.

**b) "Second-Tier" Perception**

56. One of the fears about creating an alternative pathway for transitional experiential training – the LPP - was that it would not be accepted as an equal path to licensing. The Articling Task Force addressed concerns on how the profession might treat the program and its graduates. There was concern that to the extent certain categories of candidates were over-represented in the LPP, their careers could be stigmatized as a result.
57. At the same time there was a sense among many that without trying an alternative pathway, the Law Society and others would miss an opportunity to find innovative solutions to intractable problems. Overall, the Task Force agreed to try an alternative approach, understanding that stigma and second-tier perceptions would have to be among the relevant factors in evaluating the pilot.
58. The Committee observes at the outset of the analysis of second-tier perception that over the last two years there has been positive feedback about the LPP pathway and the performance and competence of the candidates emerging from it. This has come from a variety of sources including work placement supervisors, lecturers, lawyers and mentors in both the English and French LPP. Although the LPP has been the second choice for the majority of candidates in it, it is true that for a percentage of the candidates it was the first choice. For those who have now completed the LPP and been licensed it was a path to licensing.
59. Despite this, after two years, and at the outset of the third, in the Committee's view there is evidence that the alternative pathway of the LPP is *perceived* as second tier. The Committee strongly emphasizes the language of "perception," because there is no evidence to suggest that the LPP is *in fact* second-tier or merits the perception. Indeed, as the Committee has discussed above, the LPP is to all observation of very high quality and may, in fact, excel over articling in a number of areas.

60. One of the most telling aspects of the evidence of second-tier perception and perhaps most significant, is that the majority of candidates in each licensing cohort <sup>19</sup> appear to consider the LPP alternative as a second choice or, indeed, no choice at all.
61. When the Law Society established the dual pathways, it was estimated that there would be in the range of 400 candidates in each licensing cohort in a position to take advantage of the opportunity – essentially the number of candidates in the process who were estimated to be without an articling placement at the usual starting dates of placements (July/August). There was consideration that there could be as many as 600 candidates who might wish to take the LPP in its first year – made up of the 400 unplaced candidates from the immediate cohort and additional unplaced candidates from the previous two years of cohorts.
62. The LPP failed to interest a significant portion of licensing candidates who could have chosen this path. In the two years of the LPP, there have been approximately 220 candidates in each of the two years in the English program and 14 in the French program. As of September 6, 2016 registration numbers for 2016-2017 are 241 in the English LPP and 25 in the French LPP. In the previous two years, approximately 50 candidates between the two programs have also withdrawn within the first four weeks. The final number of registrants in each of the LPP programs will, therefore, not be known until the end of September.
63. As of the traditional starting dates of experiential learning (August) in each year of the pilot, and based on all candidates moving through the process<sup>20</sup> 15-18% of the members of the group have indicated they are still actively searching for articles or have not advised the Law Society of their choice of pathway, despite the LPP being available to them. By the spring of each of the licensing years, approximately 10% of the group are still searching or not selecting, with the others having found articling positions in the interim.
64. A declining percentage (38% in Year One and 27% in Year Two) of candidates in the LPP reported that it was their first choice for transitional experiential training. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school. These respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school educated colleagues.

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<sup>19</sup> The cohort is all candidates in a licensing year.

<sup>20</sup> Approximately 3,400 candidates during the three-year cycle.

65. In Year Two, most of the almost three-quarters (73%) that indicated they did not choose the LPP as their first choice for transitional experiential training had reasons that were related to three main themes:
- a. Candidates prefer articling because it is paid, longer in duration and providing more income than the LPP, thus “disadvantaging” those in the LPP.
  - b. Candidates prefer articling because it is “traditional,” and are wary of the “perception of the legal community,” which sees the LPP as the lower of a “two-tier” system of experiential training, creating a “stigma” around the LPP and its candidates, which may be “detrimental” in finding post-call employment.
  - c. Many respondents declared they could not find an articling placement, so enrolled in the LPP as a result.
66. In both evaluation cohorts, almost all (99%) of the respondents to this question, indicated that they had searched for an articling placement. In a Year Two LPP Focus Group there was consensus sentiment that candidates in the LPP were not in the “pipeline of law school, to summer at a big law firm, to Bay Street.”<sup>21</sup>
67. Some candidates in the LPP surveyed on the admission process to the LPP raised concerns that everyone who applied for admission into the LPP was admitted. While this method of entry may seem to be an equitable process, many candidates preferred a “vetting” process so not all applicants were admitted. The implication is that a non-competitive entrance structure feeds the potential for stigma for those in the process. This is discussed below, under Readiness for Licensing, because to the extent some LPP candidates have greater difficulty completing the licensing process it may feed the perception of second-tier.
68. The Evaluation noted second-tier concerns raised in focus groups as follows:
- Some of the LPP Focus Group participants expressed that this notion of stigma is linked to nomenclature, for example, “LPP candidate” versus “articling candidate,” when both could be “students at law.” In any case, there seems to be a difference between the two types of candidates in the eyes of the profession. In some instances, the notion that candidates in the LPP are still in school, because they attend the training course at Ryerson University or the University of Ottawa, contributes to a general feeling of inequality among the pathways. Also, some of the LPP Focus Group participants suggested that marketing and branding of the LPP and its association with Ryerson, which does not have a law school, is partially to

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<sup>21</sup> Evaluation, page 127.

blame for the sense of inequality among the pathways, contributing to the stigmatization of the LPP. However, survey data was not representative of the Focus Group comments about marketing or branding of the Ryerson LPP. On a small-scale but very real basis, a candidate in one of the Year One LPP Focus Groups who was completing a work placement in the same organization and at the same time as an articling candidate became visibly upset at the way s/he was treated at the placement organization compared to the articling candidate in terms of remuneration and responsibilities given.<sup>22</sup>

69. As noted above, there is only very limited data on post-licensing employment, but it indicates that there are proportionally more lawyers from the Articling Program than from the LPP who are practising law in their first year: 82% versus 67%; and 25% (41 lawyers) of the LPP new lawyers are practising as a Sole Practitioner, compared to 6% from the Articling Program (86 lawyers). Further, 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business* as compared to 48% of the new lawyers who articulated and are working in this capacity.
70. The issue is further exacerbated by another consideration. The Committee recognizes that demographic data depends upon candidates from the various demographic categories self-identifying. As such, what is drawn from the data is illustrative, but should not be presumed to be definitive of all or even the majority of equality-seeking candidates in each cohort. Nonetheless, the Committee has been concerned by the information it does have.
71. The LPP is serving proportionally more candidates than the Articling Program from each of the following demographic categories: internationally-educated, racialized, Age 40+ and, at least in Year One, Francophone. Significantly, many of these candidates, particularly those educated in Canada, are in the LPP by other than first choice. The details of this are set out above.
72. Part of the discussion during the Articling Task Force focused on concerns that certain demographic categories were over-represented among those candidates who were unable to secure articling jobs and that racialized and older candidates were particularly affected.
73. For some, the alternative pathway was seen as a possible way to,
  - a. provide a means for those unable to secure articles to nonetheless have the opportunity to become licensed; and

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<sup>22</sup> Evaluation, page 134.

- b. to develop a true choice for candidates with a different focus on practice skills, the development of readiness for small firm practice and the availability of work placements in non-traditional areas.
74. For others, however, creating an alternative pathway was viewed as a convenient way to remove pressure from an articling process that was discriminatory, by diverting scrutiny away from the issues. The Articling Task Force characterized the concerns as follows:
- Many of the submissions from equality-seeking groups concluded that given the issues surrounding placements for equality-seeking groups any proposal for alternative pathways that retained articling as an option would be problematic for a number of reasons. These include the possibility of creating two classes of lawyers with the preferred group being those who articulated, the difficulty of adding debt to those already bearing a burden from law school expenses, and the belief that by providing an alternative to articling the profession would be able to mask the uneven treatment of equality-seeking groups.<sup>23</sup>
75. If indeed a number of candidates from equality-seeking groups already experienced stigma at earlier stages of their legal education and training, the introduction of a program that could be seen as channeling them out of the mainstream would not necessarily assist.
76. A few members of the Committee have expressed concern that a focus on second-tier perception may not be fair to a program that is so new and that for all the considerations set out here has nonetheless garnered positive feedback in a number of quarters and has offered an alternative for a number of candidates.
77. The Committee is nonetheless of the view that all of these factors suggest that there are compelling reasons to be concerned that the LPP is perceived as second-tier, notwithstanding the positive feedback about the LPP that exists. Moreover, the Committee does not believe the depth of this attitude can be attributed to the fact that this is a pilot project and that if the LPP were made a permanent program that perception would disappear.
78. Would the perception of second-tier status change if the LPP were extended for up to two more years? The Committee cannot, of course, provide a definitive answer on this and a few of its members believe or ask whether, in addition to the reasons listed above, it is worth continuing for another year or two to find out if there is greater acceptance of this pathway in the legal community.

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<sup>23</sup> Pathways Report to Convocation. Paragraph 85.

79. However, the Committee does not think the evidence after two years of the pathway has shown signs that the perception of second-tier status is diminishing. The Committee accepts that there is little concrete evidence yet about law firm attitudes toward hiring the graduates, but the perceptions of candidates themselves reveals a deeply held view about which pathway is preferable. The Committee is strongly of the view that another year or two will not make the difference.

**c) Financial Sustainability of the LPP**

80. At the commencement of the pilot, all candidates in the licensing process, not just those in the LPP, were assessed an increased licensing fee of an additional \$1900 per candidate above the then fee, to support the LPP pathway of the pilot. This fee is currently supporting final registrations of approximately 230 licensing candidates per year.

81. Lawyer licensees are also supporting the cost of the LPP by contributing \$1 million annually as part of their licensing fees, although this amount has been allocated in years preceding the pilot project for other licensing-related matters.

82. Given the lower than expected numbers in the LPP, the per-candidate cost of the program is significantly greater than was expected. This also raises issues of fairness to all candidates and debt load issues. The majority of this pathway expenditure is currently being financed by all licensing candidates to support an average of fewer than 230 of their colleagues – or only 10% of each cohort.

83. While attention has properly been focused on the financial issues that affect LPP candidates (lower or no payment in work placements, lack of financial support for examination study, etc.), the fact remains that many non-LPP candidates who are subsidizing the LPP candidates are also under financial strain, carrying high debt loads, responsible for families, or receiving modest articling remuneration, etc. The Committee would be remiss if it did not consider the impact the alternative path has also had on those not actually in it, but supporting it.

84. While this approach was considered appropriate for the duration of the pilot project, the Committee questions whether it is sustainable or fair to extend the pilot or make the LPP permanent on this same basis. On the other hand, were the subsidy to be removed, based on the average number of candidates who have been in the LPP over the last two years, the unsubsidized cost per candidate in the LPP could be as high as \$17,000. This would lead to a variety of other issues around fairness:

- a. Is it fair to have a licensing process whose fees are determined by the pathway to licensing chosen, particularly if the choice is not voluntary?

- b. Given that there are fewer candidates in the French than the English LPP, making the cost per candidate higher, would this result in a further set of differential fees?
  - c. What would the impact of unsubsidized fees be on the number of candidates who can in fact afford the cost? If the number of candidates drops further the cost per candidate will inevitably rise.<sup>24</sup> Given the discussion above about the perception of second-tier status and the implications of that perception on the numbers within the LPP now, how do the two factors (second-tier and cost) affect the likelihood that the LPP is sustainable?
85. Financial sustainability is also raised by the inability of the program, at least to date, to secure more than approximately 70% paid work placements, with at least some of these whose payment is no more than a nominal stipend. The French LPP has offered paid placements in both years, but the significantly lower number of required work placements has likely made that more feasible. A number of articling candidates have also received paid time off to prepare for and write the licensing examinations, which appears not to have been available to LPP candidates.
86. These realities may have implications for candidate success if they are unable to properly support themselves. Moreover, they point to a systemic issue that the alternative pathway has to date been unable to overcome. While the alternative pathway may be accomplishing the objective of providing appropriate exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback and of addressing the five goals of transitional training, the external influences and contexts potentially undermine both the pathway and its candidates, through no fault of their own.
87. The Committee finds that these financial burdens and inequalities cannot help but have a significant impact on the long term sustainability of the LPP pathway. A few members of the Committee have suggested that an extension of the pilot would provide a further opportunity to investigate reduced costs for the LPP. In the Committee's overall view, however, the financial issues and the perceptions of second-tier and stigma, discussed above, make the LPP unsustainable. Deferring the decision for a year or two will not, in the Committee's view, likely change that reality.

#### **d) Readiness for Licensing**

88. On the basis of the perceptions of second-tier, the impact of this on equality-seeking groups and the financial realities of the LPP, the Committee is of the view that the pathway is not sustainable. But the Committee has also considered the issue of

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<sup>24</sup> If the proposed changes to the licensing examinations, discussed below, are approved, this would likely reduce the number of candidates eligible to enter the LPP.

readiness for licensing in the two pathways, as in its view this too is a relevant part of a discussion of the pilot.

89. It is important to contextualize this discussion with two points:
- a. The first is that there are hundreds and hundreds of candidates in both pathways from a broad array of experiences, demographic categories, educational background and countries of origin who will complete the licensing process in a single licensing period, without have to rewrite any examinations and with no other difficulties. By passing the licensing requirements, including the completion of the transitional experiential training requirements in both pathways, they will have demonstrated the entry-level competency required for licensing.
  - b. The second is that it is clear that neither pathway is intended to serve a licensing examination preparatory function. Indeed most candidates will have written the licensing examinations prior to beginning the transitional experiential training phase, although as will be seen below a number of them may have failed one or both examinations on the first attempt and will have to rewrite these examinations and pass them before being licensed. It is nonetheless important in the Committee's estimation to consider examination data to assess whether it provides any additional insight into either pathway and in particular the readiness of some candidates for licensing.
90. As mentioned above, securing an articling position is the result of a competitive process. By design and for valid reasons in the context of a pilot project, entrance to the LPP is guaranteed to anyone who applies, having completed their education in a Canadian common law school or obtained an NCA certificate. In the longer term, however, it is important to consider what this means for the sustainability of the LPP pathway, both in terms of the second-tier status issue and issues of candidate readiness for licensing.
91. The Evaluation has highlighted the following, that may speak to issues of readiness of some of the candidates to proceed with licensing:
- a. The vast majority (89% in Year One and 91% in Year Two) of the articling candidates graduated law school in same year as their enrollment in the licensing process, while about half (46% in Year One and 58% in Year Two) of the candidates in the LPP graduated in the same year as their enrollment in the licensing process. Further, about one-tenth (11% in Year One and 10% in Year Two) of the candidates in the LPP graduated from law school three years or more previous to their enrollment in the licensing process, compared to just about 1% of those in the Articling Program in both evaluation cohorts.



- b. Just under 60% of candidates in the LPP reported that they expect to be called to the Bar in their originating licensing year, compared to just over 90% of the candidates in the Articling Program. So, almost a third fewer candidates by proportion in the LPP than in the Articling Program planned to be called to the Bar during their originating licensing year.
  - c. As discussed above, a significant proportion of the LPP cohort is made up of NCA candidates, both those Canadian-born candidates who were educated in law schools outside of Canada and international candidates. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school, and these respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school graduate colleagues. Many of these candidates are completely outside the acculturation process that Canadian educated law students experience over three years of law school with its approach to legal education and exposure to legal networking and ability to observe Canadian legal practice in action. This applies to both internationally born and Canadian born NCA candidates.
92. In addition, the Committee has considered the two-year comparative data on licensing examination performance to round out the information available to it on which to inform its recommendation-making process. The current examinations in the licensing process are standardized objective assessments. They require candidates to study, comprehend, analyze and then apply their knowledge, skill, ability and judgment to situational test questions. The ability to successfully complete these objective assessments requires candidates to exhibit a functional practice capacity that meets the level of minimal competence at entry to the profession.
93. Candidates have three opportunities to pass the objective examinations. Some candidates will fail the first writing of examinations, but will go on to rewrite and be successful. However, the results on the first writing of examinations are an important indicator of capability in the licensing process requirements and readiness for the transitional experiential learning component of licensing and in future law practice.
94. Importantly, they are also the only statistic in the licensing process that is capable of being reliably compared as between LPP and articling candidate groups. The results on the first attempt at the licensing examinations provide insight into the performance capacity of the candidates, based on,

- a. legal education (Canadian law school or international law school through the NCA); and
- b. a further breakdown by the current dual pathways for transitional experiential training – the Articling Program or LPP.

95. The calculations for failure rates are based on all examination results of all candidates who wrote licensing examinations for the first time between March 2014 and March 2016 (7 sittings of both licensing examinations).

<b>Legal Education –<i>Canadian or International with NCA</i></b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All Licensing Process Candidates	18.7%
Canadian law school JD/LLB only	13.0%
NCA Certificate of Qualification only <sup>25</sup>	47.1%

<b>Pathway – <i>Articling or LPP</i></b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
Articling Candidates only	16.1%
LPP Candidates only	43.0%

96. Approximately 7% to 10% of the candidates in the same cohort who have attempted the examinations will also fail the second attempt at the licensing examinations.
97. Following the completion of the first year of the LPP (2014-15 licensing year commencing May 1, 2014 and ending April 30, 2015), and one full year thereafter, 20% of the LPP candidates have still not been called to the bar due either to an inability to pass the licensing examinations or having exhausted their three opportunities to do so. In the comparator non-LPP group, 10% of candidates from the same entry licensing year have yet to be called to the bar due to lack of success on the examinations.
98. The LPP candidate groups across the two years of the program to date have been comprised of 50% Canadian law school educated candidates, and 50% internationally-educated candidates.
99. The following chart provides the performance results of those LPP candidates who have completed a first sitting of the examinations, prior to commencing the LPP.

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<sup>25</sup>Of these, the failure rate of Canadian born candidates educated abroad on the first attempt of the licensing examinations is 35.4%.

100. The relative performance of the LPP candidates in the licensing process is significantly lower than the average performance for all candidates in licensing, with a 24.3% higher failure rate. In addition, Canadian law school educated LPP candidates, have a 26.4% higher failure rate than all Canadian law school educated candidates in the licensing process. Internationally-educated candidates in the LPP have a 9.1% higher failure rate than all internationally-educated candidates in the licensing process.

<b>Legal Education – LPP Candidates Only</b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All LPP Candidates	43.0%
Canadian law school JD/LLB LPP group	39.4%
NCA Certificate of Qualification LPP group	56.2%

101. The relative performance on the objective licensing examinations of the candidates who found articling placements also differs considerably depending upon the candidates’ legal education. Internationally-educated candidates who were in the Articling Program have a 27.4% greater failure rate than the Canadian-educated articling candidates.

<b>Legal Education – Articling Candidates Only</b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All Articling Candidates	16.1%
Canadian law school JD/LLB Articling group	10.0%
NCA Certificate of Qualification Articling group	37.4%

102. The Committee is aware that “readiness” of candidates for the licensing examinations may consist of a number of influencing factors, including time and opportunity to prepare, but in evaluating the dual pathways it is incumbent on the Committee, and in its view Convocation, to consider the possible link between examination performance, readiness of some candidates for licensing and the implications for the Pathways evaluation. In particular, this feeds into the issue of perception of second-tier status for those in the LPP, regardless of whether the candidate is part of the group that completes the licensing requirement with no difficulty.

**e) The Enhanced Articling Program**

103. As part of the pilot, the 10-month Articling Program was to continue with its administrative structure, but with an additional focus on developing measures designed to enable a more useful evaluation of the Articling Program merit at the end of the pilot. This was to include enhanced documentation for Articling Principals and candidates to complete during the articling period.

104. The focus of this aspect of articling enhancements has been 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 reporting and tracking mechanisms in the program were enhanced by adding behavioural ratings systems (BARS) for scoring purposes on the depth of exposure achieved. As well, there continues to be a requirement to complete a formal Training Plan. The Evaluation sets out an Overview to the Articling Program during the pilot.<sup>26</sup> The Evaluation's findings related to articling are discussed above. Articling continues to be the first choice of candidates by a wide margin. Like the LPP it provides exposure to experiential training competencies, growth in practical skills development and access to mentors and their feedback.

105. Complete competency coverage in articling placements has been difficult to achieve, especially in non-law firm settings where work contexts may be more limited in their focus.
106. While the respondents to the Articling Program Candidates' Survey were generally positive in their ratings of value for the Articling Program, they were not as positive as their colleagues who responded to the LPP Exit Surveys. The ratings for "of great value" actually dropped considerably from Year One (43%) to Year Two (32%) in the Articling Program. Seventy-five (75%) of articling candidates rated the Articling Program as "of good value" or "of great value" in Year One, but this number also dropped to 69% in Year Two.
107. Fairness of the articling placement search process and accessibility of the Articling Program continue to show the least satisfaction among candidates in the Articling pathway. An emergent theme uncovered from Articling Program Focus Groups in both evaluation cohorts about the articling placements search is that out-of province or out-of country candidates are disadvantaged in access to articling positions. Candidates also felt that the search process puts those who are interested in social justice/child protection work at a disadvantage, as there is a deficit of paid opportunities and effective job search resources. The over-representation of certain demographic categories of candidates in the LPP, particularly racialized and over 40 candidates, coupled with the data that the LPP was a second choice for most candidates overall also has ramifications for the Articling Program.
108. When the articling candidates were asked what is the least valuable aspect of the Articling Program, responses could be slotted into three main themes. Much of the commentary on least valuable was aimed at various pieces such as the "Experiential Training Plan," "RET" (Record of Experiential Training), the "PRP" (Professional Responsibility and Practice online modules) or "Ethics" course, and the "Bar Exams." Each of these topics was considered a "waste of time," "outdated" or "useless." The next emergent theme was the "administrative tasks" or "menial tasks" candidates felt they had to perform in their articling placement. The third emergent theme could be categorized as the "high costs," "low wages," and "long hours" respondents reported as representing

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<sup>26</sup> Evaluation, page 22.

“unrealistic standards” and the “stressful environment” to which they were subjected in the Articling Program.

109. In both Year One and Year Two, many comments were made to suggest that the Experiential Training Program should be more individualized to each articling experience. Respondents felt that it was too broad and many competencies were not applicable to the professional setting.
110. The three planning and performance statements that represent the enhancements to the Articling Program (*Preparation and filing of the Experiential Training Plan, Appraising the performance of the candidate on the five specific tasks related to the performance appraisal competencies, and Preparation and filing of the Record of Experiential Training in Articling Program*) were rated more positively in Year Two than in Year One. The perception that the new reporting requirements were a waste of time was fairly prevalent among the respondents to the Principals’ and candidates’ surveys in both years.
111. Importantly, however, from the Law Society’s perspective and interpreting the objective success of the enhancements, the following is significant. In Year One, there was a very good level of participation by Articling Principals in the performance appraisal of candidates, as over three-quarters (76%) of respondents reported it was their Articling Principal who completed the performance appraisal. In Year One, over 27% more Articling Principals were responsible for the respondents’ performance appraisal than were active in the training of the respondents. In Year Two, there was even more participation by Articling Principals in the performance appraisal of candidates, as over four-fifths (81%) of respondents reported it was their Articling Principal who completed the performance appraisal. In Year Two, over 26% more Principals were responsible for the respondents’ performance appraisal than were active in the training of the respondents.
112. Although the response rate in both years is too low (44%) to state this is representative of the entire population of placements, the requirement of performance management in a specified manner, regardless of the opinion of the measurement tools themselves, appears to have prompted increased commitment of Principals to participate in the appraisals.
113. As noted in the Evaluation, a lack of performance assessment commonalty makes a comparison of pathways effectiveness based on candidate performance in the defined areas of skills and tasks invalid. In other words, it is very difficult, if not impossible, under the current measurement model to make an apples to apples comparison between the two pathways of candidate performance in the competency areas. But the Evaluation notes that the *purpose* of the pathways delivery cannot be extricated from the delivery itself.
114. After two years of the pilot, data also suggests the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice, based on certain

preliminary metrics discussed in the Evaluation and summarized above. Articling also remains the preferred pathway for the vast majority of candidates.

115. Does this mean the Committee can be satisfied that the Articling Program is consistently administered across all placements or that all candidates are exposed to all the required competency areas or that the process is entirely fair and transparent? It does not and there still appears to be much about the Articling Program that requires further analysis going forward. Moreover, there are other structural and attitudinal aspects of articling that continue to be of concern, as discussed below.
116. The Committee is satisfied, however, that despite a lack of enthusiasm among the participants for the enhancements, they are providing useful information and appear to be changing certain patterns of behaviour. The enhanced Articling Program should remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.

**f) Recommendation Respecting the Pilot Project**

117. The Committee's mandate has been twofold:
  - a. to determine whether it has sufficient evidence to evaluate the pilot; and
  - b. to determine whether the pilot project should end, become permanent or result in a different approach.
118. For all the reasons discussed here, the Committee, based on the views of nine of the 14 members, recommends that the LPP pathway of the pilot end at the completion of Year Three (2016-17). Three members do not agree it should end, although as discussed above, they too recognize a number of issues that in their view should be explored with a view to addressing them during a further period of time. Two members abstain from making a recommendation. The Committee recommends that the enhanced Articling Program should remain and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.
119. The Committee acknowledges that were its mandate to simply evaluate the content of the programs, its recommendation respecting the LPP might well be different. Moreover, it is important to emphasize that candidates who have or are taking the LPP and are successfully licensed are equally qualified to their colleagues who articulated.
120. If Convocation approves the Committee's recommendation respecting ending the LPP at the conclusion of the pilot, the licensing fee per candidate going forward will be reduced. The Committee does not suggest that it will simply revert to what it was before the pilot began as there are other considerations, including the examination costs relating to the

proposals discussed below, to take into account. But it does anticipate a lower fee, further details of which would be provided in the coming months.

### **Strategies Going Forward**

121. The Committee has considered strategies for moving forward following the end of the pilot. In particular, it has asked what lessons could be taken from the pilot? What strategies might be explored to capture and retain many of the valuable resources, advancements, infrastructure and innovations that have revealed themselves and to address the continued issues that affect components of the Articling Program?
122. It is clear to the Committee that many of the issues that prompted the pilot remain. This fact would not justify continuing the LPP, which in its view is not sustainable, but it does require that the Law Society continue to examine articling as the remaining transitional experiential training system.
123. The Committee has considered a number of recommendations in the following areas:
  - a. Continued use of LPP program content, networks, professional placements etc. in other contexts so that the invaluable resources are not lost.
  - b. Consideration of the National Committee on Accreditation (NCA) process, readiness for licensing issues and exploration of bridging programs for internationally-educated candidates.
  - c. Attention to issues of fairness, including the Articling Program's impact on equality-seeking candidates and the hiring process, accessibility and objectivity.

#### **a) LPP Legacy**

124. As discussed earlier in this report, each of the English and French LPP have been developed to address their context, size and setting. In the short life of the pilot project each has integrated meaningful program content with impressive physical and human resources and networks of professionals who have supported and assisted the programs and acted as supervisors, instructors and mentors.
125. From the outset the French LPP has developed a particular focus on the issues surrounding the enhancement and broadening of ability to offer quality legal services in French across the province and to facilitate the development of mentors and role models within the Francophone bar. Based on the recognition of linguistic dualism, the program developers and the Law Society understood from the outset that the French LPP skills content should be developed to support these goals.

126. An Advisory Board was established to ensure that the French LPP design and implementation would be undertaken in a manner that would result in candidates learning to respond to the needs of the Franco-Ontarian community. As a result of a collaborative and focused developmental approach with the University of Ottawa, the program designers and a community of lawyers, judges, advisors, lecturers, mentors and work placement supervisors, the LPP is impressive.
127. Despite the Committee's recommendation to end the LPP, it considers it essential that effort be made to adapt components of the French LPP to other contexts. In the Committee's view, for example, there is an invaluable opportunity for the Law Society, the University of Ottawa, the Advisory Board and others to come together to explore possible ways to continue to build on the groundwork laid by the French LPP.
128. Similarly, the English LPP has developed a rigorous program with valuable content and developed networks of lawyers engaged with the process. It has successfully found work placements for hundreds of candidates, as has the French LPP for a smaller number. Most of the placements were with those who had not previously taken an articling candidate. The Law Society should undertake to pursue these relationships and develop innovative ways to enhance the available articling positions from these sources wherever appropriate.
129. As the Law Society moves forward with its Coach and Advisor Initiative, which Convocation approved in January 2016, it should integrate relevant human and other resources from both the English and French LPP.

#### **b) Internationally-Educated Candidates**

130. The Federation of Law Societies of Canada administers the National Committee on Accreditation ("NCA") process for determination of equivalency of international credentials. In the discussion above respecting readiness for licensing, the Committee has observed that for a proportion of internationally-educated candidates, it appears more challenging to meet the licensing requirements than for those educated in Canadian law schools. In particular, passage of the NCA examinations does not equate, in many cases, to ability to demonstrate the competency required in the Law Society's licensing examinations.
131. The provincial and territorial law societies have recently agreed to an in-depth review of the NCA assessment process. This analysis must consider aligning the NCA assessment process for competence and capacity in licensing, rather than to the competence equivalencies comparable to those expected at the completion of a Canadian law degree, as is currently the case.
132. It is in the best interest of the public and the internationally-educated candidates to be presented with an appropriately configured equivalence assessment prior to applying to be licensed in Ontario.



133. Given that a significant proportion of NCA candidates seek admission to the Law Society and given the information that is available on examination licensing results, the Committee urges the Law Society's active engagement with the NCA review process.
134. The Committee is also of the view that the Evaluation reveals other challenges that internationally-educated candidates face by having been educated outside the Ontario context and not having had the opportunities that exposure to that context offers.
135. The Law Society is committed to a vibrant, competent and diverse profession that in turn supports the diversity of the Ontario population. For this to be feasible, in addition to an NCA assessment process that accomplishes what is set out above, internationally-educated candidates must have,
- a. reasonable expectations about their ability to succeed in the Ontario legal market; and
  - b. be assisted to meet with success through a combination of supports, resources and information exchange that will provide an opportunity to integrate into the Canadian landscape and the ability to prepare to be successful in Ontario's lawyer licensing process.
136. The Law Society has no ability to address issues related to the level of preparedness for licensing that international law degrees provide, but it must have a role in managing expectations of candidates related to what is necessary to succeed in the licensing process and the Ontario market. Indeed management of expectations is important for all candidates wherever educated. As the market for lawyers continues to change and as pressures on the legal practice model continue, law school candidates and internationally-educated candidates should be provided with meaningful information about the nature of that market as early as possible, so they can make meaningful choices.
137. The LPP has developed a rigorous program whose content may serve other possible purposes, including being utilized in a bridging program for internationally-educated candidates. The Law Society should explore possible approaches to voluntary and robust bridging programs for internationally-educated candidates to enhance their readiness for licensing in Ontario.

### **c) The Articling Program**

138. Despite the Committee's recommendations respecting the LPP, it continues to have concerns with aspects of the Articling Program, some of which the pilot has reinforced, as set out above. These relate to fairness, including the impact on equality-seeking groups and the hiring process, consistency and coverage of required competencies, working conditions and the dearth of certain types of articling positions, particularly in the field of social justice. Because of low take-up of the LPP, the alternative pathway was

unable to convincingly address placement shortages. Post LPP shortages will continue to be an issue.

139. As stated above, the Committee remains concerned about the data that suggests that candidates from equality-seeking groups are continuing to encounter difficulty accessing the Articling Program.<sup>27</sup> Competent candidates ready for licensing must have fair access to the licensing process, including transitional experiential training opportunities.
140. The Law Society must also continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, accessibility and objectivity.
141. The Law Society is committed to serving a diverse Ontario public and to advancing a diverse profession that meets that public's varied needs and enhances access to justice in under-serviced communities. This is important not only for licensees, but also for candidates for licensing as they undergo transitional experiential training. The Committee recommends that within the transitional experiential training context, the Law Society explore the development of a fund to be used to support these priorities. The exploration will include an analysis of possible sources for funding, such as Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-serviced communities and appropriate job locations.

## Licensing Process Enhancements

### a) Licensing Examinations

142. The April 2016 PD&C Report to Convocation on licensing process enhancements addressed issues related to the examination process, the administrative rules for the licensing process and procedural components of the articling requirements. Convocation determined in May that consideration of the recommendations should occur at the same time as those related to the pilot, with the Committee examining those recommendations in that larger context.
143. The Committee has completed this work and has adapted some of its earlier recommendations and reiterates others. In both cases it has benefited from additional information and data that has emerged from the Pathways evaluation, in particular relating to readiness for the licensing process.

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<sup>27</sup> The Evaluation notes: "Generally speaking, the Articling Program and LPP are comparably similar in: (1) proportion of males and females, though the Articling Program has more females, and the LPP more males; (2) English and French; (3) Aboriginal; (4) persons with a disability; and (5) LGBT. However, there are a greater proportion of internationally-educated, *Racialized*, and *Age 40+* candidates are in the LPP in each of the evaluation cohorts. The Year Two evaluation cohort has decreased proportions of French candidates and those self-identifying as Francophone in the LPP, where in Year One, the proportions of such were greater in the LPP. We see in the Year Two evaluation cohort an equal proportion of French in each pathway and a greater proportion of reported Francophones in the Articling Program."

144. The goal of the Law Society's lawyer licensing process is to license those who have demonstrated entry-level competence, by satisfying established requirements. The Law Society's mandate to regulate in the public interest begins with the licensing process. Unlike law school education, licensing is primarily a regulatory process, protecting the public by admitting only those who demonstrate readiness. The process for assessing readiness must be fair and defensible, but the Law Society's regulatory priority of competence-based licensing is clear.
145. The Committee's April 2016 Report emphasizes the important role that enhanced licensing standards and competence play in Convocation's Strategic Priority #1, also discussed at the outset of this Report.
146. 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 can be enhanced by experiential learning and exposure to the Canadian legal practice context.
147. Licensing examinations have a unique place in the continuum as the critical point-in-time assessment by which the Law Society determines who has met minimum entry requirements for licensure.
148. An examination of the Law Society's licensing assessment process over a number of years reveals an evolutionary approach to assessment methodology and formats. The recommendations in the April 2016 Report continue that approach, in keeping with a

commitment to a standards-based approach that has been evolving over the last decade and is fair, validated, defensible and transparent.

149. On December 5, 2003 Convocation approved the recommendations of the Task Force on the Continuum of Legal Education for a competence-based licensing regime for lawyers, to begin in the spring of 2006. Under this regime, lawyer candidates were to be required to meet pre-determined standards of competence in substantive and procedural law and professional responsibility and ethics, articulated as “competencies” and defined as a “knowledge, skill, ability, attitude or judgment required for entry-level practice.”
150. The development of the new Barrister and Solicitor examinations was based on competencies developed in an extensive consultation with the profession to identify the concepts, principles and skills necessary for competent entry to the legal profession. This was a very different approach to examinations than the Law Society had previously undertaken and required an intense development process. The process took place over several months in 2004 and 2005 and involved hundreds of practitioners. The new summative examinations were introduced in 2006 with candidates receiving self-study materials, sample questions and other information.
151. By retaining a barrister and a solicitor categorization in examinations at that time, continuity with the earlier substantive subject matter examinations was retained to enable users to become familiar with a new assessment approach. Moreover, given that the competencies development process was new, it was useful to retain a somewhat familiar frame of reference with which practitioners could work to assist in the development process.
152. The current Barrister and Solicitor Examinations have been in place for a decade. The practitioner subject matter experts work in conjunction with the Law Society examination experts to continue to refine and hone the examination process and continue the evolution of effective assessment. They are an integral and increasingly sophisticated part of the item-writing process for examinations.
153. From the Committee’s perspective, if the Law Society’s commitment to Strategic Priority #1 is to be meaningful, the point-in-time assessment of candidates must be open to new development and to learning from experiences over years of the licensing process. The April 2016 Report’s recommendation for the development of the Practice and Procedure Examination (PPE) reflects a commitment to refinement of the approach.
154. 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 the assessment approach. 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.

155. The Committee is aware of a concern expressed by some stakeholders that by moving from two examinations to one the rigour of the assessment process is being diminished. The Committee is satisfied, however, that a refined assessment will be even more sophisticated and better assess relevant material. In its view, it is incorrect to assume that because two examinations lasted a total of 14 hours and one examination will last perhaps six or seven hours that this means the assessment is too simple and less effective. The Committee notes that the Law Society's move from eight substantive law examinations in 2006 to the two Barrister and Solicitor Examinations has not shown any evidence of a loss of rigour.
156. The April 2016 Report also recommends a second and new examination to be known as the Practice Skills Examination (PSE). The PSE is specifically intended to measure the candidates' capability to apply their practice and analysis skills following their completion of transitional experiential training, during which time they should have been exposed to and received further opportunity to develop those skills.
157. The development of the PSE reflects a growing understanding within law schools and among law students and the profession of the importance of lawyers being able to demonstrate skills-based competence from the outset of their careers, albeit at an entry-level. The Law Society's competence profile and the Federation of Law Societies of Canada's National Admissions Standards Project National Entry-Level Competence Profile include appropriate skills and tasks.
158. Candidates will successfully complete the transitional experiential training requirement before attempting the PSE. Its purpose will be to assess whether candidates have acquired the skills to complete complex multi-dimensional legal work, including,
  - a. ability in problem-solving;
  - b. aptitude and decision-making;
  - c. identification and resolution of ethical dilemmas;
  - d. legal research;
  - e. written communication;
  - f. client communication; and
  - g. organization and management of legal issues and tasks.
159. The examinations, as proposed, assess (a) a point of entry to the licensing process with the PPE and (b) a post-transitional experiential training point in time assessment with the PSE.

160. 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.
161. 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.
162. Licensing examinations are, and should be undertakings of high significance. They attest to a candidate's competence to enter the profession and begin to provide services to the public of Ontario. They send a message to the public that someone who has successfully completed the licensing process is competent. As such they should be rigorous and reflect state of the art assessment techniques.
163. As is currently the case for examination preparation, candidates will receive a comprehensive package of materials for the PPE for study purposes and an examination preparation package that will include practice examinations and supporting explanations. Similarly for the PSE, candidates will receive a comprehensive package of materials for study and preparation purposes, including sample examination questions and responses.
164. Both the PPE and the PSE will be introduced for the 2018-2019 licensing year.
165. Funding respecting the licensing examination process will be integrated with the annual budgeting process. No funding is required for the balance of the 2016 budget year. An additional examination writing session to enable the opportunity to rewrite and be prepared to begin the transitional experiential learning component will be included in the current operational expenses and will not require any additional funding. Given the complexity of the practice skills examination (PSE) development will begin immediately. 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.

**b) Licensing Process Framework Enhancements**

166. 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.
167. The proposed licensing process framework enhancements focus on the number of times a candidate will be eligible to sit each of the PPE and PSE licensing examinations and the length of time within which the candidate must complete the entire process. They

also address a stepped approach to the licensing requirement, based on successful completion of each stage.

168. Under the current approach a candidate is eligible to write each examination up to three times and has three years complete the entire licensing process. The Committee is of the view that these requirements should remain in place. 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. All these requirements are subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the Law Society's *Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*.
169. 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. The current and proposed approach, all subject to the duty to accommodate, balance these considerations.
170. The Committee further recommends that successful completion of each stage of the licensing process should be a prerequisite to moving to the next stage of the licensing process. This means that beginning in the 2018-19 licensing year successful completion of the PPE should be a prerequisite to moving to the next stage of the licensing process, namely transitional experiential training.
171. The current approach, which entitles candidates to advance to the transitional experiential training 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 discussion above under Readiness for Licensing has further solidified the Committee's views that successful completion of each licensing examination should be a foundation for the steps that follow.
172. Currently in the licensing process there are candidates who complete transitional experiential training but have yet to, and may never, pass the licensing examinations. The profession has indicated, and the Law Society concurs, that all candidates should be capable of successfully addressing entry-level practice and procedural issues before they embark upon their transitional experiential training activities.
173. This new system will require candidates for licensing to demonstrate the capability to become a lawyer qualified to practice through a process of assessment that builds upon the necessary knowledge, skills, abilities and judgment expected of an entry-level practitioner in a sequential process.

174. To assist candidates' ability to move forward through the process there will be an additional sitting of the examination in the time period after the first writing, but before the traditional period that transitional experiential training begins. This will enable those who fail on the first attempt an opportunity to write again and is a new component to facilitate movement through the process.
175. This new approach to the PPE validates Convocation's commitment to competence by viewing the licensing requirements as a staged process, with a prerequisite of successful completion at each stage. Given the importance of licensing based on competence, this is an appropriate approach for Convocation to approve.

**c) Articling and Law School Experiential Learning**

176. The April 2016 Report recommended an adjustment to the length of the articling requirement from 10 months to nine months and approval of a developmental process to permit up to a three-month abridgment of articling, reducing the placement to six months in length, available in circumstances in which prior skills training has been attained in a program the Law Society accredits.
177. This recommendation was not intended to introduce a mandatory requirement or shift the responsibility for transitional training onto the law schools. Moreover, there was no requirement that firms, employers, law schools or candidates integrate or pursue this credit. Indeed there would likely be reasons related to institutions' mandates or employer or candidate perception of their unique needs that would militate against using this option and this is entirely valid.
178. The Committee also understands that skills training at law schools is a significant investment of time, expertise, resources and an area that requires particularized teaching expertise. Law schools have priorities and directions that determine where they best devote their resources and nothing in the proposal would interfere with this. Most schools already have a range of skills programs that under the recommendation they might or might not wish to consider for accreditation. Equally, Articling Principals would be free to agree to or reject involvement as they design their articling program based upon their own needs and their training priorities for their students.
179. The place of skills training or experience in the pre-licensing context has been evolving steadily since the late 1970s and early 1980s when many considered it could have no role to play in the development of lawyers, except in the articling context. Few accept that position today, but each stage on the road to licensing, beginning in law school defines how skills training fits its priorities. The proposal in the April 2016 Report was not intended to hamstring any stage's autonomy, but rather to expand the conversation and integrate flexibility into the process.



180. However, since it introduced the recommendation the Committee has undertaken the evaluation of the pilot, which in its view broadens the scope of the discussions around articling, as discussed in the previous sections of this report.
181. Moreover, on reflection, the Committee agrees that without a more serious collaborative discussion with a variety of stakeholders, a definite recommendation is premature. It does however believe that there is merit to further exploration of the idea. It recommends that the Law Society explore a process to permit up to a three-month abridgment of articling where prior skills training has been attained in a program the Law Society accredits. Among other factors, the exploration should consider the possible risks and benefits of such an approach and the nature of accreditation criteria for eligible programs. The exploration should include discussions with interested stakeholders and the Committee should report to Convocation on the outcome of this exploration. In the interim, the 10-month length of the articling requirement should remain unchanged.

**d) Articling Exemption for Internationally-Educated Candidates**

182. Currently, the following are the provisions related to exemptions and abridgments from the articling requirement, applicable to internationally-educated candidates:
- a. Internationally-educated candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day program on professional conduct and practice management as a mandatory component of the licensing process.
  - b. All other internationally-educated lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.
183. Pursuant to the April 2016 Report, the Committee recommended the end of the exemption in subparagraph a. As noted in that Report, however, a number of Committee members expressed the different view that there may be 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. The Committee has also considered the external feedback it received, which addressed both the substance of the recommendation and whether, if adopted, it would apply to those currently in the licensing process.
184. In further considering the issue, the Committee has examined the background to the 2008 recommendations that introduced the current provisions. Prior to 2008, seven years of previous experience was the threshold for consideration of an exemption. The Committee has also examined Law Society data, set out below, on the actual practice

experience of those who have received an exemption because they currently meet the 10 month threshold.

**Practice Experience of Exempted Candidates  
May 2013 – May 2016**

Jurisdiction	Average Experience (Years)	Experience Midpoint (Median in Years)	Most Common Length of Experience (Mode in Years)
<b>USA (181)</b>	6.32	4.39	5
<b>India (112)</b>	7.39	5.19	2 and 3
<b>England and Wales (36)</b>	5.68	5.59	N/A
<b>Nigeria (32)</b>	12.5	11.2	N/A
<b>Pakistan (23)</b>	5.12	4.5	N/A
<b>Australia (10)</b>	2.52	2.25	N/A
<b>TOTAL</b>	<b>6.58</b>	<b>4.86</b>	<b>N/A</b>

Jurisdiction	Years of Practice Experience May 2013 - May 2016							
	1 to 4	4 to 7	7 to 10	10 to 15	15 to 20	20 to 25	25 to 30	30+
<b>USA (181)</b>	93	48	16	13	4	3	2	2
<b>India (112)</b>	45	22	17	17	9	0	2	0
<b>England/Wales (36)</b>	19	5	8	3	1	0	0	0
<b>Nigeria (36)</b>	10	6	8	4	6	1	0	1
<b>Pakistan (25)</b>	11	6	2	3	2	1	0	0
<b>Australia (14)</b>	11	3	0	0	0	0	0	0
<b>TOTAL (404)</b>	<b>189</b>	<b>90</b>	<b>51</b>	<b>40</b>	<b>22</b>	<b>5</b>	<b>4</b>	<b>3</b>

185. The Law Society’s experience with internationally-educated candidates from locations such as India, Pakistan, Nigeria and other centres in the African continent and Indian sub-continent has been that many refuse a full exemption, even though they have been assessed to be eligible for one, opting instead for an abridgment of a few months. These candidates prefer to find an articling placement and gain Ontario experience prior to being licensed, for reasons including personal development and financial considerations, but predominantly reasons related to making connections in the legal market through a job search and placement process. Overall, the number of requests for exemptions and abridgments from internationally-educated candidates has decreased by 20% annually over the last two years.

186. Some experiential training in the Canadian context to enhance competence and offer greater assurance of transitional experiential training that contributes to the candidates' acculturation to the Canadian legal context is, in the Committee's view, helpful. At the same time it recognizes that removing any possibility for an exemption may not be necessary or, indeed, fair. The Committee recommends amending the exemption threshold for those licensed in a common law jurisdiction from 10 months practice experience that addresses the Law Society's articling competencies to three years, to provide some flexibility on this issue. The Law Society will continue to track the level of experience of internationally-educated candidates, examination performance data discussed above and information that will be gleaned from discussions and exploration of bridging programs to determine whether the exemption recommendation is effective.
187. If the new recommendation is approved by Convocation, it would apply on a going forward basis, beginning with the licensing year 2017-2018.

## **Conclusion**

188. The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest. In respect of lawyer licensing, its Strategic Priority #1 states that the Law Society will focus on enhancing licensing standards and requirements and their assessment for lawyers. At the same time the Law Society seeks to ensure a process that is fair, accessible and objective.
189. The Pathways Pilot Project has been an important part of the efforts to examine and address licensing requirements and fairness. The evaluation of the pilot has revealed the complexity of the issues and the difficulties inherent in determining the way forward.
190. As the Committee has stated above, all its members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.
191. The information underlying and supporting this Report is critically important and the Committee urges that it continue to be used to contribute to the ongoing analysis of and refinements to the licensing process that will continue to be sought, developed and implemented.