



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

Report to Convocation November 09, 2016

Professional Development & Competence Committee

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Purpose of Report: Decision

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EXECUTIVE SUMMARY

On September 22, 2016, the PD&C Committee provided its Report on the Pathways Pilot Project Evaluation and Proposed Enhancements to the Licensing Process (“September 22 Report”) to Convocation for information. Convocation was to consider the Report on November 9, 2016. The Report made a number of unanimous recommendations to Convocation. The recommendation to end the Law Practice Program (“LPP”) component of the Pathways Pilot Project at the completion of three years reflected a majority view, with a number of Committee members expressing dissent.

The Law Society invited written comments/submissions on the Report and recommendations until October 19, 2016. It received 93 public submissions from individuals, plus 104 additional individual comments linked to a petition, and 32 from organizations, associations, legal clinics, law schools and others. The submissions are detailed and thoughtful and provide important perspectives on the issues discussed in the Committee’s September 22 Report. The majority of them address the Committee’s recommendation respecting the LPP. There are, as well, a number of submissions that address the proposed enhancements to the licensing process.

This supplementary Committee Report for Convocation provides an overview to the seven main themes that have emerged from the submissions and sets out the reasons for the revised recommendations put forward by a majority of the Committee. Regardless of the submissions’ specific position on Pathways, collectively they reflect that views on the issues have undergone and continue to undergo change even since 2012 and that the debate on how to find a sustainable resolution for licensing is intense.

In the course of its deliberations leading to the recommendations in its September 22 Report, the members of the Committee identified and discussed these same themes. The Committee’s own diversity of perspectives, expressed in that Report in majority and minority views, reflects the complexity of the issues.

Some of the Committee continues to be concerned that second-tier perceptions, financial sustainability and readiness for licensing are serious concerns when considering the LPP’s long-term viability. As discussed in this Report, a minority of the Committee remains convinced that extending the pilot to continue the LPP is a serious error not justified by the evidence on which the Committee based its original recommendation. That view has been echoed in some of the submissions.

The majority of the members of the Committee, however, has reflected further on the many submissions that speak to other options for approaching concerns about the LPP and caution the Law Society about ending it at too early a stage in the process. As noted above, some of those members had originally expressed views similar to those outlined in the submissions.

Consultation is a meaningful, not pro forma, process and the Committee has taken what it has heard into account in formulating modified recommendations to Convocation.

The comments received in response to the Committee’s September 22 Report have also raised a number of important questions about licensing that go beyond the LPP. In this Report the Committee outlines what may be attitudinal shifts among stakeholders that are important to take into account.

There also appears to be interest from a range of perspectives for a broader analysis to be undertaken of the licensing process, which Pathways may have engendered. In the Committee’s view, the submissions demonstrate that the profession will support the Law Society undertaking such a process. The Committee is unanimous in its view that this analysis should be undertaken, but three members believe that it should be based on a commitment to transitional training as a foundation of the analysis. The rest of the Committee is of the view that if the purpose of the analysis is to make long-term recommendations for an appropriate, sustainable Law Society licensing process, in the interest of fairness the discussion should not be circumscribed.

All but two members of the Committee recommend that to enable this longer-term analysis, the current Pathways Pilot Project (both the LPP and articling enhancements) should be extended. In the Committee's view, that extension should be for two years, specifically the 2017-2018 and 2018-2019 licensing years, to enable the gathering of more data on the LPP and articling and the larger analysis of licensing.

The majority of the Committee recommends that to facilitate the discussion and development of a long-term plan, the recommendations in its September 22 Report respecting the exploration of initiatives for a post-LPP environment (recommendations in Paragraph 3) and the enhancements to the licensing process (recommendations in Paragraph 4) should not be considered at this time. Two members believe implementation of components of those recommendation should begin now, but the rest of the Committee is of the view that all these recommendations need to be considered in the context of the broader analysis of the licensing process, rather than in isolation.

Finally, the Committee has considered the importance a carefully developed process will play in the success of the analysis, including engaging relevant stakeholders throughout. It recommends that in the first quarter of 2017 it provide Convocation with a report identifying the issues that should be the focus of the analysis and a proposed plan to address them, a proposal for an engagement strategy and a budget to address resource requirements for the analysis.

Motion

1. **That Convocation approve an extension of the current Pathways Pilot Project for two years, specifically the 2017-2018 and 2018-2019 licensing years.**
2. **That, at this time, Convocation withdraw consideration of the recommendations at paragraphs 3 and 4 of the September 22, 2016 PD&C Committee Report to Convocation.**
3. **That Convocation direct that an analysis of the licensing process be undertaken for the purpose of making long-term recommendations for an appropriate, sustainable Law Society licensing process.**
4. **That in the first quarter of 2017, the PD&C Committee provide Convocation with,**
 - a. **a report identifying the issues that should be the focus of the analysis and a proposed plan to address them;**
 - b. **a proposal for an engagement strategy that will involve relevant stakeholders throughout the process; and**
 - c. **a budget that will address resource requirements, including staffing and research resources.**

Pathways Evaluation and Enhancements to Licensing Process Submissions

5. On September 22, 2016, the PD&C Committee provided its Report on the Pathways Pilot Project Evaluation and Proposed Enhancements to the Licensing Process (“September 22 Report”) to Convocation for information. Convocation was to consider the Report on November 9, 2016.
6. The Report made a number of unanimous recommendations to Convocation. The recommendation to end the Law Practice Program (“LPP”) component of the Pathways Pilot Project at the completion of three years reflected a majority view, with a number of Committee members expressing dissent.
7. The Law Society invited written comments/submissions on the September 22 Report and recommendations until October 19, 2016. It received 93 public submissions¹ from individuals, plus 104 additional individual comments linked to a petition, and 32 from organizations, associations, clinics, law schools and others. The submissions from individuals, including the petition, are available on the Law Society’s website at <http://www.lsuc.on.ca/uploadedFiles/Pathways-Submissions-Evaluations-Individuals.pdf>. The submissions from organizations are available on the Law Society website at

¹ Nine anonymous submissions were given to the Committee, but not provided to Convocation or made public.

<http://www.lsuc.on.ca/uploadedFiles/Pathways-Submissions-Evaluations-Organizations.pdf>.

8. In addition, the Treasurer and the Chair or Vice-Chairs of the Committee heard comments from those attending the Ontario Bar Association Council meeting (September 24) the Treasurer's Liaison Group meeting (September 26) and the Early Careers and Law Student Roundtable meeting (September 27). The Chair is also scheduled to participate at the Federation of Ontario Law Associations meeting on November 4, 2016.
9. The Committee has also reviewed numerous media and other commentaries respecting the Report and recommendations.
10. Concerns are expressed in a number of submissions on the brevity of the consultation period and the implications for providing detailed commentary on all recommendations. The Committee acknowledges this and recognizes that the timing necessitated by Convocation having to consider the issue before the end of 2016 has affected the length of time available for consideration of the Committee's September 22 Report. The Committee also recognizes that there may be a number of stakeholders who were unable to respond during the comment period. Despite this, the submissions are numerous, detailed and thoughtful and provide important perspectives on the issues raised. Moreover, the length of the consultation should in no way be seen as reflecting a lack of interest on the Law Society's part in what those with an interest in the issues have to say. On the contrary, the Committee has considered carefully what it has heard. This Report and the public availability of the submissions ensure that Convocation, the public and stakeholders will be well-advised of what the consultation process revealed.
11. This supplementary Committee Report provides an overview to the seven main themes that have emerged from the submissions and sets out the reasons for the revised recommendations put forward by a majority of the Committee. Where the Committee is not unanimous, dissenting views are outlined below.
12. In the submissions, some organizations note that they were unable to reach consensus on one or more recommendations, but set out the issues underlying the differing views of their members. They also raise other points that they consider relevant to the issues under consideration. A number of the comments and suggestions, while important to reflect upon, may or may not be viable, may be based on considerations outside the Law Society's mandate or may require much more consideration to determine whether they could or should be taken further.
13. Although each submission reveals certain nuanced views that are specific to the responding individual's experience or the organization's mandate, for the purposes of the Committee's assessment of what it has heard, seven recurrent themes have emerged across a broad spectrum of the submissions, as outlined below.
14. In the course of its deliberations leading to the recommendations in its September 22 Report, the members of the Committee identified and discussed these same themes.

The Committee's own diversity of perspectives, expressed in that Report as majority and minority views, reflects the complexity of the issues.

Pathways Evaluation - Submissions

15. The seven main themes that have emerged from the submissions are as follows:
- a. **There is insufficient data to allow for conclusions to be made about the LPP at this time.** The submissions highlight that in effect the evaluation is based on only two years of data and, for one aspect,² one year. This has not even allowed for an evaluation of the pilot's three years. The submissions suggest the need for more time and advocate greater caution in drawing conclusions too soon. They suggest that given the significant shift that the creation of the LPP effected in the transitional training environment, it should not be surprising that the initial limited data reveals concerns. Many of the submissions suggest that given that it is agreed that the LPP is, itself, a good transitional training program, more time should be afforded to the program to assess its sustainability. The financial investment made in the program also justifies more opportunity to evaluate it. Moreover, a number of submissions suggest it is essential to conduct a more robust public consultation. The reasons for the contrast between the candidates in the LPP and those in articling, particularly as they relate to equality-seeking groups, must be more fully explored for meaningful analysis and solutions.

There are numerous comments from those lawyers who have supervised or mentored LPP candidates and been impressed with both the training program and the candidates. They question ending the program based on the data available and the emphasis placed on that data, rather than the strength of the program. The view of these mentors is that the program's focus on practical training and small firm contexts, is invaluable. It is too soon to say that it will not be accepted or viable in the long term. Time is needed to gather more data that addresses the value and sustainability of the program generally and in terms of the goals it was intended to serve. Some note their surprise that their views have not been canvassed in the process of collecting data, given that articling principals' have.

Some comments highlight that it is also too soon to determine whether the LPP has had an effect on the manner in which new licensees are practising.

While the majority of comments have focused on the four-month course component, there have also been a number of submissions from those who have taken candidates as work placements and from the candidates themselves. These have reflected on the quality of the candidates, the diverse settings in which they have worked (legal aid clinics, private practices, corporate settings) and on the

² Post-licensing data collection for the second year of the LPP will be done in the spring of 2017.

ability of those who could not offer a 10 month articling job, being able to offer a shorter work placement. Some of these have commented that as social justice venues with limited budgets they have at least been able to offer a four-month placement.

One submission also suggests that the Law Society should attempt to analyze and explain the underlying reasons for the discrepancies between LPP candidates' and articling candidates' results relating to (1) the pass rate for first attempts at the licensing exams, and (2) first year employment opportunities, and for the discrepancy between Canadian law school educated candidates and non-Canadian law school educated candidates. There may be reasons unrelated to competence for failure rates.

- b. **It is defeatist and unwise to end a new program because of perceived second-tier status.** Many submissions suggest that it should not have been surprising to anyone that in the brief period the LPP has been in place second-tier status has been an issue. Indeed, it may be more appropriate to celebrate how much has been accomplished in such a brief period. Some submissions suggest that insufficient effort has been made at many levels, including leadership levels, to alter what was a pre-conceived view of the LPP. The Law Society and others should make a concerted effort to change the perception before it is accepted as fatal. This is particularly true since the September 22 Report concludes that the LPP is equal to, and in some ways better than, articling as transitional training. Accordingly, the Law Society needs to convince the profession and others of this, rather than ending the LPP. Some submissions suggest that the time has come to consider whether, in fact, it is articling that should be discontinued. Some also comment that the traditional articling system has itself created the second-tier sentiment.

One comment points to the fact that the LPP is not presented as a viable transitional training option early enough in the student-to-lawyer pipeline. Its work placements are not recruited for during the summer or articling student recruitment drives that occur during law school, meaning students cannot explore the LPP as an option until much later. This ultimately makes the program appear less desirable because it does not allow students to solidify plans for the early development of their career.

Others indicate that even if the LPP remains a second-tier option, it should be left to the candidates to determine their entry route. Even if it is second-tier, those who took it and are now licensed are happy to have their careers. Further, some suggest that if it is preferable to have a single pathway, it may still nonetheless be premature to end the LPP before developing a plan for next steps.

Submissions commenting on the Ottawa French LPP, known as Le Programme de pratique du droit or PPD, emphasize that because of the unique training it offers, it is not seen as a second choice for candidates. Some raise a concern that by doing the evaluation of the PPD in English it militated against a meaningful understanding by the assessors of the specific and global objectives of the PPD and the candidates' experience. In their view much of the data around second-tier perceptions is misleading in the context of the PPD. These submissions also note that the concerns expressed in the September 22 Report around the readiness for licensing of some internationally-trained candidates based on exam performance are also less relevant in the PPD, which after the first year has had few, if any, internationally-trained candidates. In their view, the development of the PPD has contributed significantly to the enhancement of competence in the delivery of French language services and the practice of law and is increasingly sought out by candidates.

A number of submissions comment on the innovative nature of the LPP and the use of technology and forward-looking approaches to the practice of law. Some are satisfied that the program in fact prepares lawyers for the practice of law in the 21st century, in contrast to the articling system. Some mentors and graduates of the LPP consider that it is a preferred choice to articling and may represent the future of practical training.

Some mentors note that they have, in fact, seen attitudes to the program change over the three years, suggesting the second-tier issue may be less important over time.

There are also submissions from those who consciously chose the LPP over articling, in a number of cases because their legal career goals are unconventional.

Others note that the dearth of available information about the LPP, given its recent introduction, may have affected the willingness of candidates to choose it.

Other submissions emphasize that the low take up by students and firms alike support the need for enhancing the LPP, not eliminating it, and for transition into a system that all students can access and participate in the profession on a more equitable footing. This could be developed using aspects of both pathways currently in place, evolving a system with a temporary stream while the permanent one is being developed or developing a system that incorporates new approaches. One comment suggests exploring the viability of offering both academic and clinical training as a mandatory part of the curriculum of all Canadian law schools, with an adjunct program to be made available to internationally trained ("NCA") students.

- c. **Before any decision is made to end the LPP there must be a concrete plan to deal with candidates who will no longer have that pathway to licensing.** This is a common view across the range of submissions. The sentiment is that even with the lower than expected enrollment in the LPP, approximately 200 candidates a year are being licensed who might not have been, otherwise. Many submissions comment that with no concrete proposal in the September 22 Report for what will happen to candidates such as these if the LPP is discontinued, it is difficult to accept the recommendation. For some of those who have commented in this vein, the concern is magnified by the disproportionate representation of racialized, age 40+ and internationally-trained candidates in the LPP. Some of the comments emphasize that since the Law Society appears to agree it cannot return to the status quo of 2012, it should not be recommending the end of the LPP without a resolution of the issues that led to its introduction.

Many of the submissions indicate growing acceptance that the LPP or other alternatives may be valuable transitional training models. Some of the submissions also suggest that if articling cannot provide sufficient jobs, it may be time to end articling. One submission mentions an approach that would have necessary competencies for practice acquired in law school with an additional year of law school for acquiring practical experience in placements that are unpaid.

Comments around the PPD again centre on the unique opportunity it offers to provide training for those specifically interested in French language legal services. The removal of this unique program, with nothing put in place to replace it, is considered premature and contrary to the Law Society's commitment to diversity and linguistic rights and access to justice.

A number of submissions suggest that the LPP is valuable for a range of candidates, such as those who are equality-seeking, internationally-trained, age 40+, unable to secure an articling job for reasons unrelated to competence, whose backgrounds and interests for a career do not fit into the traditional private practice or government structure and even for candidates in other Canadian jurisdictions who have not obtained articling positions in their own province.

One comment suggests that for internationally-trained candidates who reside outside the country and cannot avail themselves of the opportunity to interview in person at multiple stages (e.g. "summering," articling) or lack "connections" that assist with job placement, the LPP is important in addressing unreasonable barriers.

Comments are made that the quality of articling training is currently in the hands of articling principals whose approach to training is not consistent. As such, the articling system may not fulfill its goal to ensure that new lawyers are sufficiently

competent to serve the public upon licensing. The LPP provides students with experiential training that is comparable and offers consistent quality.

A subset of this theme is expressed as the need to consider factors not directly raised in the September 22 Report in considering any future plan for licensing. One example of this is how to address the rising numbers of those seeking licensing in Ontario and whether these numbers are sustainable.

- d. **Consider making the LPP the only Pathway.** As seen above, the unevenness of articling is raised in a number of contexts in the submissions. At a minimum, there appears to be some appetite for exploring a single pathway for transitional training other than articling. The language in the September 22 Report that pointed to the quality of the LPP training and in some instances its apparent superiority to articling appears to have engendered this willingness to look to a world beyond articling. The comments allude to the fact that the Law Society has little control over numbers entering its licensing process, given both the increasing number of internationally-trained candidates and increasing enrollment in law schools as well as establishment of new law schools. The issue of continued articling job shortages is raised.

A number of mentors with experience with both articling and the LPP express the view that the LPP is superior transitional training, suggesting that articling often entails menial tasks while the LPP has systematic training and prepares candidates for sole practice.

- e. **Before concluding that the LPP is unsustainable because of financial considerations, consider alternative financing methods.** The submissions that discuss the financial sustainability issue offer a range of suggestions and comments as follows:
- i. Increase Law Society fees to pay for licensing, LPP and access to justice initiatives and make them progressive to reflect licensee income.
 - ii. In the alternative, increase the amount of the current lawyer licensee contribution (currently \$1 million) across the board.
 - iii. In the short term, have lawyer licensees fund the cost of an initiative with the goals of the PPD to advance the need for more francophone lawyers and access to justice of the francophone community. Work collaboratively to find long-term solutions.
 - iv. Require LPP candidates to pay the full fee, but offer bursaries and loans in appropriate places.
 - v. Make efforts to reduce the costs of providing the LPP.
 - vi. If articling students are to continue to subsidize the LPP, provide them with the materials.
 - vii. Remove the stipend given to mentors in the LPP.

The underlying theme is that although the current funding structure is in place for the pilot, sustainability does not necessarily need to be judged on the basis of that being the model, longer term. Additional time is necessary to explore various possible funding models. In the face of a quality transitional training option that is in some cases offering a route to licensing for those who before the LPP faced barriers, there must be more creative effort expended to avoid a decision based primarily on financial considerations when alternatives have not been tested.

- f. **There is a “disconnect” between the Challenges Faced by Racialized Licensees Report (“Challenges Report”) and recommendations in the Pathways Evaluation Report.** A number of submissions emphasize that since the Challenges Report focuses on eliminating barriers for racialized licensees/candidates, the elimination of the LPP runs counter to that Report. A number of submissions more specifically point to the broad range of groups who have been served by the existence of the LPP.

Many racialized, internationally-trained and older candidates who took the LPP identify their negative and frustrating experiences with the traditional articling route, expressing the importance of the LPP to their ability to complete the licensing requirement.

Candidates in the PPD have commented that half of their number are visible minorities and Francophone, emphasizing that the PPD directly addresses diversity and linguistic dualism. It has also been suggested that the changes proposed in the Challenges Report may gradually result in a culture shift that will have a positive effect on licensing issues that currently raise barriers to racialized candidates. It is premature to end the PPD and LPP for these reasons.

A number of equality-seeking groups reflect that concerns they raised to the Articling Task Force have either been confirmed by what the September 22 Report addresses or point to the deficiencies in the approach to transitional training that continue to create discriminatory barriers for equality-seeking communities. In the view of some, whether the LPP should be made permanent is not the immediate issue. Rather it is that without a plan to address the ongoing issues that affect equality-seeking groups, ending the LPP is premature or worse. Much more consultation is needed to determine the way forward, particularly in view of the Challenges Report.

One comment notes that the LPP is the only recent initiative that has borne any fruit in addressing the problem of the lack of licensing opportunities for racialized, foreign, or older candidates, and has done so without compromising the competency requirements of the Law Society.

- g. **The LPP should be discontinued, as recommended in the September 22 Report.** A small minority of submissions agree with the recommendation to end the LPP at the completion of the three year pilot and express a number of reasons that include the following:
- i. The second-tier perception is real and unlikely to change.
 - ii. Articling is a critical feature of licensing, which the LPP cannot replace.
 - iii. The view in (ii) is sometimes accompanied by an exhortation to take steps to increase the supply of articling jobs, discussed further below.
 - iv. Given low enrollment, the LPP has been unable to address the Law Society's commitment to ensure a licensing process that is fair, accessible and objective.
 - v. The work placement process is arbitrary and not transparent.
 - vi. There is unfairness in requiring articling candidates to assume the cost burden of the LPP. In addition to this burden, they receive no benefit from their financial contribution. They should at least receive the LPP materials.
 - vii. Having a catch-all program for candidates increases the risk of unsupervised junior lawyers practising without mentors or direction.
 - viii. Some do not express a view about the LPP directly but raise a serious concern about the growing numbers of candidates seeking to be licensed. They question whether this is viable in the long term. They agree that any unreasonable barriers must be eliminated, but believe candidates even as early as law school should receive realistic information about the profession and numbers.

For those who support articling as the more appropriate option, there is recognition, nonetheless, that the status quo, in which the number of available jobs is significantly outnumbered by the number of candidates, cannot continue. Submissions offer suggestions for what might be done to address the issue, including support for the recommendations in paragraph 3 of the Committee's September 22 Report. A number of suggestions may be beyond the Law Society's mandate or require third party commitment

Some comments suggest working with government and the private sector to explore the development of a fund to facilitate the creation of articling placements, to subsidize firms to hire articling students or to establish additional articling placements, either paid or unpaid.

Some also suggest working with law schools on issues related to enrollment, encouraging work experience opportunities during law school to count toward the articling requirement or having a shorter articling period with more rigorous examinations.

Enhancements to Licensing Process – Comments

16. Overall, the Committee received few comments about the proposed enhancements to the licensing process. In some cases, this may be because in the period between the original April 2016 Report and the Committee's September 22 Report, it revised some of the recommendations.
17. It may also be the case that given the necessarily short period for receiving submissions on the September 22 Report most individuals and organizations focused their attention on the Pathways Evaluation.
18. In the comments on the enhancements, one general comment is made that even if the decision on the LPP must be made before the end of the year, there should be more opportunity to consult on the other recommendations before Convocation votes on them.

Examinations (PPE and PSE)

19. Among the few comments received on the examination recommendations, some support the introduction of the practice and procedure examination (PPE) that candidates will be required to pass before proceeding to the transitional training part of the licensing process. In the view of these comments, this is to enhance the quality of candidates, independent of the path they choose for experiential training. Others comment that the proposed PPE and PSE appear to be appropriate mechanisms for assessing whether licensees possess the requisite procedural base prior to beginning articling and confirming that articling has achieved its goal of experiential learning.
20. Other comments suggest that more information is necessary about what gaps both new examinations are intended to fill or deficiencies they are intended to remedy, as well as how any unintended consequences around possible unreasonable barriers will be addressed.
21. One comment suggests that the September 22 Report does not address the fundamental question of how and whether the substantive point-in-time testing of knowledge through the PPE will provide a necessary and meaningful enhancement to the overall process of entry-level training for new lawyers. Instead of emphasizing and enhancing the experiential component of the licensing process, the focus is continued on point-in-time testing relating to diverse statutory law. A few comments raise concern for a lack of sufficient evidence for requiring passage of the PPE before proceeding to transitional training. Similarly, questions are raised about the efficacy of assessing skills through a PSE.
22. Others raise concerns that the proposed dates for the first sitting of the PPE in May could have serious consequences for graduating law students' opportunities to prepare because of interference with completion of law school requirements. As well, the

proposed first rewrite date of July might interfere with traditional starting dates for articling.

23. The comment is also offered that the transition to a new format must be gradual, to accommodate those students who have already begun their law studies. This would allow them to adjust their selection of courses to maximize their preparedness for passing the examinations.
24. Some emphasize that there are many questions around the examination recommendations for which there are not yet sufficient answers to enable meaningful comment.

Abridgment of Articles for Experiential Learning Credits

25. There are a few comments on the recommendation. One speaks to the need to ensure that the Law Society consider all the ramifications of this recommendation, in particular given its potential impact on law school curriculum. The different imperatives of the Law Society and law schools are important in considering a recommendation such as this and should engender meaningful discussion before any significant steps are taken to move it forward.
26. Some concern is raised on the impact this recommendation could have on law firm recruitment, articling programs and candidates' futures. Discussions at an early stage to explain and consider views from affected stakeholders should be undertaken before moving forward.
27. One submission suggests possibly expanding the availability of an abridgment beyond formally recognized skills training programs to any licensee capable of demonstrating a sufficiency of practical experience.

Changes to Eligibility for Exemption from Articling for Internationally-Trained

28. There are only a few comments that address this recommendation. Some comments point to an absence of evidence supporting the decision to change the requirement from 10 months to three years of practice. These also note the assumption that one size fits all and suggest that rather than a calculation based on years it should be based on an analysis of the skills each candidate seeking the exemption demonstrates.
29. Another comment agrees with the recommendation on the basis that it should minimize some of the concerns regarding the baseline skills of some internationally-educated candidates.

The Committee's Analysis and Revised Recommendations

30. It has been clear for some time that the issues around the licensing process in Ontario generate a multitude of views, perspectives, proposals for resolution and responses to those proposals. The Articling Task Force engendered many such views and perspectives, with divergent views on the merits of Convocation's approval of the Pathways Pilot Project in 2012 that created the LPP.
31. Not surprisingly, then, the Committee's majority recommendation respecting the LPP in its September 22 Report has generated much comment and debate about the recommended approach. The Committee's own diversity of views, expressed in that Report as majority and minority views, reflected the complexity of the issues. In the course of its own deliberations leading to the recommendations in its September 22 Report, the members of the Committee identified and discussed the themes subsequently reflected in the submissions. The scope of the submissions suggests that further discussion is warranted on the issues before decisions are made.
32. Regardless of the submissions' specific position on Pathways or the fact that in some cases the suggestions may be beyond the Law Society's mandate to undertake, they also reflect that views on the issues have undergone and continue to undergo change even since 2012 and that the debate on how to find a sustainable resolution is intense.
33. Some of the Committee continues to be concerned that second-tier perceptions, financial sustainability and readiness for licensing are serious concerns when considering the LPP's long-term viability. Indeed, as discussed further below, a minority of the Committee remains convinced that extending the pilot to continue the LPP is a serious error not justified by the evidence on which the Committee reached its original recommendation. That view has been echoed in some of the submissions.
34. The majority of the Committee, however, some of whom originally expressed the view that more time was needed to evaluate the pilot, has reflected further on the many submissions that speak to other options for approaching the concerns it has laid out, as well as to cautioning the Law Society about ending the LPP at too early a stage in the process. Consultation is a meaningful, not pro forma, process and the Committee has taken what it has heard into account in formulating modified recommendations to Convocation.
35. Of equal significance, the comments received in response to the Committee's September 22 Report have also raised a number of important questions about the licensing process that go beyond the LPP. The Committee has noticed what may be attitudinal shifts among stakeholders that it believes are important to take into account, as follows:
 - a. The fact that a significant number of submissions are now highly critical of evaluating the pilot after so short an implementation period suggests that an attitude of greater openness respecting alternative approaches to transitional

training has emerged since 2012, when concerns about the length of the pilot and its entrenchment saw it reduced from five years to three. This is important when considered in conjunction with the number of submissions that have emphasized the quality of the LPP as transitional training.

- b. The language in a number of submissions that suggests or implies that it may be time to consider ending articling is worth noting. The Committee wishes to be careful not to overstate the meaning of this. The issue of ending articling was not discussed in its September 22 Report and might have engendered different comments had it been. The Committee's mandate did not include a first principles examination of the licensing process, including articling, which had been undertaken as part of the Articling Task Force's mandate. As a result, the Committee's September 22 Report was limited in scope and was focused primarily on an evaluation of the LPP as an acceptable transitional training alternative to articling.

But the comments that have identified the possibility of reconsidering articling may signal a shift from the strongly supportive views of stakeholders who responded to the Articling Task Force's consultation that articling should be a central component of transitional training. These comments should not be ignored.

- c. Many submissions received during the Articling Task Force consultation in 2011-2012 indicated reservations about introducing an LPP transitional training pathway if articling were also to continue, on the basis that licensees coming through it would be perceived as second-tier. This view was expressed by a number of equality-seeking groups, as well as others. The recommendation of the majority of the Committee in its September 22 Report concluded that this perception has in fact occurred and has had a powerful, negative impact on the program and its sustainability. The reaction to this part of the Committee's Report has been overwhelmingly critical, however, arguing that there is a responsibility among all stakeholders to tackle and eliminate this perception or come up with new solutions to the licensing issues. Again the strength of these submissions, if translated into action going forward, suggest a shift in attitude.
 - d. The Committee has been concerned about the negative impact that ending the LPP would have on candidates who might otherwise have availed themselves of it. It made recommendations to address this issue over the coming year, but the submissions received have been largely of the view that if the LPP is to end there must be a concrete plan in place *before* such a step is taken.
36. There also appears to be interest from a range of perspectives for a broader analysis to be undertaken of the licensing process, which Pathways may have engendered. The Law Society's Strategic Priority #1 focuses on enhancing licensing standards and requirements and their assessment with a focus on competence. Ensuring a sustainable

licensing process in the context of this strategic priority, has been the Committee's overall concern. In the Committee's view, the submissions raise that issue as well and make clear that any meaningful plan going forward would need to be developed in the context of a full analysis of the licensing process and a realistic consideration of a sustainable future.

37. The Committee believes that the submissions demonstrate that the profession is interested in such further and broad analysis and will support the Law Society undertaking such a process. The Committee is unanimous in its view that this analysis should be undertaken, but three members believe that it should be based on a commitment to transitional training as a foundation of the analysis. The rest of the Committee is of the view that if the purpose of the analysis is to make long-term recommendations for an appropriate, sustainable Law Society licensing process, in the interest of fairness the discussion should not be circumscribed.
38. All but two members of the Committee agree and recommend that to enable this longer-term analysis, the current Pathways Pilot Project (both the LPP and articling enhancements) should be extended. In the Committee's view, that extension should be for two years, specifically the 2017-2018 and 2018-2019 licensing years, to enable the gathering of more data on the LPP and articling and consideration of the larger analysis of licensing. A one-year extension would not be sufficient. Indeed, the Committee cautions that a full and proper analysis of all the issues may require longer than two years, beyond the parameters mandated by Convocation for the Pathways Pilot Project in 2012. While some submissions appear to suggest the LPP component of the pilot be made permanent at this time, for the majority of submissions the issue is one of extending the pilot to enable a more thorough evaluation.
39. Two members of the Committee are of the view that despite the importance of, and their agreement with, the larger analysis of the licensing process, this should not change the Committee's recommendation to end the LPP. In their view, the reasons for the Committee's original recommendations are too significant to allow the program to continue for two more years. The impact of extending the pilot for two more years is to license hundreds more candidates who are stigmatized with a second-tier perception, continue a financial model that imposes a burden on all candidates and, because it accepts all applicants, allows some candidates who may not be ready for licensing to nonetheless complete transitional training. In their view, the process of undertaking a large scale analysis of the licensing process should not necessitate continuing the LPP, which is not sustainable.
40. While the Committee respects this minority view and some of the Committee members share many of the concerns it reveals about the LPP, the majority of the Committee is nonetheless of the view that given the acceptance that an analysis of licensing overall should be undertaken it is better done with the pilot continuing so that no doors or options are closed.

41. The majority of the Committee is of the view that to facilitate the discussion and development of a long-term plan, the recommendations in its September 22 Report respecting the exploration of initiatives for a post-LPP environment (recommendations at Paragraph 3) and the enhancements to the licensing process (recommendations at Paragraph 4) should not be considered at this time. Two members believe implementation of components of those recommendation should begin now, but the rest of the Committee is of the view that all these recommendations need to be considered in the context of the broader analysis of the licensing process, rather than in isolation. In addition, these changes would have resource implications. These recommendations should inform the analysis going forward as part of many factors that will be examined.

42. Finally, the Committee has considered the importance a carefully developed process will play in the success of the analysis, including engaging relevant stakeholders throughout. It recommends that in the first quarter of 2017 it provide Convocation with a report identifying the issues that should be the focus of the analysis and a proposed plan to address them, a proposal for an engagement strategy and a budget to address resource requirements for the analysis.