



TAB 9

**Report to Convocation
April 28, 2016**

Professional Development & Competence Committee

COMMITTEE MEMBERS

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

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

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

Purpose of Report: Decision

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

COMMITTEE PROCESS

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

DECISION

ENHANCEMENTS TO LICENSING PROCESS

Motion

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

Matter under Consideration

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

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

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

Rationale

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

Key issues and Considerations

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

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

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

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

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

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

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

Discussion

(a) Licensing Examinations and Licensing Requirements

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

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

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

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

(b) Experiential Components

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

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

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

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

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

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

Financial Impact

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

LICENSING REQUIREMENTS: PROPOSAL TO CONVOCATION

Licensing Process Enhancements:

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

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

(b) Approved for the licensing year 2017-2018

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

- b. the Articling Principal approves the abridgment.

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

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

(c) Approved for the licensing year 2018-2019

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