PATHWAYS EVALUATION SUBMISSIONS

CALL FOR INPUT

SUBMISSIONS RECEIVED – up to October 28, 2016

ORGANIZATIONS SUBMISSIONS

A2J Submissions in response to the September 22, 2016 Report of the Professional Development & Competence Committee

Submitted: October 19, 2016

A2Justice Working Group on Articling
WORKING GROUP MEMBERS
David Ang, Lawyer
Kendra Eyben, Law Student
Zanna Gorfe, B.A. Honors Law Graduate
John Guest, Lawyer
Yavar Hameed, Lawyer
Guida Heir, Lawyer
Matthew Letourneau, Lawyer
Julia McDonald, Lawyer

Overview

1. The present submission addresses the Professional Development & Competence Committee **(PD&C or "the Committee")** report to Convocation dated September 22, 2016, relating to licensing requirements and the abandonment of the Lawyers' Practice Program (LPP).

2. A2Justice reiterates its comments provided to the Committee on May 10, 2016, in response to its April 28, 2016, report to Convocation. In particular, A2Justice opposes the creation of the amalgamated Practice and Procedure Examination (PPE), which combines the Barrister and Solicitor examinations. It also opposes the creation of the Practical Skills Examination (PSE) as a proxy evaluation method/substitute for the practical skills that should be developed during the experiential component of articling. We advocate rethinking the framework of the current examination process on the ground that the current evaluatory point-in-time testing process is antiquated, largely irrelevant, and bears no measurable evidence-based correlation with building the necessary skills for practising law in Ontario.

3. The proposal to abandon the LPP was not raised by PD&C in its April 28th report to Convocation, and represents what we believe to be a premature and imprudent measure without any clear interim or replacement plan for dealing with systemic equity problems in the articling process--an issue which the Committee has recognized as being a serious and ongoing.

Procedural Concerns

4. To recall, PD&C's April 28th recommendations to Convocation were not adopted, as it was decided by Convocation that there should be a more fulsome opportunity for submissions regarding its proposal.

5. Significantly, after a delay of almost six months since April 2016, the Committee has adopted its own prior proposal of creating the PPE and PSE with the now added recommendation of discontinuing the LPP. Stakeholders' reports, comments, and suggestions were not made public; therefore it is not apparent how heavily the Committee considered their concerns.

6. We note that there was no logical or necessary basis for the Committee to recommend abandoning the LPP at the same time and in the same report wherein it has decided reconfirm prior recommendations on the licensing

process. This omnibus approach frustrates input from interested stakeholders who have substantial comments to make on each of these very significant recommendations.

7. As with the May proposal for feedback, the present timeline for providing submissions on the Committee's proposal is extremely unmanageable. As has been previously stated, the normal *in camera* deliberations of the Committee make it impossible for stakeholders to know which approach the Committee will take in advance of its tabled report to Convocation. The expectation that stakeholders can then provide substantive comments in a span of less than 30 days while the Committee has been deliberating the matter for several months is unreasonable and unfair.

8. A2Justice reiterates its concerns about the process of the Committee and its recurring pattern of tabling massive recommendations with a very tight timeline for response.

PPE Represents an Improper Approach to Building Practical Skills

9. With respect to the licensing exam recommendations, we strongly caution that the Committee's approach is expedient, non-evidence based, and dangerously subjective. It also runs counter to the evidence and analysis that it has itself gathered. Drawing from the Pathways Evaluation report, the Committee has accepted a key finding, which reveals a foundational problem in the Law Society of Upper Canada's (LSUC) licensing process. The measures for articling as a process to prepare students for entry-level practice are acknowledged as being "perceptual" and "subjective", such that without looking at the statistics of hire and employability there can be no valid "apples to apples" comparison between different training processes.[1] It is for this reason that the Pathways Report could not validly compare the LPP with the normal articling pathway.

10. Effectively, this admission in respect of experiential training (not knowledge testing) goes to the foundation of the entire process of lawyer certification. It reveals the inherently subjective method of skills training, which is a necessary component of the licensing process. Each of the experiential and knowledge-based components of training and evaluation are necessary and complementary to achieve licensing. Accordingly, an admission regarding the subjective nature of experiential evaluation--which cannot objectively measure preparedness of the

[1] See: page 140 of the Pathways Evaluation Report and para. 39 of the Committee Report.

candidate for entry level practice--calls into question the objectivity of assessing the entire system of preparation for entry-level lawyer practice.

11. Logically, the knowledge-based requirement (currently evaluated through the Barristers and Solicitors exams) cannot be accepted as being appropriately calibrated and adequate because there is no clear way to assess candidates' successful and effective application of knowledge other than by looking at the rates of hire and employability of freshly minted lawyers.[2] In other words, the entire licensing system is effectively being justified on the fact that new lawyer licensees continue to be hired. This *post-facto* justification, however, does not tell us that the pathway to become licensed was necessary, appropriate, or fair.

12. The Committee has left untouched 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.

13. In this regard, the move towards synthesizing the respective Barristers and Solicitors examinations into one examination (PPE) is—to use the Committee's own language from its April report to Convocation—a process of "revalidation" that does not clearly indicate what the Committee's markers are for assessing success.[3] Furthermore, no evidence-based calibration exists as to whether LSUC's past examinations were effective and/or pedagogically useful for the practice of law in Ontario.

14. Anecdotal evidence received by A2Justice in respect of the current licensing examination process indicates that many candidates believe the Barrister and Solicitor licensing examinations were not useful to the practice of law. Regarding the subject areas that are examined, no evidence exists to demonstrate that the examination procedure provides a sufficient grounding for entry-level law practice. It acquaints them with artificial time constraints within which to access paper copies of rules and procedures in a broad spectrum of areas, many of which will be irrelevant to their ultimate practice and all of which are readily available by internet and keyword searches. Depending on the area of law, much of the information learned for the exams will soon become irrelevant with the ever changing statutory and regulatory landscape in Ontario. For the candidates who

[2] See: pages 140 and 141 of the Pathways Evaluation Report.

[3] In the April 28, 2016 PD&C Committee Report, the Committee refers to the development of the PPE as a "revalidation process" (see: paragraph 17 of the Report). The current September 22, 2016 report abandons the "revalidation" terminology but effectively says the same thing referring to it as "rigorous development review and validation" (see paragraph 161).

go on to advocate at regulatory and administrative tribunals and the Federal Court, these exams are especially ineffectual.

15. There is also no indication that a point-in-time assessment relating to changing statutory laws is of any demonstrable use in a practice setting where the electronic tools of accessing laws and information are completely different than in an examination setting. The body of law in Ontario is constantly changing and information relating to specific legal areas simply does not prepare for or correlate with practice in other areas. The knowledge-based exam that seeks to test point-in-time regurgitation of facts does not enhance critical thinking skills and is counter to the context of real-world application of the law and legal skills.

16. We previously suggested that the licensing process should approach training by focusing on the application of knowledge and skills in a manner consistent with the values of the profession in order to pedagogically instill analytical practice skills. However, the Committee has narrowly focused on revalidating an antiquated examination procedure. Instead of emphasizing and enhancing--with a view to standardizing--the experiential component of the licensing process, the arbitrary exercise of point-in-time testing relating to diverse statutory law in Ontario has been further entrenched through more intensive and consolidated examination.

17. Strikingly, the Committee has referenced the notion that the evolution from the multi-examination training procedure in Ontario (including eight different areas of law) down to two examinations has not resulted in an appreciable difference in terms of the level of preparation and competency of lawyers.[4] Respectfully, this observation begs the question, as it assumes that the examination process was fit to begin with. In other words, it has not reconsidered whether testing candidates on certain legal topics could be integrated within practical training. As the reduction of point-in-time testing from eight examinations to two has not showed appreciable difference in competencies, there is no evidence that eliminating the point-in-time testing in favour of more rigorous practice training that integrates legal analysis would not achieve the same result.

18. Additionally, the proposal that the PPE must be successfully completed as a prerequisite to commencing the articling term is problematic and forces unwarranted rigidity on licensing candidates. A candidate should not be prevented from beginning their articling if they cannot prepare for the PPE until a later date for personal reasons. Articling positions may have fixed start dates due

[4] See: para. 155 of the September 22, 2016 PD&C Committee Report.

to the specific needs of the articling principal, law firm, or organization. If the candidate fails the PPE, they may be forced to withdraw from their articling position. Finally, there is no evidence to indicate that candidates will be better prepared for articling or that their articling experiences will be more meaningful after they complete the PPE. Likewise, there is no evidence that the current Barrister and Solicitor examinations better prepare candidates for their articling experiences.

PSE is an Inappropriate Method For Evaluating Skills Learned Through Experiential Training

19. The proposal for a second practical skill examination at the end of articling appears to be both unnecessary and outdated. The notion that testing of practical skills through a written examination is counterintuitive and contradictory. The Committee provides no consideration of alternate methods to assess practical skills within articling. As we previously highlighted, the Alberta and British Columbia models as compared to the current LSUC model, in our view, better judge practical skills acquired by the candidate.

20. The British Columbia and Alberta models incorporate in-class oration, drafting, and interactive exercises instead of giving candidates another written examination. These alternative models are more reflective of real-life practice than the sit-down closed-book exam model, especially considering that in real life practice, lawyers have access to online resources and the wisdom of their colleagues when preparing documents and researching legal issues.

21. In Alberta, the Canadian Centre for Professional Legal Education ("CPLED") course is the program by which skills are standardized and assessed. The CPLED website (www.cpled.ca) describes the Alberta program as consisting of:

> "three one-week modules delivered face-to-face in the classroom, six modules delivered online using a course management system called Desire2Learn, and the completion of an Ethics & Professionalism Competency Evaluation. Students will research, analyze, write, draft, debate, present and discuss a number of real life situations while taking part In the Program."

22. The Law Society of British Columbia's Professional Legal Training Course ("PLTC") similarly emphasizes a practical approach to skills-based assessment. Its website (https://www.lawsociety.bc.ca/page.cfm?cid=287&t=Course-Details) presents a diverse amount of learning opportunities (such as a mock civil trial,

research and writing assignments, drafting assignments, and advocacy and interviewing assignments) which are meant to teach skills in advocacy, writing, interviewing, drafting, legal research, negotiation, mediation, and problem-solving.

23. The placement of the PSE at the end of the term of clerking with a Court is also somewhat incongruous with the expectation that relevant practical skills learned through the term of articling can be ultimately tested, given that clerking does not involve work in a practical or clinical law setting. As we have previously noted, the remedy to this problem would involve periodic practice-based assignments integrated within the term of articling (or clerkship) as is the case in British Columbia's and Alberta's models.

24. The reality is that the Committee Report has not meaningfully acknowledged that the experience of articling across the board is so vastly diverse. The different settings, principals, regions, and practice areas make it difficult to gauge or compare skills from one articling experience to the next. The current regime does not need a synthesis of a better amalgamated standard examination, but rather, more standardized tools of evaluation, teaching, feedback, monitoring and guidance that can enhance and serve to standardize the articling experience itself. Guidance, mentorship, and some level of skills training evaluation can be improved and observed in each setting.

25. A2Justice notes that candidates are most significantly prepared for practical skills during the transitional experiential phase (articling). The Committee has acknowledged that more consultation and research must be done before recommending an abridgement of articles to six months in light of other experiential training opportunities. We caution the Committee and ask that it ensures that experiential training opportunities which allow for an abridgment offer the same level of procedural and practical skills development as articling opportunities. If the opportunities are not sufficiently similar, abridgment could serve to erode the potential development of useful practical experiential training during articles.

26. A2Justice agrees with the Committee Report recommendation that LSUC should explore funding options that expand transitional experiential training opportunities. The current transitional experiential training program relies on the benevolence of the private bar to provide opportunities. The current shortage of positions as well as the barriers experienced by equity seeking groups demonstrates the limits to the private bar's benevolence. A2Justice believes that a funding mechanism that funds well-paid and substantive transitional

experiential training opportunities is needed to fill the gaps in the current process. The creation of this funding mechanism should be based on rigorous research and consultation with stakeholders, including licensees and licensing candidates. A2Justice also supports a funding mechanism that places the costs not solely on licensing candidates, but on the licensee community at large.

Abandonment of LPP is Premature and Regressive

27. A2Justice also echoes the comments of the minority Committee members who opposed the abandonment of the LPP. There are undoubtedly many improvements that can and should be brought to the LPP, but by abandoning the LPP, LSUC overlooks the core concern that articling currently creates significant barriers for many racialized candidates and equality-seeking groups.

28. Moreover, the abandonment of the LPP—without any mention or proposal for a replacement solution—completely disregards the originating purpose of the Pathways Pilot Project: to provide another option for the achievement of experiential training. The Pathways Pilot Project was created in response to the very real articling crisis and the reality of the shortage of viable articling positions for licensing candidates. The erasure of the LPP, in the face of a recognition of the current problems with the articling system, demonstrates a strange and ill-conceived move to jettison a working program in its infancy.

29. Presumably, a number of licensing candidates from equity-seeking groups might not have been able to become licensed over the past two years without the LPP. We predict that many candidates from equity-seeking groups will now be unable to complete the requirements for licensing.

30. There does not seem to be any objective analysis by the PD&C of the measure of success of the LPP thus far. In terms of actual numbers, more candidates from equity-seeking groups were able to become licensed due to the LPP--there are simply not enough articling positions to otherwise satisfy the demand. This fact, in and of itself, proves that the LPP has been successful on at least one indicium.

31. Whether the LPP becomes a permanent fixture of the licensing process or not, it is highly premature and irrational to abandon a program in which much time and resources have been invested without evaluating its impact. If the expectations of the PD&C were not clear in the beginning, we suggest that they be clarified and that a more robust evaluation be conducted before abandoning the LPP. At the very least, such information would undoubtedly serve to guide any future iteration of a modified licensing process.

32. The Report of September 22, 2016, places an undue amount of weight on anecdotal evidence that the LPP is a “second choice” to articling. Given the choice between a likely paid articling position and less likely paid alternate pathway position, it is difficult to perceive them as equal. However, it remains premature at this juncture to determine whether negative perceptions might be false if, in several years from now, both articling and LPP lawyers demonstrate an equivalent level of competence in the profession. Furthermore, it takes time for perceptions to change--the profession may very well adjust its views on the LPP once these graduates become integrated into the professions.

33. The premature way in which LSUC plans to abandon the LPP will inevitably harm the reputation of the candidates who are currently enrolled in the LPP or have graduated from the LPP. These candidates cannot reasonably be expected to obtain positions as lawyers in a society where the professional licensing body has deemed their experiential training to be inferior. It behooves LSUC to show confidence in the ability of graduates from the LPP program. If the LPP program is instead modified over a period of time, this could help lessen the stigma that these candidates will likely face in the job market.

Conclusion

34. The entire focus of the two pronged recommendations of the PD&C on licensing and experiential training demonstrates, in our view, a hasty box-checking exercise designed to streamline and standardize the licensing process without regard to the values, substance, and experience of practical legal skills development. The removal of LPP and the emphasis on examinations—in the absence of compelling evidence that such examinations are useful or relevant—is indicative of a concerning process that is out of touch with the reality of legal practice and the real challenges that beginning lawyers face.

35. Instead of focusing on rote instruction and testing of statutory materials, A2Justice considers that helping to build situational awareness, skills, and practical orientation in candidates to address access to justice problems in our system should be paramount. In other words, skills should not be taught in a vacuum; through the process of articling, candidates should have an opportunity to consider their role and the importance of lawyering in addressing current structural problems that impedes effective legal representation and access to and

accessibility of the system to marginalized groups. We hope that the Committee will take the opportunity to seriously and meaningfully reassess its direction in view of the profession's values, and to turn away from the rote reproduction of its antiquated model of formulaic testing.

36. Rather than revalidating a track of point-in-time assessment as a means of ensuring competence, PD&C should focus upon building skills that are the distinguishing feature of practice. The attempt to instill a knowledge base of statutory Ontario laws in new candidates is misplaced. Instead, the focus of testing should be on teaching practical skills that build upon the successful completion of the Juris Doctor degree.

37. A2Justice has repeatedly urged PD&C to look at the Alberta and British Columbia models of building practical skills assessment into a practical plan of training. It is recommended that this type of assessment become an integral part of articling, while phasing out the current model of point-in-time examination based assessment.

38. The PD&C Committee's move to abandon the LPP without a concrete plan for its replacement and in full cognizance of the structural problems and equity problems engendered in the current articling regime is short-sighted and wasteful. Although the LPP was never a full or perfect replacement for articling, its creation correctly focused upon building practice-based skills and responded directly to problems being faced by candidates in securing articling positions.

39. Accordingly, the LPP should be continued, with a concrete plan as to how it can be destigmatized and combined with mainstream procedures of experiential learning. The LPP should only be abandoned once an appropriate alternate pathway to licensing for equity seeking groups has been established, or once the articling stream has been modified to better include these groups.

October 22, 2016

VIA EMAIL: policy@lsuc.on.ca / ssperdak@lsuc.on.ca

Ms. Sophia Sperdakos
Policy Counsel
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Sperdakos:

RE: Response to *Pathways Pilot Project Evaluation and Enhancements to Licensing Report*

The Advocates' Society, established in 1963, is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of The Advocates' Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

The Advocates' Society has reviewed with interest the *Pathways Pilot Project Evaluation and Enhancements to Licensing Report* of the Professional Development & Competence Committee of the Law Society of Upper Canada (the "2016 PD&C Report"). The Advocates' Society takes the following position with regard to the issues outlined in the Report:

- that the Law Practice Program ("LPP") is not, when offered as an alternative to the traditional articling program, a viable option in the long term due mainly to its significant financial costs on both students and the profession. In fact, when offered as an alternative to articling, the perception of a two-tier system appears to have been created notwithstanding evidence that the LPP is in substance a high quality program which, in some respects, may well be superior to articling;

- that, given that the LPP has provided an alternative to articling for a number of licensees (notably many who identify themselves as being from racialized communities), it should be maintained pending the Law Society developing and implementing a **single, unified system** which affords appropriate experiential training (possibly incorporating elements of the current LPP) to all qualified licensing candidates without market-driven or discriminatory barriers to entry.

With respect to the other proposed changes to the licensing process:

- The Advocates' Society does not agree with the Law Society's proposal that internationally-educated candidates licensed in a common law jurisdiction should require three years of practice instead of ten months in order to be exempt by the Law Society from the articling requirement, as such an extension appears to be unduly burdensome and arbitrary.

- The Advocates' Society supports the Law Society's proposal that licensing candidates should be restricted in the number of times that they are permitted to write the licensing examinations.

- The Advocates' Society supports the development of a practice skills examination ("PSE") to be administered at the completion of the licensing process, and that this examination should be rigorously reviewed by the Law Society. However, The Advocates' Society also believes that the proposed practice and procedure examination ("PPE") should also be subject to the same rigorous review. The Advocates' Society also believes that, in some cases, requiring a licensee to pass the PPE prior to commencing articles will pose a burden on both the licensee and his or her employer.

1. Recommendation that the Law Practice Program be Terminated Only If Another Alternative is in Place

The Advocates' Society believes that the LPP is in substance a high quality program which, in some respects, may well be superior to articling. Nonetheless, when offered as an alternative to the traditional articling program, the LPP is not a viable option. The Advocates' Society, however, does not support the recommendation of the committee that the LPP program be terminated at the completion of the 2016-2017 term – unless another alternative to address the articling crisis is in place before then.

The Advocates' Society is primarily concerned that having two separate pathways to licensing has opened the door to the perception of two separate "tiers" of licensing candidates. One of the fears in 2012 was that creating an alternative pathway to licensing would result in the profession treating the program and its graduates differently than articling candidates. There was concern that LPP candidates would be stigmatized in their career. Having two tiers of programs makes the comparison of the two pathways nearly impossible.

With only 220 students enrolled in the English program and 14 in the French program – rather than the anticipated 400 students annually – it is clear that the licensing candidates themselves are viewing the LPP as a second-tier option. This perception is regrettable, as there has been positive feedback about the LPP pathway and with the work done by Ryerson University and the University of Ottawa in developing the program, and employers who have hired LPP students and instructors who have taught them have praised the quality of the students in the LPP. In fact, it may well be that the LPP pathway has developed into a more standardized and high-quality training opportunity than articling.

In addition, the 2016 PD&C Report makes it clear that the Law Society and all licensing candidates are spending substantial resources on a program to subsidize an alternative licensing pathway for a comparatively small number of candidates. The Law Society contributes $1 million per year to the program at a cost of approximately $25 per licensee. In addition, all

candidates in the licensing process (not only LPP candidates) have been assessed an additional licensing fee of $1,900 per candidate to subsidize the LPP pathway. If this subsidy did not exist, the cost per LPP candidate could be as high as $17,000.[1] The lower than anticipated enrollment makes for a higher cost program that is only benefiting 10% of the licensee cohort. Such a significant expenditure of funds may not be warranted for such a small number of licensing candidates.

Further, the financial impact for students who enroll in the LPP is high. Many students enrolled in the LPP program do not earn income while attending the classroom sessions – in stark contrast to the majority of the students in the articling program who do earn incomes. In addition, LPP students are not currently eligible for student loan funding from the Ontario Student Assistance Program and only 70% of placements provided for the LPP students are paid. On a financial level, the LPP is not equitable.

The Advocates' Society notes that 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).[2] These figures may indicate that a number of LPP candidates may never complete the licensing process.

2. Recommendation that the Enhanced Articling Program and the LPP Both Remain in Place as an Interim Measure, Until a Single, Unified Licensing System is Created

The Advocates' Society believes that, if the LPP is to be abolished, a single, unified system of licensing (as opposed to two different pathways) should be implemented for licensees in its place.

The Advocates' Society agrees in principle with the Law Society's recommendation that the enhanced articling program remain in place, so long as the LPP itself is still in place. It is The Advocates' Society's view that the articling program has had more than sufficient time to be evaluated over the last several decades. In particular, a great deal of work was done to evaluate the articling program in 2011 and 2012 by the Law Society's Articling Task Force which led to the creation of the LPP. If the Law Society were to eliminate the LPP without having an alternative in place to deal with the articling crisis, the Law Society would simply be bringing the profession back to where it was in 2011 and 2012.

Currently, as was the case in 2012, the number of available articling positions is insufficient to accommodate the number of candidates who enter the licensing process on an annual basis. Without a solution to allow all qualified candidates to become licensed, the barrier to entry to the profession is market-driven, as opposed to driven by a candidate's qualifications. It is true that, given the number of law school graduates seeking licensing in Ontario, at some point it is likely that the market will not be able to accommodate all those that are hoping for employment. However, The Advocates' Society believes that the market for articles should not be allowed to act as a somewhat artificial and ostensibly discriminatory barrier to entry to the profession, especially when the LPP appears to provide more uniform experiential training.

[1] Law Society of Upper Canada, Report to Convocation of the Professional Development & Competence Committee, September 22, 2016 ("2016 PD&C Report"), p. 30.
[2] 2016 PD&C Report, p. 18.

The minority of the Law Society Professional Development & Competence Committee believes that:

> To the extent there are doubts about the sustainability of the LPP they [the minority] think that as the data suggests that candidates for equality-seeking groups are continuing to encounter difficulty accessing the Articling Program, 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 the positive features of the LPP pathway be given greater weight and more time to consider them.[3]

The Articling Task Force received a number of submissions from equity-seeking groups in 2011 and 2012, nearly all of which rejected the *status quo* out of concern that it failed to address shortages that they believed to disproportionately affect them.[4] As of 2010, 26.6% of the licensing candidates self-identified as aboriginal, francophone, Gay/Lesbian/Bisexual/Transgendered, a person with a disability or an individual from a racialized community. As a group, these individuals were 4% less likely to secure articles than the overall group of candidates.[5] At the time, the Law Society expressed concern about the accuracy of these statistics due to the tendency of candidates not to self-report as a member of these groups.[6]

The 2016 PD&C Report majority expresses no similar concerns about the accuracy of the statistics gathered. In fact, the report states:

> 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.
>
> 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. Competent candidates ready for licensing must have fair access to the licensing process, including transitional experiential training opportunities.
>
> 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.[7]

[3] 2016 PD&C Report, p. 23.
[4] Law Society of Upper Canada, Articling Task Force Final Report, October 25, 2012 ("2012 Articling Task Force Report"), p. 34.
[5] Law Society of Upper Canada, Articling Task Force Consultation Report, December 9, 2011, p. 11.
[6] 2012 Articling Task Force Report, p. 36.
[7] 2016 PD&C Report, pp. 41-42.

There is no question that the LPP is serving more candidates than the articling program in certain demographic categories. In the first year of the LPP, 33% of the participants identified as being racialized compared to 21% in the articling program. The discrepancy increased in year two with 33% of candidates in the LPP reporting as racialized compared to only 18% of articling candidates. The LPP program also served a higher portion of candidates over the age of 40[8] and students educated outside of Canada.[9] There is also evidence presented in the report that the articling program provides barriers to entry for students interested in social justice work.[10]

In addition to the evidence obtained in the 2016 PD&C Report, important figures can also be found in the Law Society's Equity and Aboriginal Issues Committee September 22, 2016 report entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. In Appendix A it was reported that:

> Racial and ethnic barriers were ranked highly among the barriers to entry and advancement. Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry to practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees frequently identified physical appearance, socioeconomic status, place of birth and upbringing, age, manner of speaking English/French and gender identity as barriers – more so than non-racialized licensees. Racialized licensees were also more likely to have struggled to find an articling position or training placement.[11]

The Advocates' Society is not satisfied with the majority's recommendation as to how to address these concerns about the articling program. The recommendation is outlined at page 42 of the 2016 PD&C Report and is incorporated into the motion as item number 3(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.

This recommendation does not provide any concrete solutions to deal with the inequalities that have been shown to exist with the articling program. Before the LPP comes to an end there needs to be a concrete plan in place to address these inequalities.

---

[8] In the first year of the program 17% of candidates were over the age of 40 compared to 2% in the articling program. In year two, 19% of LPP candidates were over the age of 40 compared to only 2% in the articling program. (2016 PD&C Report, pp. 18-19).

[9] In year one 64% of candidates did not graduate from a Canadian Law School. In year two this number was 51% (2016 PD&C Report, p. 19). Articling student focus groups in both years commented that there was a perception that out of province or out of country candidates are disadvantaged in obtaining articling positions. (2016 PD&C Report, p. 20).

[10] 2016 PD&C Report, p. 20.

[11] Law Society of Upper Canada, Equity and Aboriginal Affairs Committee, Report to Convocation, September 22, 2016, p. 39.

Accordingly, it is The Advocates' Society's position that the LPP should remain in place pending the Law Society's development of a concrete plan to develop a single, unified system in which licensing candidates may obtain experiential learning prior to licensing.

3. Other Proposed Changes to the Licensing Process

The Law Society has also proposed other changes to the licensing process. These proposed changes are premised on the Law Society maintaining the enhanced articling program. As explained above, The Advocates' Society recommends the implementation of a single, unified licensing system for all candidates. In the event, however, that the enhanced articling program, or the current two pathways for that matter, are maintained in the short term, The Advocates' Society makes the following comments.

First, the Law Society proposes that, beginning in the year 2017-2018, internationally-educated candidates licensed in a common law jurisdiction will require three years of practice instead of ten months in order to be exempt by the Law Society from the articling requirement. It is The Advocates' Society's view that the Law Society has provided no evidence as to why this increase is necessary or desirable. The increase appears to be arbitrary in that it creates an unnecessary barrier to entry to the profession for lawyers from other common law jurisdictions who already have one to three years of experience in practice. The 2016 PD&C Report does not outline any risk to the public interest or stated concern with the current requirements that would provide a rationale for this change. In fact, there may be a countervailing consideration: foreign-trained lawyers who have practised for one to three years may have experience practising in underserviced areas which could benefit the public interest and enhance access to justice in Ontario. Requiring these individuals to secure an articling position would delay these contributions. The Advocates' Society believes that the *status quo* should be maintained.

Second, The Advocates' Society supports the Law Society's proposal that licensing candidates should be restricted in the number of times that they are permitted to write the licensing examinations. The Advocates' Society is of the view that this recommendation is reasonable. The Law Society has established that these rules will be subject to the enumerated grounds provided for under the *Human Rights Code* and will be reflected in the Law Society's Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes. The Advocates' Society understands that the Law Society is required to balance a minimum standard of competency with fairness in the licensing process. It is in the public's interest to ensure that only qualified, competent candidates are entering the profession.

Third, The Advocates' Society has the following comments regarding the new proposed practice and procedure examination ("PPE") and practice skills examination ("PSE"). The Committee is recommending that in place of the current Barrister and Solicitor Examination, the PPE be established. In addition to this, the Committee is recommending that the PPE must be passed prior to the commencing of experiential training but that the Law Society should schedule two opportunities to write the test prior to traditional starting dates for experiential training.

The Committee does not identify any substantive issues with the current Barrister and Solicitor Examinations and states only that the "Committee considers that it is now appropriate to evolve the assessment approach." The Committee states that it is satisfied that a "refined assessment

will be even more sophisticated and better assess relevant material" in response to suggestions that a single examination may be too simple or less effective.[12] It appears from the wording of this recommendation that the Committee does not intend to assess the content of this new PPE examination to the same magnitude as the PSE that is recommended in the next aspect of the motion. The additional funding for the 2017 and 2018 budgets that is suggested in the 2016 PD&C Report also only makes reference to the development of the PSE examination, and not the refinement of the PPE.

The Advocates' Society's position is that if the Law Society is creating an examination that is to serve as a barrier prior to licensing candidates commencing their experiential learning, the PPE examination should receive the same rigorous assessment as the PSE. In particular, The Advocates' Society does not believe that simply combining and reducing the content of the current Barrister and Solicitor Examinations into one Examination is an appropriate test to require candidates to pass prior to commencing their experiential learning. Equal thought should be given into the content of this Examination and whether the content is appropriate as a barrier to entry into the next phase of the licensing process. If an appropriate examination can be developed, then this test may be beneficial to the profession.

Further, The Advocates' Society can foresee two practical issues with requiring licensing candidates to pass the PPE prior to commencing experiential learning.

First, if the two sittings of the PPE are planned close together in May and July it is conceivable that a licensing candidate may have a personal emergency during that time period which may impact their ability to write the PPE during one or both sittings. The impact could be that the licensing candidate may not be able to commence the experiential learning period until the following licensing year. This would be an unduly harsh result for students who rely on articling income after completing their legal education.

Second, the majority of articling employers in Toronto, Ottawa, Middlesex and Hamilton participate in the Law Society of Upper Canada's recruitment process.[13] The articling recruitment process results in articling students being offered articling positions well in advance of articling. Firms will now need to make their offers conditional on students passing the PPE examination. Further, there will likely be a second round of recruitment generated that would commence in July of a licensing year as employers scramble to find replacement articling students for students who they had hired that did not pass the PPE examination.

The Advocates' Society believes that the proposed PSE examination at the end of the experiential learning period would be a positive development to the licensing process as it will assess whether candidates have acquired the skills to complete complex multi-dimensional legal work.[14] Licensing candidates are not currently tested in this area. The proposed PSE will therefore assess candidates on skills that they would presumably learn through their experiential learning and will also serve as one final assessment prior to being called to the bar. These goals are laudable and are certainly in the public interest.

[12] 2016 PD&C Report, pp. 44-45.
[13] The Law Society of Upper Canada, 2017-2018 Articling Recruitment Procedures. Online: http://www.lsuc.on.ca/licensingprocess.aspx?id=2147497188.
[14] 2016 PD&C Report, p. 45.

Thank you for providing The Advocates' Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours very truly,

Bradley Berg
President

Members of The Advocates' Society Task Force Struck to Respond to the 2016 PD&C Report

Guy J. Pratte (Chair), *Borden Ladner Gervais LLP*, Toronto
Andrew Bernstein, *Torys LLP*, Toronto
Sonia Bjorkquist, *Osler, Hoskin & Harcourt LLP*, Toronto
J. Thomas Curry, *Lenczner Slaght Royce Smith Griffin LLP*, Toronto
Erin H. Durant, *Borden Ladner Gervais LLP*, Ottawa
Erin D. Farrell, *Gowling WLG*, Toronto
Ann L. Morgan, *Ministry of the Attorney General, Crown Operations*, Toronto
Megan E. Shortreed, *Paliare Roland Rosenberg Rothstein LLP*, Toronto
Tara Sweeney, *Soloway, Wright LLP*, Ottawa
Dave Mollica, Director of Policy and Practice

ajefo Association des juristes d'expression française de l'Ontario

VIA EMAIL

Ottawa, October 19, 2016

JUSTICE EN FRANÇAIS EN ONTARIO

Mr. Peter Wardle, Chair
Professional Development & Competence Committee
Law Society of Upper Canada
130 Queen Street West,
Toronto, Ontario M5H 2N6

Re: Response to the Pathway Pilot Project Evaluation—September 22, 2016

Dear Sir,

AJEFO submits that it is imperative that the Law Society keep the **Programme de pratique du droit (PPD)** until it finalizes its reform of the *Pathway* project. This transitory program allows French-speaking candidates, and specifically racialized French-speaking candidates to complete articles, which is an essential step to access the profession. To end this program without offering alternatives would be unfair and would go against several policies and goals of the Law Society, such as those pertaining to equity and French language services. AJEFO submits that the abolition of the PPD would have a disproportionate impact on French-speaking students and would ultimately be detrimental to access to justice in French in Ontario.

AJEFO has reviewed the report on the evaluation of the Pathways pilot and intends hereby to communicate its position, especially regarding the motions proposed by the Committee at pages 6 to 8 of its report.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

JUSTICE EN FRANÇAIS EN ONTARIO

Motion 1: recommendation to end the PPD after the third year of its existence

AJEFO strongly opposes this recommendation. The PPD should be maintained as an alternative to traditional articling in order, among other things, to ensure access to the profession for students who cannot find an articling position. The PPD was created in response to a real need for French speaking and Francophile licensees with a common law degree from a Canadian faculty of law. The French-speaking legal community has supported the PPD since its inception and is part of its success. AJEFO submits that the abolition of the PPD would be particularly detrimental to the French-speaking students, to the French-speaking legal community and to the French-speaking litigants for the reasons listed hereunder.

AJEFO has been sitting on the PPD Advisory Board since 2012. Building on this experience, AJEFO observed and noticed the impact of the PPD with the candidates in the program, but also with the Franco-Ontarian litigants. Indeed, in addition to offering quality training to the candidates, the program had the effect of promoting the active offering of French language services. As professors Flaherty and Roussy have indicated in their work *The Law Practice Program: tackling racial inequality in the legal profession*[1], though the PPD is not yet a perfect solution, it is part of the solutions to the problem. Moreover, the authors write:

> The LPP is clearly not the complete answer to all access to justice issues. However, to the extent that 1) it addresses some of the barriers to the profession that exist within the licensing framework that have tended to disproportionately affect racialized candidates or 2) it increases the number of capable

[1] Michelle Flaherty and Alain Roussy, "The Law Practice Program: tackling racial inequality in the legal profession?", (2015) WP 2015-39 p. 16.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

lawyers available and willing to assist underserviced Ontarians, it may be part of a multi-faceted solution.

In AJEFO's opinion, the PPD is one part of an exhaustive response aiming at meeting the challenges of access to justice in French in Ontario. By contributing to the training, in French, of the new generation of French-speaking lawyers in Ontario, the PPD contributes to building a future in which all French-speaking Ontarians will be able to access justice in the two official languages.

JUSTICE EN FRANÇAIS EN ONTARIO

Unfortunately, AJEFO submits that the evaluation of the program offered in French is beset with substantial errors since the PPD was not evaluated in light of the goals that are unique to the French-speaking community, the specific circumstances of the French-speaking graduates and the diverse methods implemented for the users of the PPD. Also, certain findings in the report do not reflect on who the users of the PPD are and don't consider the support and the recognition that this program has received within the French-speaking legal community. More specifically, AJEFO has identified the following issues with the approach and the findings of the report:

a) **Language of the evaluation**: the evaluation of the PPD was carried out in English, i.e. in the second or even third language of the candidates, the directors and the members of the advisory committee. The evaluation would have greatly benefited from an in-depth differentiated analysis based on the language in which the programs were offered. That approach would also have allowed the evaluators and those being evaluated to understand and demonstrate specific and overall goals of the PPD as well as its role for the French-speaking population of Ontario.

b) **Evaluation framework and criteria**: Despite the fact that some goals may be shared, the evaluation of the PPD and of the Law Practice Program was made from the same evaluation framework. AJEFO submits that this evaluation does not take into account and does not reflect the diversity and the accomplishments that are specific to each program. There are important distinct goals in the two approaches and the programs should have been evaluated through two different evaluation frameworks reflecting those distinctions. Such a differentiated approach would have identified the following findings:

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

a. **PPD Candidates**: The evaluation report puts great emphasis on the fact that several PPD and LPP candidates have received international training. However, **all** the PPD candidates in its three years of existence have had a diploma from a Canadian faculty of Law.

b. **Goal to improve French language services in Ontario**: The evaluation criteria did not include maintaining or improving French language legal services provision in Ontario. However, the PPD plays a unique role in the province by allowing, on the one hand, access to a work placement in French which would otherwise be very rare and secondly, by allowing French-speaking candidates, especially racialized candidates, to have access to the profession.

c) Analysis of the program costs: Despite the fact that this item is an important element of the recommendations made by the Committee, AJEFO submits that it is not justifiable to abolish the program for financial reasons. The program was created to meet the challenges of some racialized and minority groups, such as French-speaking students, in accessing the profession. The transitional program must be maintained until the Law Society finds an alternative solution. Obviously, this type of program cannot be financially self-sustaining since it responds to the needs of some marginal minorities. For AJEFO, it is the responsibility of all the jurists in Ontario to fund this kind of initiative and to work in collaboration to find long-term solutions.

d) Reputation and choice of candidates: Ultimately, through its intensive academic teaching and practice conceived for and by Francophones, the PPD distinguishes itself from the LPP. The Law Society committee indicates on several occasions that the PPD and the LPP are perceived as a second-class pathway in the community.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

> However, the PPD advisory committee, which is based in the French-speaking legal community, has noticed on numerous occasions that on the contrary, the PPD enjoys an excellent reputation. In fact, more than 40% of the PPD candidates have chosen to participate in the PPD instead of pursuing the traditional articles[2]. According to Flaherty and Roussy, "this choice by over 40% of the French LPP candidates could be interpreted as a vote of confidence in the new program[3]".

Under the circumstances, Convocation should maintain the LLP and the PPD for separate reasons. The two programs offer alternatives to the traditional articles, as well as a second viable and recognized option to access the profession. AJEFO submits that the abolition of the PPD would have a totally disproportionate impact on the French-speaking community and the French-speaking students. The abolition of the PPD would not reflect the success specific to the French language program as noted by Flaherty and Roussy:

> The data emerging from the French LPP is very encouraging, however: in 2015, all candidates in that program received paid placements. The experience at the English LPP program has been quite different. Though the English LPP has been able to find a work placement for all of its candidates, 30 per cent of those placements are unpaid. In addition, even for those English LPP placements that are paid, some candidates receive only a stipend, which does not approximate a full salary[4].

In addition, AJEFO submits that the Law Society must consider the incremental impact that would result from ending the PPD. Failing to recognize the specificity of the PPD would be contrary to the principles set out in the preamble of the French language services policy of the Law Society.

Motion 3 a): Continue to develop and highlight achievement of the PPD

The **Programme de pratique du droit (PPD) should be maintained** at least until the Law Society finalizes its *Pathways* reform. AJEFO is keen to remain involved and to be part of the consultation on the process of identifying alternatives to articles. Any possible alternative should take into account and draw on the efforts invested by the

[2] *Ibid* at p. 17.
[3] *Ibid* at p. 19.
[4] Ibid at p. 21

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

Francophone community towards the PPD development. Traditional articles very rarely afford students the opportunity to work in French, to interact with Francophone clients or to represent clients in court in French. Faced with a serious lack of materials and teaching resources in French (while equivalent resources are offered for free in English by LAW Pro and the Law Society), the PPD, in collaboration with the legal community, has developed an array of materials. As a result, the PPD has become an outstanding source of materials not only of a pedagogical nature, but also of practical nature for the benefit of the candidates in the program as well as of French-speaking lawyers.

JUSTICE EN FRANÇAIS EN ONTARIO

Within the official-language minority communities, outside of Quebec, organizations such as AJEFO, often in collaboration with the Law Society, are the ones that ensure the continuous professional development of Francophone lawyers. Legal professionals count on AJEFO and its members when it comes to professional development relating to legal terminology and substantive law in French. Any new initiative should plan for a substantial investment in order to encourage training activities. Such projects must be supported to ensure the sustainability of French language services within the justice sector. The PPD is an incredible innovation engine for offering legal services in French in Ontario.

Motion 3 b): Ways to continue utilizing the resources of the French PPD

Legal professionals play a key role towards ensuring that French-speaking litigants outside of Quebec and English-speaking litigants in Quebec have access to justice in the official language of their choice. A litigant faced with a legal problem in Canada should have access to a competent legal professional who is able to offer him or her services in the official language of his or her choice.

In order to support legal professionals in Canada, to improve their linguistic capabilities and, ultimately, to improve access to justice in both official languages, AJEFO strongly suggests that the Law Society maintains the PPD program. As indicated above, the PPD is an innovation engine because it offers French-speaking lawyers to the Francophone community over the long term, who will be able to provide services in French to litigants in Ontario. Furthermore, the PPD makes possible the sharing of resources developed in French with community legal organizations. Indeed, in order to offer legal services in both official languages, legal professionals who are from official-language minority communities must have access to legal tools in that language. These legal tools are, in the end, as beneficial to litigants as they are to legal professionals (less research time for professionals, contributions towards making files of equal quality to the services offered to the majority).

Through the *Roadmap for Canada's Official Languages 2013–2018*, AJEFO has created

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

and continues to provide resources through its pan-Canadian portal Jurisource.ca[5]. This portal makes legal and terminological resources available online, including:

- Legal tools: form templates, checklists, bibliographies, decision summaries and commentaries, legal guides, studies, publications and laws, which support research for legal professionals.
- Linguistic tools: glossaries and legal notes that support the legal practitioner in drafting and pleadings.

Through the Jurisource.ca portal, AJEFO is able to confirm that form templates, files organized by law themes and glossaries represent an added-value and are very useful for legal professionals[6].

We suggest that the Law Society of Upper Canada allow AJEFO to add the resources developed through the PPD to its portal and to make these resources available to all regions of the country, to ultimately improve access to justice in French.

Motions 4 d) and e): new exams of the Law Society of Upper Canada

AJEFO understands that the Law Society of Upper Canada is working on a new practice and procedure exam, to replace the current Barrister and Solicitor exams. AJEFO also understands that the Law Society of Upper Canada will be adding a practical competence exam to the requirements of the process following experiential transition training.

AJEFO wants to be involved and part of the consultation in the development of these two new exams, so as to ensure that the teaching materials and the Francophone and Anglophone exams are of equal quality. Since the Law Society began offering licensing in both official languages, AJEFO has regularly received complaints about the translation quality of the materials and the exams. In order to avoid past mistakes, the Law Society should collaborate with the Francophone legal community when developing these two new exams, thereby ensuring impeccable quality of materials and exams for Francophone-community students.

[5] Jurisource.ca is a virtual library with a powerful search engine which catalogues thousands of resources such as form templates, glossaries, checklists, professional training tools, files organized by themes, terminological resources, acts, jurisprudence, etc. AJEFO notes that files organized by themes, glossaries and form templates are resources of great interest for legal professionals.

[6] Google Analytics consistently show that form templates, glossaries, and files organized by themes are among the most consulted types of resources.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

We also believe this transition towards a new format must be gradual, in order to accommodate those students who have already begun their law studies. The choice of courses during a bachelor of laws is made over three to four years, depending on the program and the university. Interim measures should be implemented, to give sufficient notice to students so that they may adjust their selection of courses so as to maximize their knowledge to pass the exams.

Conclusion

JUSTICE EN FRANÇAIS EN ONTARIO

It is imperative that the **Programme de pratique du droit (PPD)** is maintained until the Law Society finalizes its reform of the *Pathways*. This interim program allows the Francophone students, and the racialized Francophones in particular, to complete a work placement which is essential to licensing. This program also advances the teaching of law in French and the development of practice and learning tools which are useful to all of the Francophone legal community and Francophone litigants in Ontario. Terminating this program without offering other alternatives would be unjust and contrary to many policies and objectives of the Law Society, including those relating to equity and French language services. The Francophone legal community has invested huge efforts into creating, developing, working out and perfecting the PPD over the past 3 years. The PPD has established an **excellent reputation with the Francophone legal community and it fulfills the specific needs not only of the candidates, but also of the Francophone community**.

I remain at your disposal for any comment and feedback.

Sincerely,

Ms. Sonia Ouellet
President
Association des juristes d'expression française de l'Ontario

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

PAR COURRIEL

Ottawa, le 19 octobre 2016

JUSTICE EN FRANÇAIS EN ONTARIO

Maître Peter Wardle, président
Comité du perfectionnement professionnel
Barreau du Haut-Canada
130 rue Queen ouest
Toronto (Ontario) M5H 2N6

Objet : Réponse au rapport sur l'évaluation du projet pilote *Voies d'accès à la profession* du 22 septembre 2016

Me Wardle,

L'AJEFO estime qu'il est impératif que le Barreau maintienne le **Programme de pratique du droit (PPD)** jusqu'à ce que celui-ci finalise sa réforme sur les *Voies d'accès à la profession*. Ce programme transitoire permet aux francophones et particulièrement aux francophones racialisés de compléter un stage, une étape essentielle afin d'accéder à la profession. Mettre fin à ce programme sans offrir d'autres alternatives serait injuste et irait à l'encontre de plusieurs politiques et objectifs du Barreau, notamment ceux ayant trait à l'équité et aux services en français. L'AJEFO estime que l'abolition du PPD aurait un impact disproportionnel sur les étudiants francophones et serait ultimement préjudiciable à l'accès à la justice en français en Ontario.

L'AJEFO a pris connaissance du rapport sur l'évaluation du projet pilote *Voies d'accès à la profession* et vise par la présente à communiquer sa position, particulièrement en ce qui a trait aux motions proposées par le Comité aux pages 6 à 8 de son rapport.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

Motion 1 : recommandation de mettre fin au PPD après la fin de la troisième année de son existence

L'AJEFO oppose vivement cette recommandation. Le PPD devrait être maintenu comme alternative au stage traditionnel afin, entre autres, d'assurer l'accès à la profession aux étudiants qui ne peuvent pas se trouver de stages. Le PPD a été mis sur pied en réponse à un besoin réel pour les francophones et francophiles titulaires d'un diplôme de common law d'une université canadienne. La communauté juridique francophone appuie le PPD depuis ses débuts et est partie prenante à son succès. L'AJEFO estime que l'abolition du PPD serait particulièrement préjudiciable aux étudiants francophones, à la communauté juridique francophone et aux justiciables francophones pour les raisons énumérées ici-bas.

L'AJEFO siège au comité consultatif du PPD depuis 2012. Forte de cette expérience, l'AJEFO a directement observé et constaté l'impact du PPD auprès des candidats au programme, mais aussi auprès des justiciables franco-ontariens. En effet, en plus d'offrir une formation de qualité au candidat, le programme a aussi eu l'effet de promouvoir l'offre active des services en français. Tel que l'indique les professeurs Flaherty et Roussy dans leur ouvrage *The Law Practice Program: tackling racial inequality in the legal profession*[1], bien que le PPD ne soit pas pour le moment une solution parfaite, il fait pour l'instant partie des solutions au problème. Les auteurs précisent que :

> The LPP is clearly not the complete answer to all access to justice issues. However, to the extent that 1) it addresses some of the barriers to the profession that exist within the licensing framework that have tended to disproportionately affect racialized candidates or 2) it increases the number of capable

[1] Michelle Flaherty et Alain Roussy, "The Law Practice Program: tackling racial inequality in the legal profession?", (2015) WP 2015-39 à la p. 16.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

lawyers available and willing to assist underserviced Ontarians, it may be part of a multi-faceted solution.

Selon l'AJEFO, le PPD est un des moyens inclus dans une réponse exhaustive qui vise à répondre aux difficultés d'accès à la justice en français en Ontario. En contribuant à former, en français, une relève de juristes francophones en Ontario, le PPD contribue à bâtir un avenir où tous les Ontariens d'expression française pourront accéder à la justice dans les deux langues officielles.

Malheureusement, l'AJEFO estime que l'évaluation du programme offert en français est entachée d'erreurs significatives puisqu'elle a omis d'évaluer le PPD selon une grille qui prenait en considération les objectifs particuliers pour la communauté francophone, la réalité particulière des diplômés francophones et les approches différentes qui ont été mises en place pour les usagers du PPD. De plus, certains constats dans le rapport ne reflètent pas la composition des usagers du PPD et ne tiennent pas compte de l'appui et la reconnaissance que ce programme a obtenus auprès de la communauté juridique francophone. Plus précisément, l'AJEFO a identifié les problèmes suivants avec la démarche et les conclusions dans le rapport :

a) **Langue de l'évaluation** : l'évaluation du PPD s'est faite en anglais, soit dans la deuxième ou même troisième langue des candidats, des directrices et des membres du comité consultatif. L'évaluation aurait grandement bénéficié d'une analyse approfondie différenciée selon la langue dans laquelle les programmes étaient offerts. Cette approche aurait également permis aux évaluateurs et aux évalués de comprendre et mettre en valeur les objectifs spécifiques et globaux du PPD ainsi que son rôle pour la francophonie ontarienne.

b) **Cadres et critères de l'évaluation** : Malgré que certains objectifs puissent être mis en commun, l'évaluation du PPD et du Law Practice Program en anglais (LPP) s'est faite à partir du même cadre d'évaluation. L'AJEFO estime que cette évaluation ne prend pas en considération et ne reflète pas la diversité et les accomplissements distincts des programmes. Il existe des objectifs distincts importants aux deux approches et les programmes auraient dû faire l'objet de

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

deux cadres d'évaluation qui reflètent ces distinctions. Cette approche différenciée aurait identifié les constats suivants :

a. **Candidats au PPD** : Le rapport d'évaluation met beaucoup d'emphase sur le fait que plusieurs candidats du PPD et du LPP ont été formés à l'étranger. Or, **tous** les candidats du PPD dans ses trois ans d'existence détiennent des diplômes de faculté de droit canadienne.

b. **Objectif d'améliorer les services en français en Ontario** : Les critères d'évaluation prévus ne comprenaient pas le maintien ou l'amélioration de la prestation des services juridiques en français en Ontario. Or, le PPD joue un rôle unique en province en permettant d'une part l'accès à un stage de formation en français qui ne serait autrement que très peu disponible et deuxièmement en permettant à des candidats francophones, particulièrement des candidats racialisés, d'accéder à la profession.

c) **Analyse du coût des programmes** : Malgré que cet item soit un élément important des recommandations faites par le Comité, l'AJEFO estime qu'il n'est pas justifié d'abolir ce programme pour des raisons financières. Le programme a été mise en place pour répondre aux difficultés de certains groupes racialisés et minoritaires, tels que les étudiants francophones, pour accéder à la profession. Ce programme d'accommodement transitoire doit être maintenu jusqu'à ce que le Barreau trouve une solution alternative. Évidemment ce genre de programme ne peut pas être financièrement autosuffisant puisqu'il répond aux besoins de certaines minorités marginales. Selon l'AJEFO, il en revient à l'ensemble des juristes en Ontario de financer ce genre d'initiative et de travailler en collaboration pour trouver des pistes de solution à long terme.

d) **Réputation et choix des candidats** : Ultimement, par l'entremise de son apprentissage intensif théorique et pratique conçu par et pour les francophones, le PPD se distingue du LPP anglophone. Le comité du Barreau indique à plusieurs reprises que le PPD et le LPP sont perçus comme une voie d'accès de deuxième

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

> classe dans la communauté. Or, le comité consultatif du PPD, qui est ancré dans la communauté juridique francophone, a constaté à maintes reprises que tout au contraire, le PPD jouit d'une excellente réputation. De fait, plus de 40 % des candidats au PPD francophone ont choisi de participer au PPD francophone au lieu de poursuivre un stage traditionnel[2]. Selon Flaherty et Roussy, « this choice by over 40 % of the French LPP candidates could be interpreted as a vote of confidence in the new program[3] ».

Dans les circonstances, le Conseil devrait maintenir les programmes du LLP et du PPD et ce pour des raisons distinctes. Les deux programmes offrent des alternatives aux stages traditionnels, ainsi qu'un deuxième choix viable et reconnu pour accéder à la profession. L'AJEFO estime que l'abolition du PPD produirait des effets complètement disproportionnés sur la communauté francophone et les étudiants francophones. L'abolition du PPD ne refléterait pas les succès propres au programme francophone tels que noté par Flaherty et Roussy:

> The data emerging from the French LPP is very encouraging, however: in 2015, all candidates in that program received paid placements. The experience at the English LPP program has been quite different. Though the English LPP has been able to find a work placement for all of its candidates, 30 per cent of those placements are unpaid. In addition, even for those English LPP placements that are paid, some candidates receive only a stipend, which does not approximate a full salary[4].

De plus, l'AJEFO estime que le Barreau se doit de tenir compte de l'impact différentiel qui découlerait de l'élimination du PPD. Le défaut de reconnaître la particularité du PPD

[2] *Ibid* à la p. 17.
[3] *Ibid* à la p. 19.
[4] *Ibid* à la p. 21.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

serait contraire aux principes énoncés au préambule de la Politique du Barreau sur les services en français.

Motion 3 a) : Continuer de développer et mettre en valeur les avancées du PPD

Le **Programme de pratique du droit (PPD) devrait être maintenu** tout au moins jusqu'à ce que le Barreau finalise sa réforme sur les *Voies d'accès à la profession*. L'AJEFO tient à être impliquée et consultée dans le processus qui vise à identifier des alternatives pour les stages. Toute éventuelle alternative devrait tenir compte et tirer profit des efforts investis par la communauté juridique francophone dans le développement du PPD. Les stages traditionnels n'offrent que très rarement l'opportunité aux étudiants de travailler en français, d'interagir avec des clients francophones et de représenter des clients à la Cour en français. Devant une importante carence de matériel et de ressources pédagogiques en français (alors que les ressources équivalentes sont offertes gratuitement en anglais par Law Pro et par le Barreau) le PPD en collaboration avec la communauté juridique a développé une panoplie de ressources. Par la force des choses, le PPD est devenu une source incroyable de matériel non seulement pédagogiques, mais pratiques pour les candidats au programme, mais également pour tous les juristes d'expression française.

Dans les communautés linguistiques officielles en situation minoritaire, à l'extérieur du Québec, ce sont des organismes, comme l'AJEFO, souvent en collaboration avec le Barreau du Haut-Canada, qui assurent la formation professionnelle continue des juristes francophones. Les professionnels de la justice comptent sur l'AJEFO ainsi que ses membres en ce qui concerne le perfectionnement professionnel en matière de terminologie juridique et de droit substantiel en français. Toute nouvelle initiative devrait prévoir des investissements substantiels afin de favoriser les activités de formation. Ces projets doivent être soutenus pour assurer la pérennité des services en français dans le secteur de la justice. Le PPD est un moteur incroyable d'innovation pour l'offre des services juridiques en français en Ontario.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

JUSTICE EN FRANÇAIS EN ONTARIO

Motion 3 b) : Façons de continuer d'utiliser les ressources du PPD francophone

Les professionnels de la justice jouent un rôle critique pour assurer que les justiciables d'expression française hors Québec et anglaise au Québec aient accès à la justice dans la langue officielle de leur choix. Un justiciable faisant face à un problème juridique au Canada doit pouvoir avoir accès à un professionnel compétent de la justice qui est en mesure de lui offrir des services dans la langue officielle de son choix.

Pour appuyer les professionnels de la justice au Canada, améliorer leur capacité linguistique et ultimement, améliorer l'accès à la justice dans les deux langues officielles, l'AJEFO suggère fortement que le Barreau du Haut-Canada maintienne le programme PPD. Tel qu'indiqué ci-haut, le PPD est un moteur d'innovation puisqu'il offre, à long terme, à la communauté francophone, des juristes d'expression française qui vont être en mesure d'offrir les services en français aux justiciables en Ontario. De plus, le PPD permet le partage des ressources développées en français avec les organismes juridiques communautaires. En effet, pour offrir des services liés à la justice dans les deux langues officielles, les professionnels de la justice issus de communautés linguistiques officielles en situation minoritaire doivent avoir accès à des outils juridiques dans cette langue. Ces outils juridiques sont en définitive tout aussi bénéfiques aux justiciables qu'aux professionnels de la justice (réduction du temps de recherche des professionnels, contribution à rendre les dossiers de qualité égale aux services offerts à la majorité).

Par l'entremise de la *Feuille de route pour les langues officielles 2013-2018*, l'AJEFO a créé et continue de fournir des ressources par l'entremise de son portail pancanadien Jurisource.ca[5]. Ce portail rend disponible des ressources juridiques et terminologiques en ligne, notamment :

[5] Jurisource.ca est une bibliothèque virtuelle composée d'un puissant moteur de recherche, qui recense des milliers de ressources telles que des modèles d'actes, des lexiques, des listes de contrôle, des outils de formation professionnelle, des dossiers thématiques, des ressources terminologiques, des lois, de la

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

- Les outils juridiques : les modèles d'actes, les listes de contrôle, les bibliographies, les commentaires et résumés d'arrêt, les guides juridiques, les études, les publications et les lois qui appuient la recherche des professionnels.
- Les outils linguistiques : les lexiques et les capsules juridiques qui appuient le praticien tant dans ses rédactions que dans ses plaidoiries.

Par le biais du portail Jurisource.ca, l'AJEFO peut confirmer que les modèles d'actes, les dossiers par thématiques de droit et les lexiques sont une plus-value et d'une grande utilité pour les professionnels de la justice[6].

L'AJEFO suggère au Barreau du Haut-Canada de permettre à l'AJEFO de rajouter les ressources élaborées par le PPD à son portail et rendre ces ressources accessibles à toutes les régions du pays, afin d'ultimement d'améliorer l'accès à la justice en français.

Motions 4 d) et e) : nouveaux examens du Barreau du Haut-Canada :

L'AJEFO comprend que le Barreau du Haut-Canada mettra sur pied un nouvel examen sur la pratique et la procédure (EPP) pour remplacer les examens actuels d'avocat plaidant et de procureur. L'AJEFO comprend également que le Barreau du Haut-Canada ajoutera un examen sur les compétences pratiques (ECP) aux exigences du processus après la formation de transition expérientielle.

L'AJEFO tient à être impliquée et consultée dans l'élaboration de ces deux nouveaux examens afin de veiller à ce que les matériel pédagogiques et les examens francophones et anglophones soient de qualité égale. Depuis que le Barreau offre l'accès à la

jurisprudence, etc. L'AJEFO note que les dossiers thématiques, les lexiques et les modèles d'actes représentent des ressources de grand intérêt pour les professionnels de la justice.

[6] De façon consistante, les statistiques de Google Analytics confirment que les modèles d'actes, les lexiques et les dossiers thématiques figurent parmi les types de ressources les plus consultées.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

profession dans les deux langues officielles, l'AJEFO reçoit régulièrement des plaintes quant à la qualité des traductions de matériel et des examens. Afin d'éviter certaines erreurs du passé, le Barreau devrait collaborer avec la communauté juridique francophone dans l'élaboration de ces deux nouveaux examens et ce faisant, assurer une qualité impeccable de matériel et des examens pour les étudiants de la communauté francophone.

Nous croyons également que cette transition vers un nouveau format doit être échelonnée afin d'accommoder les étudiants qui ont déjà entamé leurs études en droit. Les choix de cours pendant un baccalauréat en droit se font sur une période de trois à quatre ans selon les programmes suivis et les diverses universités. Des mesures transitoires devraient être mises en place afin de donner un avis suffisant aux étudiants pour ajuster leurs choix de cours afin de maximiser leurs connaissances en vue de passer des examens.

Conclusion

Il est impératif que le **Programme de pratique du droit (PPD) soit maintenu** jusqu'à ce que le Barreau finalise sa réforme sur les *Voies d'accès à la profession*. Ce programme transitoire permet aux francophones, et particulièrement aux francophones racialisés de compléter un stage qui est essentiel afin d'accéder à la profession. Ce programme permet aussi l'avancement de l'instruction du droit en français et le développement d'outil de pratique et d'apprentissage qui sont d'une utilité à l'ensemble de la communauté juridique francophone et les justiciables francophones en Ontario. Mettre fin à ce programme sans offrir d'autres alternatives serait injuste et contraire à plusieurs politiques et objectifs du Barreau, notamment ceux ayant trait à l'équité et aux services en français. La communauté juridique francophone a mis d'énormes efforts à monter, développer, roder et perfectionner le PPD depuis les 3 dernières années. Le PPD a établi une excellente **réputation auprès de la communauté juridique francophone et répond aux besoins particuliers non seulement des candidats, mais également à ceux de la communauté francophone.**

Je reste à votre disposition pour tous commentaires et rétroactions.

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

ajefo Association des juristes d'expression française de l'Ontario

Je vous prie d'agréer, Maître Wardle, l'expression de mes sentiments les plus respectueux.

Me Sonia Ouellet
Présidente
Association des juristes d'expression française de l'Ontario

1400-85, rue Albert
Ottawa (Ontario) K1P 6A4
T (613) 842-7462
F (613) 842-8389
bureau@ajefo.ca
www.ajefo.ca

Canadian Association of Black Lawyers
L'Association des Avocats Noirs du Canada

October 19, 2016

Via Email

Paul Schabas, Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Peter Wardle, Chair, Professional Development & Competence Committee
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer Schabas and Chair Wardle:

Re: Pathways Pilot Project Report dated September 22, 2016

The Advocacy Committee of the Canadian Association of Black Lawyers ("CABL") writes to you with respect to the Pathways Pilot Project Report dated September 22, 2016 (the "Report").

CABL is a national network of law professionals formed in March 1996, with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary.

CABL is both a member of the Law Society of Upper Canada (the "LSUC")'s Treasurer Liaison Group and a member of the LSUC's Equity Advisor Group ("EAG"). CABL is also a member of the Ontario Bar Association ("OBA")'s Diversity Program and a member of the Roundtable of Diversity Associations ("RODA"). CABL has participated in a number of consultations with the LSUC, the Canadian Bar Association (the "CBA"), the OBA and the provincial and federal governments on issues of access, diversity and equity affecting the legal profession and the legal system within Canada and Ontario.

We write to you expressing our serious concerns with both the lack of any form of substantive consultation process preceding the finalization of the Report or, more significantly, with the Recommendations identified in the Report to end the LPP following the completion of Year Three (2016-2017) and to continue the enhanced Articling Program as the sole avenue in respect of transitional experiential training.

Consultative Process

We are very troubled by the fact that on an issue of such magnitude with such far reaching effects on our profession, and given in particular, the impact of the issue of transitional training on racialized law students, that final Recommendations would be published and disseminated to the public with only approximately three weeks to respond.

The importance of proper consultation with the profession cannot be understated. The speed with which the Report and its Recommendations are being presented to Convocation suggests that the LSUC does not wish to have thoughtful and meaningful consultations with the very entities, such as CABL and RODA, among others, which participated in the consultation process prior to the creation of the LPP and who represent a meaningful portion of the constituency most directly affected by these issues. Further, given the far reaching consequences to the profession as a whole, a reasonable length of time should have been provided to allow CABL, and others, to properly review the voluminous report (approximately 150 pages), consult among our members, and prepare proper and thorough written submissions on the Recommendations. We have had no reasonable opportunity for review and consultation and in the result, this letter is a much rushed and significantly abbreviated version of our response to the Report on a substantive basis.

Recommendation to End the LPP

As you are aware from the submissions filed with the LSUC by CABL in March 2012, which is attached for your information, CABL was and is against any two tiered system of transitional experiential training, as currently exists with the LPP and Articling Programs.

However, given that the LSUC has not to date implemented the previous Recommendation of CABL, and numerous other individuals and organizations, for a single tiered practical legal training experience, dismantling the LPP is wholly premature and counterintuitive as it then places us back to 2012 and the dire problem of law students, and in particular racialized law students, being unable to locate articles, thereby preventing entry to the profession.

CABL remains of the view that a two tiered system is not desirable for the reasons identified in our 2012 Submissions. However, until such time as the LSUC can design an enhanced, effective, affordable and permanently sustainable single tiered system for **all** law students, which we maintain is in fact achievable (please have regard to our 2012 Submissions in that regard), CABL is firmly of the view that the LPP should be retained and structurally enhanced, to better meet the needs of both the students and the profession.

Terminating the LPP Pathways Project without a viable alternative to the LPP, in the current environment, would cause extreme prejudice to those students who are, as found in the Report, obtaining valuable and necessary legal training from it.

We must also note the clear interrelationship and correlation between this issue and the already noted real barriers facing racialized students in their entry into and progression within the profession. The elimination of the LPP would in CABL's view increase the magnitude of those barriers as for the most part, lawyers from equity seeking groups are more likely to enter into

sole or small practice and do not have the same access to skills and professional responsibility training as those in large firm environments. Ironically, it was the recognition of those barriers, in part, which led to the LPP Pilot Project in the first instance.

As stated above, CABL is of the firm view that an enhanced single tier system is viable but in the meantime, and to address the concerns outlined in the Report, the LPP can be structurally enhanced to: better address the issues which has caused it not to gain acceptance by candidates and the profession, better address the inequities between the current Articling system and the LPP, which have a disproportionate impact on students from equity seeking groups; and, make it sustainable, **not for the long term** but until the LSUC can design **one system** which is mandated for all students.

Some of such structural enhancements are as follows:

1. continue the LPP pilot utilizing the English and French LPP resources, impressive physical and human resources and network of professionals, including the supervisors, instructors and mentors already in place;

2. align the practical portion of the LPP with the commencement of the articling term as LPP students are prejudiced by starting well after articling students have started within a firm/legal organization and thus do not get the same degree of up front exposure within the firm/legal organization as do articling students. This may mean that the academic portion of the LPP is undertaken immediately after law school ends or in the summer;

3. put in place the same supports, and in particular mentoring, as were recommended in the Racialized Licensee Consultation Task Force Report, to address what the Report masks, which is the issue of racialization and hiring practices;

4. address the issue of the significant inequity of the LPP cost (currently $1,900), borne by LPP students without regard to their economic means, which also has a disproportionate impact on racialized students (we note that spreading the cost of the LPP across **all** students in a single tiered system would likely address, significantly or in full, the issue of financial sustainability); and

5. allow for a period of time after the structural enhancements (at least another 2 to 3 years) to evaluate the LPP as a meaningful alternative for **all** students as a mandatory, single tiered system (or until some other appropriate single tiered system is created).

On this last point, we are of the firm view that there has been inadequate time and data (being only 2 years' worth), to properly and fully evaluate the LPP Pilot Project. We note that the original proposed pilot project timeframe was five (5) years. In particular, there is clearly insufficient data collected at this still early stage to evaluate the impact of the LPP in relation to the first cohort of lawyers in practice who successfully completed the LPP and commenced practising in 2015 in respect of the rates of professional discipline. Specifically, it is well too early to determine, in particular, whether the LPP training has had a positive impact on the **manner** in which the graduates are practising. One of the key goals of the LPP was to produce

competent and well trained lawyers. Bearing in mind that a large number of the LPP students are racialized and will have no viable alternative but to start practice in a sole or small firm post completing the LPP Program, primarily due to the barriers they face in the profession as racialized students, the opportunity to obtain high quality competency training and practical skills is crucial.

Summary

In summary, CABL is of the view that the Report findings show that the low take up by students and firms alike support the need not for the elimination of the LPP Project, but for its enhancement and transition into a one tiered system wherein all students can access and participate in the profession on a more equitable footing. The issue of the stigma attached to a two tiered system will be eliminated and at least all students would obtain the same level of training and participation within a firm/legal organization environment. In taking this position, CABL is mindful of the issue of placement shortages and in that regard, CABL reiterates the recommendation made in its 2012 Submissions for the LSUC to reconsider, as part of a proper consultation process, 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.

Please note our position that these submissions are not fulsome due to the time allotted for responses. CABL, as always, is willing and available to more fully expand on these and other proposals as part of a proper, full and meaningful consultation process.

Yours truly,

CANADIAN ASSOCIATION OF BLACK LAWYERS

Arleen Huggins, Chair, CABL Advocacy Committee
c/o Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3
Email: ahuggins@kmlaw.ca
Direct Tel: 416-595-2115
Enclosure

c. Donna Walwyn, President, CABL
Gordon Cudjoe, CABL Advocacy Committee

The Canadian Association of Black Lawyers (CABL)

SUBMISSIONS RESPONDING TO THE LAW SOCIETY OF UPPER CANADA ARTICLING TASK FORCE CONSULTATION

March 15, 2012

Canadian Association of Black Lawyers
L'Association des Avocats Noirs du Canada

I. INTRODUCTION

The Canadian Association of Black Lawyers (CABL), formed in March 1996, is a national network of law professionals and individuals that is committed to reinvesting in the Black community. Its continuing goal is to bring together law professionals and other interested members of the Black community from across Canada to cultivate and maintain the association of Black legal professionals in Canada, and in particular, Black lawyers.

CABL has reviewed the Articling Task Force Consultation Report. CABL believes that it continues to be appropriate and necessary for the Law Society, as the regulatory body for the legal profession in Ontario, to address the problem of articling shortages in Ontario. This is particularly pressing in light of the fact that this problem not only persists but has increased in magnitude and intransigence since the Law Society issued its Licensing and Accreditation Task Force Consultation Report in 2008. Further, the Law Society's resolution in this matter must take into consideration equity, fairness, access to justice and specifically, the impact such changes will have on members of equity seeking groups, including the members and putative student members of CABL.

II. RESPONSES

In light of the above, CABL offers the enclosed comments as they relate to the Consultation Report and the 5 options proposed therein. We have organized our comments in response to the following questions (which we have reformulated based on the questions posed by the Law Society in their consultation) as posed to our Membership during our consultations:

1. ***Should transitional training (of any nature or kind such as articling, PLTC or something else) form part of the Law Society's licensing requirements as discussed in the Consultation Report (as opposed to no transitional training between law school and practice other than a licensing examination) and why?***

- CABL is firmly of the belief that transitional training must form part of the Law Society's licensing requirements as practical legal training should be a fundamental element of qualifying a lawyer to practise. The standard law school curriculum does not fully prepare a law student for the practice of law. While CABL believes that the law school curriculum could be modified to provide such training, it remains the Law Society's obligation to ensure the technical competence of all Ontario lawyers.

- In addition, it should be noted that, for the most part, lawyers who are members of equity seeking groups are more likely to enter into sole or small practice as opposed to large firm practice. As a result, these lawyers may not have the same access to skills and professional responsibility training in their firm environments. These lawyers rely primarily on information obtained in law school and the Law Society's skills and professional responsibility programs to provide them, initially, with the necessary legal practice skills and professional responsibility awareness to enable them to best serve their

clients. In view of the fact that a large proportion of CABL members enter into sole or small practice after their call to the bar, it is desirable that these new lawyers have adequate skills training and possess the requisite competency to provide legal services to members of the public.

- Further it should be noted that:

  - by reason of the fact that many individuals from equity seeking groups transition directly into sole or small firm practice, especially due to the disproportionate employment opportunities made available to members of these groups, articling as a transition training program provides an invaluable opportunity, to those who are able to secure quality articles, to address and experience professional responsibility and ethical issues in a real-life professional environment, with a responsible lawyer available to oversee, guide and direct the individual; and

  - transitional training should also, ideally, provide law school graduates with an opportunity to be exposed to, and evaluate, different practise environments so that they may formulate at least an initial view of their desired practise area(s), without having to make a long-term practise commitment which may come with significant financial consequences (financial costs of setting up practise etc.).

2. ***As a regulatory requirement, should transitional training have established standards against which students are assessed? If so, how does the current articling requirement accomplish this?***

- CABL believes that any form of transitional training must have clear and appropriate standards against which to assess students. The purpose of the transitional training is two-fold. First, to provide a venue to develop the skills necessary to practice law and second to ensure that all practitioners who complete the training have a minimum skill level. Any requirement of transitional training that does not have clear and enforceable standards would be an unjustified and unreasonable financial and practical burden on all applicants, but especially on those applicants who are less well off financially.

3. ***Should the Law Society be obligated to address the issue of articling shortages?***

- The Law Society, as the regulator is absolutely obligated to address the issue of articling shortages. This is a responsibility to the profession and the public. While there are other stakeholders who may play a part in a solution, such as law schools, the Law Society must be the prime motivator in this matter.

4. ***What are our views on the introduction of financial incentives to encourage increased articling placements? Should Law Society fees fund such incentives even if it means increasing Law Society Member fees?***

- CABL believes that should PLTC be chosen or, if the Law Society develops a workable solution to retain articling, then either system should not be a financial burden to already

cash strapped law school graduates. The Law Society should explore alternative sources of funding, which may include a levy against Law Society Member fees' or organizations such as the Law Foundation of Ontario or the government.

- CABL would generally support recommended initiatives being funded through Law Society Member fees, provided that any increase in fees is reasonable, there are appropriate criteria for receiving such funding and the graduates who benefit from such funds are accountable (in the sense of the student actually entering into, and remaining in, the practice of law or being required to repay a portion of the amount by which they benefited). CABL would also support funding being sourced from a third party such as the Law Foundation of Ontario, government, etc.

5. ***What are our views on introducing a system specifically designed to hire articling students under the supervision of lawyers to provide access to justice to low income Ontarians, equality-seeking groups and regions outside the major metropolitan centers? What is our view of such an initiative being funded through Law Society Member fees?***

- CABL would generally support a system designed to hire articling students under the supervision of lawyers to provide access to justice to low income Ontarians, equality-seeking groups and regions outside the major metropolitan centers as one of the available alternatives to traditional articles. Such a system could provide law school graduates with valuable experience and assist in meeting the five goals of transitional training, while also helping to provide better access to justice by the aforementioned groups. One should keep in mind, however, that there may only be a limited number of graduates who wish to practice in this area, and therefore such a system would only be a partial solution to the issue of articling placement shortages. As such, it would have to be implemented in conjunction with articling or a PLTC.

- In order to be successful, the supervision provided by the supervising lawyers must be to the same standard as required for lawyers acting as principals in traditional articling arrangements. As an incentive, the supervising lawyers could be provided with additional credits towards the Law Society continuing legal education requirements (as we understand that credits are already available for such activity). Further, if the student was not working for the supervising lawyer (such that that there was no direct or indirect financial benefit to the lawyer), then the supervising lawyer may need to be separately compensated for his/her efforts. Also, some form of financial remuneration to the student should be mandated so that the student is not at a significant disadvantage as compared with students in tradition articling positions or other alternatives to traditional articling where the student is being paid. To have law school graduates work in unpaid positions (or, even worse, requiring the student to pay) would only exacerbate the diversity problems which already exist in our profession by creating an increased financial barrier for those from equity seeking groups, who are disproportionately from lower income families.

- Care should be taken to ensure that any such system provides a greater level of experience than a student would obtain through participating in the legal assistance programs offered by some law schools. Consideration should also be given to whether the law schools and law professors could be a valuable part of such an initiative.

6. ***What are our views on the 5 options presented in the Consultation Report and do any of them adequately address the issue of articling strategies and if so how?***

- Option 1 is not acceptable, as all indicators appear to suggest that continuing with the status-quo will result in the shortage of articling positions continuing to grow more severe. Given that transitional training is a requirement or pre-requisite to practice mandated by the Law Society, where the market is substantially failing to provide sufficient opportunities in an equitable manner, as in the current case, the Law Society should intervene. This is a fundamental issue of fairness. Also, given that a disproportionately large number of candidates from equity seeking groups are unable to secure articling positions, the status quo does not provide an impartial solution as it will continue to favour non-equity seeking groups.

- Option 2, while potentially addressing the issue of standards, does not address the larger issue of the shortage of articling positions and the resulting barrier on admission to practice. The quality assurance improvements contemplated as part of Option 2 could be considered for implementation together with an option that more adequately addresses the shortage of available articling positions.

- Option 3, as described, does not appear to provide law school graduates working in a sole or small firm practice setting with the same degree of practical, contextual and experiential learning as those who are "under supervision" (which we understand to be more like traditional articles) and will therefore result in a system that is not reasonably consistent and which places those working in a sole or small firm practice setting at a disadvantage. Also, it would be preferable for the transitional training to be completed *prior* to embarking in actual practise so that those working in a sole or small firm practice setting are not at greater risk of complaints and negligence claims in their first year of practice. Finally, Option 3 would not provide law school graduates who participate in the transitional training with an opportunity to be exposed to, and evaluate, different practise environments so that they could formulate at least an initial view of their desired practise area(s), without having to make a long-term practise commitment which may come with significant financial consequences (financial costs of setting up practise etc.).

  However, Option 3 is attractive with respect to eliminating the barrier on admission to practice, to the extent that there are sufficient "mentors" who would appropriately participate in the programme. In order to provide for sufficient mentoring, the Law Society should provide incentives to sole practitioners and lawyers in small firms to act as mentors, as discussed in the response to Question 5, above. It would also be necessary to address the concern that Option 4 would

create a two-tiered practical legal training experience with stigmatization attaching to the "transitional training" or "mentoring" option, as compared to being "under supervision".

Notwithstanding the comment made earlier with respect to Option 3, allowing the graduate to begin practice upon completion of the licensing examinations would help to address the financial inequality that would otherwise result if transitional training were to be completed prior to practice (presumably with no pay), as compared to those graduates "under supervision" who would (on the understanding that this would be more like traditional articles) presumably be paid.

- Option 4 suffers significantly from the perspective of financial fairness. Requiring law school graduates to pay for the PLTC course and to take a placement on an unpaid basis places them at a financial disadvantage as compared to law school graduates who secure articling positions. This disadvantage would likely be felt disproportionately by equity seeking groups, as members of equity seeking groups are more likely to enter into sole or small practice as opposed to large firm practice. Members of equity seeking groups are also disproportionately from lower income families to begin with, so the impact would be even greater. As a result, Option 4 could only exacerbate the diversity problems which already exists in our profession by creating an increased financial barrier for members of equity seeking groups. If the Law Society funded the PLTC course and provided for paid placements, Option 4 could be viable, although query whether the Law Society would be better positioned to design the course or to fund the full course. In addition to addressing the issue of financial fairness, it would also be necessary to address the concern that Option 4 would create a two-tiered practical legal training experience with stigmatization attaching to the PLTC option, as compared to traditional articles.

  Similar to Option 3, the "placement" component of the PLTC course does not appear to provide law school graduates with the same degree of practical, contextual and experiential learning as those who secure traditional articles and will therefore result in a system that is not reasonably consistent and which places those working in a sole or small firm practice setting at a disadvantage. It is not clear whether the degree of practical, contextual and experiential learning with Option 4 would be greater or less than the degree of practical, contextual and experiential learning provided with Option 3.

- Option 5 has the benefit of creating a level playing field with respect to transitional training. However, it would still result in inequalities given that the abolishment of articles would likely favour members of non equity seeking groups who are more likely to come from social backgrounds which have access to and networks among other lawyers which allow them to more easily locate permanent employment. This would likely only exacerbate the current lack of diversity in firm hiring decisions, as articling references/experiences could not be used as a hiring tool.

Overall, while not completely ideal, for the reasons outlined herein, Option 5 would be the preferred choice by CABL as it provides a single standard requirement approach.

7. ***What should a PLTC look like in options 4 or 5 of the Consultation Report?***

What courses/co-op or other work programs are to be included?
Who is to deliver the courses/program?
Who is to fund PLTC?
Where is it to be provided?
For how long is it to be provided?
When is it to be provided (pre or post licensing examinations)?

Substance of the PLTC:

- CABL believes that a single standard requirement is the most appropriate approach. In this case it would be a standardized PLTC since the existing articling program is not, in our opinion, workable in its current form to address the articling shortages that persist. Although there is no specific design model of how the proposed PLTC will look, a PLTC can be the equivalent to articling if it is designed to mirror the purpose and goal of articling and is similar in duration. CABL recognizes that the goal of articling is to provide recent law school graduates with exposure and orientation to the legal profession, facilitate mentorship, assist them to understand the role of lawyers in representing clients and being officers of the court and educate them on the need for ethical responsibility and the situations in which it arises, along with the business aspects of conducting a legal practice.

- The PLTC must consist of pertinent Professional Skills and Responsibility courses along with placement in a legal setting, such as a small, medium or large firm, a legal clinic, government or a legal department of a private or public entity. The PLTC should also focus on the soft skills of practice, such as client management and the administrative aspects of running a legal practice, which often to lead to disciplinary action.

- Any third party that offers the PLTC must satisfy appropriate and rigorous requirements that the Law Society establishes.

- CABL also believes that should PLTC be chosen, it must not be a financial burden to already cash strapped law school graduates. Rather, LSUC should explore alternative sources of funding, which may include a levy against LSUC member fees' or organizations such as the Law Foundation of Ontario or the government.

- CABL believes that a two tiered system of articling and PLTC must be avoided as it has the potential to create a segregated system wherein both members of the profession and fellow students may perceive the PLTC choice as inferior to the more familiar articling choice. CABL recognizes that this choice may be made disproportionately by members

of equity-seeking groups given the proven difficulty such individuals have had in finding articles under the current system.

Manner of Providing the PLTC

- Ideally, we also recommend that the clinical training should be offered as a mandatory part of the curriculum of all Canadian law schools, and could be developed along the lines of the University of Victoria Co-Op program which formally integrates law students' academic and career studies on campus with relevant and productive work experience in government and the private sector in Canada and elsewhere.

    - The UVIC Co-op program involves students working with three different employers in co-op term placements after completing a standard first year of legal studies. The first work term is completed only after the first full year of legal studies. The final two years of the LL.B degree programme consists of four terms of study and two additional work terms (resulting in an additional 1 to 2 semesters (4 to 8 months) to the law school program);

    - Conceivably a co-op program can, if three (3) months long work terms are engaged in, and the co-op proceeds through the summer months, be completed as early as the end of the summer following the 3rd year of law school and therefore could result in students graduating with 9 months work experience (instead of the UVIC program which results in 12 months work experience) with three different employers;

    - The co-op program would involve students engaging in the co-op work terms at different times and thus the issue of insufficient placements would be alleviated;

    - The co-op program would allow students to experience the diversity of legal practise by requiring them to work at three different employers (and it may well be advantageous to require that at least one placement be with government, including legal aid clinics) so that students experience alternatives to private practise and can refine career plans;

    - Co-op students can make invaluable contacts and gain invaluable working experience to better equip them for practise;

    - Co-op students, who must be paid during their co-op term, will be better able to fund their legal education; which will likely encourage individuals from equity seeking groups to apply to law schools.

- A prerequisite to the move to a true, mandatory co-op program to replace the current articling program, and a position which CABL has supported in the past and continues to support, is that the Federation of Law Societies must have influence over, and in fact mandate, the Canadian law school curriculum as a condition of conferring licenses to

practise law upon all Canadian law school students and those seeking licensing who have not attended a Canadian law school.

- NCA students who have been called to the bar and have practised for a minimum period of years/months in any common law jurisdiction should not be required to complete the co-op program in order for licensing to be granted.

- CABL is not in a position to discuss the minimum period of legal practise which should be required to be exempted from the co-op program or which academic requirements should reasonably be imposed upon NCA students in order to be granted a license to practise law in Ontario or elsewhere in Canada.

8. ***Are there any options not mentioned in the Consultation Report that could address the articling shortage issue?***

- Given the over representation of members of equity-seeking groups in the sole and small firm sectors of legal practice, CABL firmly believes that any solution to the articling issue must have a strong focus on practical training to provide students with a solid foundation prior to entering the practice of law, including:

    - practical training, with the ability to provide definite practice skills and practice management training, including real-life client exposure;

    - practical training that provides an opportunity for students to address and experience professional responsibility and ethical issues in a real-life professional environment, with a responsible lawyer available to oversee, guide, and direct the individual;

    - practical training that provides law school graduates with an opportunity to be exposed to, and evaluate, different practice environments so that they may formulate at least an initial view of their desired practice area(s), without having to make a long-term practice commitment which may come with significant financial consequences (cost of setting up a practice etc.); and

    - practical training should provide students with the skills and resources in order to easily move across provincial law society jurisdictions, without having to re-qualify, should they decide to do so after being called to the Ontario Bar.

- Furthermore, CABL's position is that any practical training program should not further marginalize people from equity-seeking groups; therefore, we see a two stream system as being an avenue for marginalizing those students who choose for example a practical legal training program over articling. As such, all students should be subjected to one stream of completing the necessary training to be called to the bar. Also, the objective of any training program should be more than just ensuring that students are called to the bar, but also ensuring that adequate training is provided to make students employable once

they are called to the bar. Finally, CABL views legal training as being the responsibility of the law schools and not solely that of the regulatory body (LSUC).

- Another option that might address the lack of suitable training placements for graduating law students would be to require students to complete intensive externships hours during their 3 years of law school studies.

- Law students, with the help of their school's externship coordinator, would arrange to clerk during a semester or summer, either domestically or internationally, with judges, law firms, legal clinics, or other entities with legal counsel on staff. The student could earn credit towards their required practical training for licensing and one credit for every 50 hours completed (about equal to the number of hours required to earn one credit for a traditional law school course). The student's progress would be monitored by the externship coordinator through the development of a learning plan at the outset of the externship and tracking of the student's progress through weekly journals and a final evaluation from the student's extern supervisor.

- The externship program has found increased popularity in the United States, even though not required for licensure, because of a recognition of the value of practical training and to provide their students with an edge in the marketplace once called to the bar. Likewise, similar programs, to a lesser extent, are found at certain faculties of law in Ontario, including the University of Ottawa, which organizes limited judicial externships during the fall and winter semesters.

- Some may argue that the Law Society cannot dictate to law schools how to fashion their curriculum, however we do not see that there is a difference between the Law Society mandating this issue and its involvement in respect to the standardized first year law school curriculum. Further, should the Law Society require that students graduate from law school with certain hours of practical experience in order to be called to the bar, it is certain that law schools in order to attract and retain the best talent will find a way to advance the objectives of the Law Society.

9. ***How to address the issue of over-representation of equity-seeking groups and those not able to obtain articling positions?***

- The over-representation of equity-seeking groups amongst those unable to find articling is less of an issue about the number of available placements and really is a systemic issue within the profession.

10. ***If there is a voluntary election between articling and PLTC, can a PLTC be designed to be equivalent to articling?***

and

11. ***If there is a voluntary election between articling and PLTC, will there be a stigma attached to those who chose PLTC among:***

(a) ***the profession; or***

(b) ***other students.***

- In our opinion given the potential stigma to the election of a PLTC as discussed elsewhere we do not believe that articling and the PLTC can be provided as an election.

III. CONCLUSION

Ultimately, whatever option is chosen, CABL believes that the option must not further marginalize individuals from equity seeking groups and must be geared towards providing adequate real-life legal training that will sufficiently equip law graduates and protect the public. The Task Force must be guided by the principles of access to justice, equity and fairness in making its recommendation to Convocation.

October 19, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON, M5H 2N6

Delivered via E-mail: **policy@lsuc.on.ca**

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing report

CELA writes to provide to the Benchers of the Law Society our perspective and experience with the Law Practice Program pilot. The Canadian Environmental Law Association (CELA) is a specialty legal aid clinic, funded by Legal Aid Ontario. We practice environmental law with a social justice mandate, and we provide a range of services including representation of low income and vulnerable groups, families and individuals at tribunals and hearings, summary advice, law reform and public legal education.

We have participated in the Ryerson LPP for the first two years of the program, and are looking forward to an LPP candidate joining us again this year.

We have read the report to the LSUC from the Committee. We concur with some of the issues that have been noted by the Committee. For example we share the concern that with our current resources we can offer only an honorarium to the LPP students and there is an inequity in this respect with our articling program. We were persuaded to take on LPP students despite this concern, on the basis that the program would be benefitting the LPP students by providing an avenue to licensing, consistent with their own career goals. If the LPP program is to continue, we encourage efforts to consider mechanisms to address the inequities in compensation with traditional articling positions.

We particularly wish to state that we have been very impressed with the high calibre of candidates who have been available in the LPP program. By coincidence, in all cases so far the LPP program has provided an alternative entry point to the practice of law for lawyers or students working with us to enter Ontario who have training, experience, and practice in environmental law in other jurisdictions. We have benefited tremendously from these diverse and expansive backgrounds and are confident that this is to the benefit of the province and the practice of law in general as well, to have these professionals joining our ranks.

We also note, as did the Committee report, that there are insufficient opportunities to enter the practice of law in Ontario through a social justice practice experience. We have only one articling position per year, having built that position into the structure of our clinic; but the majority of legal aid clinics do not have articling positions available to offer. We think that the ability to mentor additional young professionals in public interest administrative/social justice law is very important. We are also able to provide good practice experience at a range of tribunals and federal and provincial levels of Courts, in addition to

Canadian Environmental Law Association

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

providing good on the ground experience in understanding how environmental law is developed and applied.

It strikes us that the portion of the Committee report dealing with “perception” of the calibre and training of LPP candidates is not only incorrect in fact as the report notes, but also that given more time, this perception would disappear. At the moment it is premature to assume that those perceptions are anything more than the growing pains of the profession becoming accustomed to a new licensing system.

We thank you for your attention and would be pleased to provide any further information or input that may be of assistance in your deliberations.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Theresa McClenaghan
Executive Director & Counsel

The Canadian Hispanic Bar Association
260 Edgeley Blvd. Suite 10,
Woodbridge, Ontario L4K 3Y4
www.c-hba.net sandra@lozanolaw.ca
Tel. 647-772-6952 Fax 866-214-9362

TO: The Law Society of Upper Canada Convocation
FROM: The Canadian Hispanic Bar Association
DATE: October 19, 2016
RE: Submissions on the Pathways Pilot Project Evaluation and Enhancements to Licensing Report

BACKGROUND

1. The Canadian Hispanic Bar Association (the "CHBA") is a national, non-profit organization representing Hispanic/Latin American lawyers, law students, Articling/LPP students and NCA students.

2. The CHBA was founded in 2005 and was formerly known as the Hispanic Ontario Lawyers Association (HOLA). The CHBA has member representatives in the Roundatble of Diversity Associations (RODA), the Equity Advisory Group (EAG), JusticeNet Ontario and the US National Hispanic Bar Association.

3. The CHBA works to promote diversity within the profession, to increase the number of Hispanic lawyers across Canada and to provide support to its members.

4. In October 2012, the CHBA participated in the submissions by the Equity Advisory Group/ Groupe consultatif en matière d'équité (EAG) in response to the Articling Task Force Report entitled Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario. At that time, EAG was supportive of the LPP establishment, but raised concerns regarding the costs associated with the new program and the potential creation of a two-tier system for students undergoing the licensing process. EAG noted that it would be important, at the end of the pilot, to assess the effectiveness of the program, including any disproportionate negative impact on candidates and lawyers from equality-seeking communities.

COMMENTS ON THE LPP AND THE MOTION BEFORE CONVOCATION

5. The CHBA strongly believes that the LPP is an efficiently run program that is being administered by extremely capable professionals who have demonstrated a commitment to supporting diversity and equality within the legal profession. On the English language program, Ryerson LPP Executive Director, Mr. Chris Bentley, worked extensively as former Attorney General of Ontario on reaching out to equity-seeking legal associations, building dialogue with ethnic communities and implementing initiatives that supported racialized communities. He has continued that important work within the LPP. Ms. Gina Alexandris, Senior Director of the Ryerson LPP, has also demonstrated her long-standing commitment to diversifying the profession, including her tenure as Director of the Internationally Trained Lawyers Program at

the University of Toronto. The Report found no deficiencies within the administration of the LPP itself. On the contrary, it acknowledged that the LPP provides more systematic and consistent exposure to all the required competencies than articling and that it may excel over articling in a number of areas.

6. The CHBA commends the Law Society for taking very progressive steps towards addressing the challenges faced by racialized licensees and requests that the motion to terminate the LPP be considered within the context of the findings and recommendations made within the "Challenges Faced by Racialized Licensees Working Group Final Report."

7. The CHBA acknowledges that there may be valid concerns regarding the LPP raised within the "Pathways Pilot Project Evaluation and Enhancements to Licensing Report." More specifically, the CHBA agrees that the same issues identified by EAG in 2012 prior to the implementation of the LPP (costs and a potential 2-tier system) have resurfaced as some of the main concerns during the evaluation of the LPP. However, the CHBA strongly believes that Convocation should consider those concerns vis-a-vis the findings of the "Challenges Faced by Racialized Licensees Working Group Final Report" and that it afford the LPP administration the opportunity to properly respond to and address those concerns and all LPP related concerns raised within the Pathways Report.

8. The CHBA submits that it is well documented that the Hispanic community is vastly underrepresented within the legal profession. The Law Society has concluded that access to justice is enhanced by a legal profession that reflects the public it serves. The Ornstein Report found that as of 2006, there was only 1 Latin American lawyer for every 1,649 Latin Americans in Ontario which amounted to 0.3% of all lawyers or 90 Latin American lawyers in the province. Similarly, the 2015 Annual Report finds that only 0.6 of lawyer respondents self identify as Latin American.

9. The CHBA has requested information from the LPP regarding the number of Hispanic/Latin American students who have undertaken the program. The LPP has informed that in Year 1, there were 12 Spanish-speaking students in the program while Year 2 had 7 Spanish-speaking students and Year 3 has 7 Spanish-speaking students.

10. The CHBA respectfully submits that the LPP is providing a much-needed forum for the Hispanic community to gain more representation within the legal profession and more lawyers who will be able to provide services to this underserviced community.

11. The CHBA respectfully submits that there is no correlation made within the Pathways Report between the quality of the LPP and the lower Bar exam pass rates for LPP students on their first attempt and their lower rate of hire back numbers--the two main statistics cited for terminating the LPP. There needs to be more data and analysis of whether the LPP is actually creating a 2-tier system as the report refers only to "perception." Such data gathering and analysis may be more accurate or descriptive after 3 or more years of the LPP functioning.As such, the CHBA respectfully submits that Convocation should consider a further investigation of these issues prior to making a determination on the future of the LPP.

12. The CHBA submits that a decision regarding the termination of the LPP would be premature given the above noted issues and the short consultation process on the Report. The CHBA believes that a decision on this issue that has important ramnifications for racialized lawyers and communities should be made after at least the end of the 3rd year of the program, if not the 5 years initially considered for the Pilot.

13. The CHBA is concerned that the Report provides no alternatives for students if the LPP is terminated and makes no recommendations to address the concerns raised within the Report and offers no opportunity to the LPP providers to address those concerns. The CHBA submits that a decision on the termination of the LPP should be made once a proper consideration of options/remedies to address the concerns raised within the Report has been provided by its providers and considered by the Law Society and the Bar. For instance, the NCA examinations could be adjusted to correlate more with the requirements of the Bar exams to address the competency issue raised in the Report.

14. The CHBA is supportive of the other recommendations made within the Pathways Report regarding changes to the Articling process and submits that those changes should also apply to the LPP if the LPP is not terminated and as applicable.

15. We thank Convocation for the opportunity to make these submissions and we look forward to working with the Law Society to address licensing issues.

Sincerely,

The CHBA Pathways Report Working Group:
Sandra Lozano
Antonio Urdaneta
Laura Chaves Paz
Rita Villanueva

On behalf of the Canadian Hispanic Bar Association.

October 19th, 2016

Law Society of Upper Canada
Osgoode Hall
130 Queen Street West,
Toronto ON M5H 2N6

Attention : Professional Development and Competence Committee
Policy Secretariat – Sophia Sperdakos
Via email : ssperdak@lsuc.on.ca

Dear Ms. Sperdakos,

Re: CCLA Input into proposed LSUC Motion to end Law Practice Program

On behalf of the County of Carleton Law Association (CCLA), we thank you for this opportunity to contribute to the discussion on the Professional Development & Competence Committee (PD&C Committee/ "the Committee") recommendations, *inter alia,* to end the Law Practice Program ("LPP") following completion of the third year (2016-17) of the original five-year pilot project.

We specifically respond to the Report to Convocation: Pathways Pilot Project Evaluation and Enhancement to Licensing Report ("the Report") released by the Committee on Sept. 22nd, 2016.

We observe that running predominantly through the Report is the contention that the LPP is perceived by its candidates to be a second-tier pathway into the profession. This current perception still does not derogate from the fact that, as one of our members succinctly put it, "At least the LPP is giving people a fighting chance. The alternative is no chance at all. If I were a student, I would at least want a chance."

Moreover, the Committee's Report itself stated, "There is no evidence to suggest that the LPP is in fact second-tier or merits [such] a 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". We therefore caution against a rush to terminate the pilot while it is still in its infancy.

Our group considered the context of the Report wherein the original five-year pilot was amended by Convocation in its October/November 2012 report. It was stated that a five-year pilot was a long time and might end up having the unintentional effect of entrenching it, thereby not treating it as the pilot it was intended to be. We respond that extending the LPP to the end of Years 4 and 5 as a specifically-labeled pilot will not achieve entrenchment, but rather will allow for accurate assessment of LPP's future viability, using the same tools the Law Society has developed to date.

We note that the LSUC retained senior psychometrician Dr. A. Sidiq Ali, as the Senior Evaluation Consultant to develop specific tools to capture and apply data from the 2014-2015 and 2015-2016 years (1 & 2) to evaluate the LPP overall. The conclusions garnered by psychometric testing of the LPP pilot were stated to depict negative trends over a two-year span when comparing the LPP to Articling. The areas addressed included: the perception that the LPP is viewed by candidates and some Articling principals as a second-tier transitional experiential

training, the relative lack of LPP work placements, a greater percentage of withdrawal from the LPP program, fewer calls to the Bar in this group, and lower hire-back statistics, amongst others.

With respect, our group contends a brief two-year window of observation cannot accurately depict the forward momentum of any “trend”. We are only in the midst of Year 3 right now. A trend would be more accurately observed with data garnered from this year, plus Years 4 and 5.

We also ask whether the perception of LPP as a second-tier training process is merely an artifact of its relative novelty being compared by the profession and law students’ long-standing familiarity with Articling’s time-hallowed tradition. But given the long-running history of Articling, it could hardly come as a surprise that this new process would initially be viewed skeptically by members of the profession and by law students. We believe this could change over time, and possibly within the originally planned five year period after familiarity with the LPP grows.

Some members of our group support the LPP in theory while others do not. However, we all agree that terminating the LPP pilot after three years leaves law students with no other path to licensing but to somehow try to obtain Articles. This has proven to be an arbitrary barrier to many. The LPP was created to offer a viable option to Articling. Anecdotally, we offer our own examples of success with the LPP. One Criminal Defence practitioner in our group had two LPP students. One of them went on to become self-employed, while the other was hired by a major law firm. A Real Estate practitioner in our group hired an LPP student last year, taking him back as an associate after his call this year. Of note, these three LPP students are minorities with no prior connections to the legal community. We are unanimous in our decision that it is too soon to scrap the LPP program without a meaningful test period exceeding the two short years allowed so far.

The Committee’s Report to evaluate the LPP over its first two years is indeed detailed, insightful and thorough. However, we strongly feel these same tools should be applied across the broad panorama of the initially-conceived five-year pilot, not to a tiny two-year snapshot. If indeed the current findings remain fairly consistent at the end of the five years, a true and demonstrable ‘”trend” might seal the fate of the LPP. If on the other hand the LPP proves a viable long-term option to Articling when employing the parameters of the current report, another pathway to licensing will remain available to Ontario law students.

On behalf of the CCLA, we exhort you not to terminate the LPP at the end of Year Three (2016-2017) but rather continue it to the end of the originally-contemplated Year Five (2018-2019) for two reasons. Firstly, many of us feel the LPP has already been of great benefit to many licensing candidates, and thus to the profession. Secondly, we feel terminating the LPP two years prior to its original five year test period is precipitous. Allowing the LPP to continue to its originally anticipated evaluation period will have the salutary effect of either confirming the PD&C Committee’s current analysis and recommendations concerning the pilot, or alternatively, provide sufficient time for it to accurately observe success by its own parameters.

We thank you sincerely for your time and consideration of this submission.

Yours very truly,

Karen Ann Reid
Craig O’Brien
Rosalind Conway
Mark Habib
Andrew Ferguson
CCLA Trustees and Pathways Pilot Project Committee

Criminal Lawyers' Association
189 Queen Street East, Suite 1
Toronto, ON M5A 2S1

Tel: (416) 214-9875
Fax: (416) 968-6818

www.criminallawyers.ca
Anthony@criminallawyers.ca

October 18, 2016

Policy Secretariat
The Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Via e-mail: policy@lsuc.on.ca

Attn: Members of the Professional Development and Competence Committee

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing report

I am writing on behalf of the board and members of the Criminal Lawyers' Association (CLA). The CLA is the largest representative of criminal lawyers in Ontario and one of the largest specialty legal organizations in Canada. The vast majority of our members practice law either in small firms of fewer than 10 lawyers or as sole practitioners.

We are pleased that the Committee has undertaken a thorough review of the pilot project and provided this report for comment. In our response below, we have considered each of the Committee's major recommendations in turn.

Committee Recommendations

- Ending the Law Practice Program at the completion of Year Three (2016-17)

We agree with a majority of the Committee members that the data suggest that the LPP is not sustainable in its current form. It is encouraging to see the efforts in developing a more robust, consistent educational component for transitional and experiential learning, and we agree with the recommendation that Convocation explore ways in which both the French and English LPP resources can continue to benefit the licensing process going forward. Nevertheless, it appears the perception

of this alternate path as being *second tier* persists. This is consistent with anecdotal feedback of our own members.

- Continued use and evaluation of the enhanced Articling Program

We encourage Convocation to continue its efforts toward developing a more comprehensive articling program, including considering incremental changes to the licensing process that might achieve the stated goals of the LPP, specifically the need to address the difficulty graduates face in finding an articling position. The underlying problems in the licensing process will persist after the Pathways pilot project ends, and it is critical that any future model adopted deal with these issues. Of particular concern to the continued development of a robust criminal bar are the cost barriers licensees face, as smaller firms and sole practitioners, particularly in smaller markets, may not be in a position to offer articling positions that will adequately offset the cost of a modern legal education.

- Introduction of two new licensing examinations

We support in principle the suggested modifications to the licensing examination process. Adoption of a competency examination focused on practice and procedure appears to be a reasonable gateway mechanism to address concerns over whether licensees possess the requisite knowledge base of procedural, as contrasted with substantive, legal matters prior to beginning the articling term. Likewise, the introduction of an assessment of practical skills at the conclusion of the articling period appears to be a reasonable means of confirming that the articling term has achieved its goal of experiential learning.

- Articling exemption for internationally-educated candidates with three years of practice experience

The proposed increase from ten months of practice to three years of practice experience to qualify for an exemption should theoretically minimize some of the concerns regarding the baseline skills of internationally-educated candidates.

- Exploration of process to permit abridgment of articling up to three months

We would encourage Convocation to consider expanding the availability of an abridgment beyond formally recognized skills training *programs* to any licensee capable of demonstrating a sufficiency of practical experience. In 2012, one of the recommendations suggested by the CLA to address the decreasing availability of articling positions was to permit students who complete certain practical courses (e.g. trial advocacy or appellate advocacy) or who work with a law school legal clinic during their studies to complete their articles in six months rather than ten. Such a reduction in the articling term would enable small firms who currently employ one articling student a year to employ two at no extra expense.

Conclusion

In summary, the CLA is thankful for the opportunity to provide a response to the Committee's report. Our membership continues to be very interested in all future proposed developments to the licensing process. We encourage the Committee and Convocation to continue efforts to find new ways to address the shortfall in available articling positions without increasing the financial burden on new graduates, something that remains a concern to the defence bar going forward. We are committed to working with the Law Society to address these issues,

As outlined in our 2012 submissions when the Articling Task Force was first struck, the CLA maintains the following positions:

1. Articling is a valuable step on the road to the successful practice of law and should not be abolished.

2. A failure on the part of successive Ontario governments to fund Legal Aid Ontario adequately has had a significant impact on the ability of criminal lawyers to hire articling students.

3. Significant increases in the number of criminal law articling positions are not likely to take place without significant increases in funding to Legal Aid Ontario.

4. The Law Society should not take any steps that result in increasing the financial burden to those seeking to be called to the bar.

5. A practical training course is not a substitute for articling.

We were pleased to hear Treasurer Schabas' recent commitment to work on improving the Legal Aid program in this province. We firmly believe that a properly funded plan, with sufficient resources directed to supporting the private bar, would allow more of our members to take on articling students. This could in turn alleviate some of the major financial stresses experienced by students seeking criminal law articles.

If you have any questions concerning this response, please contact me.

Sincerely,

Anthony Moustacalis
President

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

EQUITY INITIATIVES DEPARTMENT

TO: Professional Development and Competence Committee's Pathways Working Group

CC: Members of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les Affaires Autochtones

FROM: Members of the Equity Advisory Group/ Groupe consultatif en matière d'équité

DATE: October 19, 2016

RE: Submission by the Equity Advisory Group/ Groupe consultatif en matière d'équité (EAG) in response to the Professional Development & Competence Committee's *Pathways Pilot Project Evaluation and Enhancements to Licensing Report.*

---

1. Professional Development & Competence Committee presented the *Pathways Pilot Project Evaluation and Enhancements to Licensing Report* (the Report) at Convocation on September 22, 2016. The recommendations provided within the Report will be deliberated at Convocation on November 9, 2016.

2. Following the presentation and public release of the Report the Equity Advisory Group (EAG) convened via teleconference on September 26, 2016 to discuss the Report and begin to generate a response to the recommendations posed within. The

members of EAG met in-person on October 06, 2016 to engage in further dialogue about EAG's response. On October 17, 2016 members participated in another teleconference for final deliberations on EAG's response to the Report. The purpose of this memorandum is to provide EAG's views and perspective on the Report.

3. The EAG is composed of the following individual members: Paul Jonathan Saguil (Chair), Sharan K. Basran (Vice-Chair), Jonathan Davey (Vice-Chair), Tahlee Afzal, Lisa Borsook, Douglas Judson, Leonard Kim, Lorin MacDonald, Paul Scotland, Jason Tam, and Brenda Young.

4. The EAG is also composed of the following organizational members: ARCH Disability Law Centre, Association des juristes d'expression française de l'Ontario, Canadian Association of Black Lawyers, Canadian Hispanic Bar Association, Canadian Muslim Lawyers Association, Canadian Association of Muslim Women in Law, Federation of Asian Canadian Lawyers, Law Students' Society of Ontario, Roundtable of Diversity Associations, South Asian Bar Association, Women's Law Association of Ontario, and the Women's Paralegal Association of Ontario.

5. It should be noted that individual or organizational members of EAG may make individual submissions to the Professional Development & Competence Committee.

6. All EAG members share the view that the discontinuation of the Law Practice Program (LPP), without an alternative program to take its place, will place undue hardships on licensing candidates from equality-seeking communities working to obtain a license to practice law in Ontario. If the Law Society votes to discontinue the LPP, it must develop alternative ways to assist candidates from equality-seeking communities that have faced historic and systemic difficulties in obtaining a license to practice law in Ontario.

7. Members are also unanimous in their concern about the increase in costs attributed to candidates throughout the licensing process due to the LPP, regardless of whether candidates participate in the LPP. The expenses associated with obtaining a license are exacerbated for candidates in the LPP, as they do not earn an income while participating in the program, and may not earn an income during the work placement they secure through the program. The high probability of student debt accrual in addition to rising licensing fees is likely to deter members from equality-seeking communities from entering the legal profession in Ontario, as they may deem it to be cost-prohibited.

8. In light of these shared positions on the LPP's effect on the licensing process, members of EAG held divergent views in regards to whether the motion to discontinue the LPP should be supported or refuted.

9. EAG members in favour of the continuation of the LPP provide the following reasons to support their position:

10. Members believe that the LPP provides licensing candidates with an opportunity to create relationships with legal professionals that would otherwise be difficult to forge. Such relationships are critical since the guidance and mentorship candidates receive during the licensing process will form the foundation upon which their respective legal careers are built.

11. Members state that many private law firms and organizations are primarily concerned with attracting law students who either display exceptional aptitude in their studies or represent an ability to attract clientele and enhance profitability. As a result, the prevailing thought among some members is that without the LPP law students who do not display either or both of these attributes will be less likely to be hired by private firms and organizations, despite being capable of otherwise completing the licensing process. The result is that such students are further inhibited in completing the licensing process, which does a disservice to them and to the many underserviced communities that would benefit from their expertise.

12. Members note that law students currently rely on the LPP as an option available to them upon graduation. Without such a program law students' ability to obtain a license in Ontario may be detrimentally affected as some students elected to forego applying to paid articling positions altogether. Discontinuing the LPP, with little notice to current law students, is not reflective of a public body that strives to assist students who have faced historic and systemic difficulties when attempting to enter the legal profession in Ontario.

13. In contrast with EAG members who support the continuation of the LPP, members not in favour of the continuation of the program present the following views to that effect:

14. Members believe the LPP creates a two-tier licensing process in Ontario. The basis for this belief is that licensing candidates who elect the LPP may be stigmatized by potential employers with the perception that LPP students could not attain a paid articling position. A possible result is that students who participate in the LPP may have to combat such a perception when seeking employment shortly after attaining their license.

15. Members also suggest that the LPP does not ameliorate a systemic issue, which is that the current demand for legal positions appears to outweigh the supply of legal positions in Ontario. As a result, the LLP transfers the excess demand for paid articling positions to an excess demand for entry-level positions for lawyers. The difficulty in finding legal positions in Ontario is compounded for equality-seeking licensing candidates who are already overly represented in the group of law students who often struggle to attain both paid articling positions and entry-level legal positions.

16. In addition to the views on whether the LPP should be discontinued, EAG members also expressed concerns about the changes to the competency examination during

the licensing process. Specifically, for new licensing examinations, such as the Practice and Procedure Examination and Practice Skills Examination, to be fairly incorporated into the licensing process, students should be made aware of these new formats early in their legal education to allow for adequate preparation.

Family Lawyers Association

c/o Katharina Janczaruk, Chair
701 – 65 Queen Street West
Toronto, Ontario
M5H 2M5

Tel.: (416)-924-8492
E-mail: kjanczaruk@sympatico.ca
Web: www.flao.org

October 19, 2016

By email: policy@lsuc.on.ca
ssperdak@lsuc.on.ca

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5N 2N6

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing report

The Board of the Family Lawyers Association ("FLA") wishes to provide the following comments about the Pathways Pilot Project Evaluation and Enhancements to Licencing Report ("Report"):

This 200 page Report, dated September 22, 2016, deals with issues that are of critical importance to the public, legal profession in general and to family lawyers in particular.

Family lawyers provide services to individuals during very difficult periods in their lives. They regularly deal with individuals fleeing violence, and those with multiple barriers including mental health and language. It is important that new licencees be ready for these challenges.

Family lawyers in Ontario tend to work as sole practitioners or in small firms. As a result, family lawyers face challenges in providing traditional articling positions for financial and administrative reasons. Licencee candidates similarly face challenges in obtaining articling positions in family law.

Training of new family lawyers, and effective alternatives to the traditional articling

process are of immense importance to the FLA. In addition, the FLA is concerned with the fairness of the Articling process, and the challenges facing racialized and foreign-educated candidates in obtaining suitable articling experiences.

Unfortunately, the October 19, 2016 deadline for comments is unreasonably short. The Report is long, detailed and complex. The Recommendations of the Report are far-reaching, and may have consequences related to the readiness of new licencees to provide competent services, fairness of process in ensuring racialized licencees obtain suitable experiences, and diversity in the legal profession.

One month is simply insufficient time for the FLA Board to review this Report in detail, consult with its membership and provide meaningful feedback.

At this time, the FLA takes a position in support of paragraph 3 of the Motion to be considered by Convocation. The FLA is unable to take a position on the rest of the proposed Motion.

We urge Convocation to provide additional time for stakeholders, including the FLA to provide meaningful, fully-considered feedback by extending the time for submissions on the Report.

We look forward to working with the Law Society of Upper Canada on this very important issue.

Yours truly,

Katharina Janczaruk
Chair, Family Lawyers Association

Zeenath Zeath
Board Member, Family Lawyers Association

VIA EMAIL TO policy@lsuc.on.ca

October 19, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6
[email: policy@lsuc.on.ca]

Paul Schabas
Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
[email: lawsociety@lsuc.on.ca]

Peter Wardle
Chair, Professional Development & Competence Comm.
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
[email: pwardle@wdbblaw.ca]

Dear Sir/Madam:

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing Report ("Pathways Report")

I am writing on behalf of the Federation of Asian Canadian Lawyers ("FACL") regarding the recently released Pathways Report by the Law Society of Upper Canada's Professional Development & Competence Committee ("PDCC").

FACL is a diverse coalition of Asian Canadian legal professionals that promotes equity, justice, and opportunity for Asian Canadian legal professionals and the wider community. The legal profession presents numerous barriers to Asian Canadians – be it access to culturally and linguistically sensitive legal services or entry into the profession itself. FACL addresses these barriers by, among other things, monitoring and advocating for policy developments impacting

the profession, providing Asian lawyers with mentoring and networking opportunities, and connecting Asian law students with the broader legal community.

The Pathways Report affirmed how racialized candidates in Ontario continue to encounter difficulties entering the Articling Program and that the Law Practice Program ("LPP") now serves as a stopgap measure, affording some of these candidates access to the profession. We have reviewed the Pathways Report in its entirety and believe the PDCC's conclusions and recommendation to end the LPP are premature.

We recognize that the Law Society seeks to establish not only a diverse but competent profession that can properly support Ontario's diverse communities. To that end we commend the PDCC's attempts to evaluate the effectiveness of the two pathways in developing competent lawyers. However, the data on effectiveness has yet to materialize. One of the tools most likely to offer an objective assessment of post-licensing competency, the survey of Employers of New Lawyers, has to date only achieved response rates of 2% and 1% respectively for the Articling Program and LPP (year two data was not even collected). Dr. Sidiq Ali qualified this data as "insufficient" and "highly unreliable" (see pp. 14-15 of Dr. Ali's Report).

The PDCC acknowledged that "there is no evidence to suggest that the LPP is *in fact* second-tier or merits [this second tier] 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." (see Report at para. 59).

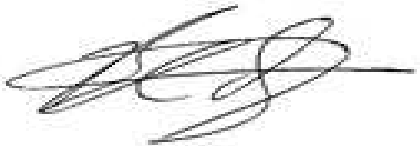
Yet the PDCC puzzlingly relies on the percentage of calls to the Bar and hire-backs to conclude that because the Articling Program produced more lawyers, it is the more effective pathway. The discrepancy in these two metrics is not reflective of pathway effectiveness but rather the demographics of the two candidate populations, which in turn results from the decision to run the LPP as a pilot, concurrent with the Articling Program. Absent any attempt to disentangle these demographic factors, the conclusion that the Articling Program produced more lawyers is meaningless.

Further data is required to properly assess not only the two programs' relative effectiveness in developing competencies, but also which is better suited at resolving the longstanding issues of equity and diversity within the profession. We urge the PDCC to delay the termination of the

LPP, engage in further consultations, and propose an evidence-based solution that meets all of these objectives – competency, equity and diversity – in a comprehensive manner.

Additionally, we concur with the position of the Roundtable of Diversity Associations ("RODA") that the decision is premature insofar as the PDCC seeks to eliminate the LPP without proper consultation and without addressing any of the fundamental issues that prompted the need for the LPP. We support RODA's request, outlined in its letter to you dated October 12, 2016, that Convocation delay discussion of the Pathways Report until the completion of a more comprehensive consultation process and continue the LPP into at least Year Four.

Sincerely,



Brendan Wong
President and Director
Federation of Asian Canadian Lawyers (Ontario)

On behalf of the Advocacy & Policy Committee of FACL (Ontario)

cc: FACL Board
RODA Board
Benchers of the Law Society of Upper Canada
Members of the LSUC Equity Advisory Group

FEDERATION OF ONTARIO LAW ASSOCIATIONS
FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

"The Voice of the Practising Lawyer in Ontario"

Commentary on the Pathways Pilot Project Evaluation & Enhancements to Licensing

Submitted to:

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON, M5H 2N6

policy@lsuc.on.ca

Submitted October 19, 2016

Corporate Mailing Address:
731 9th Street West, Owen Sound, ON N4K 3P5
Phone: (519) 270-4283

www.fola.ca
@ont_law_assoc

FEDERATION OF ONTARIO LAW ASSOCIATIONS
FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

"The Voice of the Practising Lawyer in Ontario"

We wish to thank you for the opportunity to provide submissions. The Federation of Ontario Law Associations (FOLA) is an organization that represents approximately 12,000 lawyers in private practice in Ontario. As an organization we are the voice of the practicing lawyer in Ontario and represent the interests of all lawyers in large, medium and rural legal markets. The Licencing process is of critical importance to members of FOLA and we are pleased to provide certain comments.

We can advise that FOLA cannot provide a consensus position on the complex issues raised in the licencing process or the decisions of the Committee as it relates to the evaluation of the Pathways Pilot Project. It was rightly noted in the Executive Summary to the report to Convocation on September 22, 2016 that there are a myriad of perspectives on the issue that has resulted in principled disagreement on an appropriate approach. This is the experience of the FOLA executive. It would be difficult, if not impossible, to present a common position on all of the issues presently before Convocation on this important licencing issue. Certainly, the recommendation to discontinue the Law Practice Program (LPP) early has generated the most controversy and discussion from the Committee's recommendations. We are addressing this issue below, but wish to provide some comments from our discussions and consultations on this issue which may be broader than the matters under consideration on November 9, 2016 but which have arisen as a result of the consideration of the subject-matter of the report of the Professional Development & Competence Committee (the "Committee") dated September 22, 2016. While these comments may not specifically address the recommendations being presented by the Committee, the Executive feels it is important for the Law Society to understand the dialogue that was raised in the course of the consideration of the issues.

While there have been loud criticisms and recent media coverage challenging the proposal to discontinue the LPP, FOLA notes that the Committee had before it the information of the Consultant's Evaluation Report that is not readily available to the FOLA Executive or members of the various law associations. The Committee provided a broad overview of the Evaluation. We assume that the recommendation to discontinue the LPP was made on a principled basis and with proper analysis by members of the Committee who carefully considered the issues. We also note that nine (9) of the fourteen (14) members of the Committee concurred with this result. Accordingly, FOLA is taking no position as it relates to the discontinuance of the LPP and would defer to the expertise and knowledge of the Committee on this particular matter.

We are also unable to comment on the program design of performance metrics as they relate to the LPP. The Committee appears to have thoroughly studied the issue and we would defer to the large majority of members who came to the same conclusion having carefully considered the data. We are not in a unique position to evaluate the success of the LPP. Similarly, FOLA takes no position as it relates to the other elements of the motion before Convocation related to bridging programs for internally-educated candidates or the approaches for licencing year 2018-2019.

…2/

Corporate Mailing Address:
731 9th Street West, Owen Sound, ON N4K 3P5
Phone: (519) 270-4283
www.fola.ca
@ont_law_assoc

We can advise that in our organization there continues to be passionate dialogue regarding licencing issues. While the views are divergent and sometimes the rhetoric can result in passionate debate, there is consensus on certain matters. We would like to present some of these consensus points for your consideration.

The ever-increasing numbers of students seeking to be licenced is presenting the profession with significant and profound challenges. We would urge the Law Society to continue to carefully examine the issue of how the growing numbers of licensed professionals have an impact on competence and the overall health of the profession as it continues to monitor the Articling Program. While the "numbers" debate has raged for many years at the Law Society, we hope the debate will continue.

In our view, it is clear that presently law schools are addicted to rising numbers of students to support funding for new positions to remain competitive with other schools. We understand that new schools are seeking accreditation. At the same time tuition fees have continued to rise unregulated and to unaffordable levels to many in the middle-class. Students are trying to enter the profession following law school with six-figure debt, putting further economic pressure on practitioners. At the same time, ever higher numbers of international graduates are seeking to enter the legal market in Ontario. It is no wonder that the number of articling positions available do not meet demand. In short, there is a "perfect storm" brewing and this needs to be addressed in some fashion.

In our view, there is only so much the Law Society can and should do to open more articling positions and to assist graduates with licencing. By focusing on assisting higher numbers of graduates each year to enter a profession that is already suffering in many respects, the result may further exacerbate the economic pressures being felt by the profession. In fact, we are seeing anecdotal evidence of many recent licensees in certain practice areas hanging up their own "shingles" and we are concerned that many of these new calls do not yet have the experience or competence to operate without the benefit of more experienced colleagues they can consult "down the hall". Apart from these matters of apparent consensus with respect to the problem, at this time there appears to be no consensus on the proper approach to solving the problem. FOLA respects the Law Society as the governing body responsible for licencing. However, FOLA is of the view that the importance of the issues this profession is facing requires a broad consultation and a fresh look with the following key points in mind.

1. The Law Society should continue to focus on solutions for the profession, consistent with its mandate to ensure competent members of the profession through the licencing process. In this process, we recommend that the Law Society consider another wide-reaching consultation with members of the profession throughout the Province. As the voice for the practicing lawyer in Ontario FOLA is uniquely positioned to assist the Law Society in this endeavour and we would be pleased to work with you to develop a Committee to address the issues provincially as policy positions are being developed on licensing.

…3/

Corporate Mailing Address:
731 9th Street West, Owen Sound, ON N4K 3P5
Phone: (519) 270-4283
www.fola.ca
@ont_law_assoc

2. FOLA defers to the decision-making of the Committee and to Convocation as it relates to the decision to discontinue the LPP and in decisions related to the Licencing process in the motion before Convocation on November 9, 2016. We have members with strong views on both sides of this debate to continue or discontinue, but whatever decision is made, we respect that it will be a well-considered one.

3. Whatever decision is made with specific reference to the future of the LPP, we do believe the Law Society must, as it determines how to move forward, have regard to the economic feasibility of the current LPP or whatever might replace it. In our view, neither the profession nor those law students who have articling positions should be required to bear a disproportionate level of financial cost to provide a pathway to the profession.

4. The Articling process in Ontario has been viewed as exceptional and has resulted in training some of the most talented lawyers in the world. While the Law Society continues to monitor the Articling program and address the issues that emerged from the Pilot, we hope the Law Society will continue to view the articling program as a core element of the licencing process.

5. While not part of the recommendations before the Convocation in November, the Law Society should consider putting pressure on law schools to ensure that students entering law schools are aware that the legal market is changing and that the holder of a law degree is not guaranteed an articling position or entry to the profession. While Law Schools are primarily academic institutions that are not mandated to assist with licencing and have no role in the regulation of the profession, they do have a responsibility to ensure that students are advised that there should be no reasonable expectation that all students will find positions or become licenced to practice law in the Province of Ontario. While the Law Society rightly considers the removal of barriers to entry and to ensure that the licencing process is fair and balanced, it is not in the public interest that all candidates seeking entry to the profession should feel that they have a right to entry just because they were lucky enough to be allowed entry to a law school in Ontario or anywhere else in the world.

   In a similar vein, we endorse the efforts of the Law Society to reform the "NCA" Process governed by the Federation of Law Societies of Canada to ensure students who come through that process are fully competent and able to practice immediately. Similarly, these candidates need to be made aware that the licensing process is rigorous and entry into the process is a long way from a guarantee to licensing and accreditation. While all effort should be made to remove racial or other barriers that might prevent or disadvantage certain segments of the population, these efforts to remove barriers cannot diminish the rigour of the testing.

…4/

Corporate Mailing Address:
731 9th Street West, Owen Sound, ON N4K 3P5
Phone: (519) 270-4283
www.fola.ca
@ont_law_assoc

FEDERATION OF ONTARIO LAW ASSOCIATIONS
FÉDÉRATION DES ASSOCIATIONS DU BARREAU DE L'ONTARIO

"The Voice of the Practising Lawyer in Ontario"

FOLA understands that the myriad of views makes it very difficult to achieve a consensus on this issue. However, the issue is of critical importance to all members of the practicing bar in Ontario, and to the future economic viability of the profession. We urge the Law Society to continue to engage in robust study and debate on this issue before any final decisions are made. In the meantime, we support the work of the Committee as it relates to decision-making and evaluation of the Pilot Project and wish the Committee well in its deliberations.

Thank you for the opportunity to provide these submissions.

Eldon Horner
Chair

Christopher J. Edwards
East Region Representative

Corporate Mailing Address:
731 9th Street West, Owen Sound, ON N4K 3P5
Phone: (519) 270-4283

www.fola.ca
@ont_law_assoc

Commissariat aux services en français de l'Ontario

Office of the French Language Services Commissioner of Ontario

800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9
1 866 246-5262 / 416 847-1515
416 847-1520
ATS 416 640-0093
flsc-csf@csfontario.ca
csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9
1 866 246-5262 / 416 847-1515
416 847-1520
TTY 416 640-0093
flsc-csf@flscontario.ca
flscontario.ca

October 19, 2016

Pathways Pilot Project Evaluation and Enhancements to Licensing Report
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6
policy@lsuc.on.ca

I read with interest the Professional Development and Competence Committee's September 22, 2016, report to Convocation. To my astonishment, I saw that the majority of the committee's members voted to end the Pathways Pilot Project and the Law Practice Program (LPP) after the 2016-2017 cohort. While I am aware that this was only a preliminary vote, I would like to take this opportunity to express my views regarding the LPP and its importance for access to justice in French.

First of all, I want to make it clear that I am not making this comment as part of an investigation under the *French Language Services Act*.

Access to justice in French is an important issue which has generated a great deal of indignation in Francophone communities and raised serious questions about the integrity of the existing legal system. The case of *Belende v. Patel* is a perfect illustration of this, particularly after the widely reported decision of the Court of Appeal for Ontario, which contained the following statement:

> English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s. 126 of the *Courts of Justice Act*. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures. (*Belende v. Patel*, 2008 ONCA 148, at para. 24)

Like others, I am of the opinion that the LPP is an excellent measure taken by the Law Society of Upper Canada (Law Society) to, among other things, address the problems associated with access to justice in French. The LPP helps to ensure the continuity of legal services in French, as its organizers have managed to impress upon its participants the importance of access to justice in French. In a recent survey of LPP participants, most of them stated that they now have a greater understanding of and appreciation for access to justice in French in Ontario.

In this regard, I have received only positive comments about the LPP. That is why I am dumbfounded by the resolution of September 22 to recommend terminating the program, without any apparent replacement. The decision to end the LPP, especially with nothing to take its place, could seriously undermine the progress it has made in educating aspiring lawyers on the issues surrounding access to justice in French. In my view, this decision would be a grave error. The Law Society must continue to play a leadership role in training Francophone lawyers. In their report entitled *Access to Justice in French*, Justice Paul Rouleau and lawyer Paul Le Vay noted the following:

> It is clear that the Law Society needs to take a leadership role [regarding the availability of French-speaking lawyers]. While legal associations such as AJEFO, the Ontario Bar Association, and others can assist, the Law Society is in the best position to lead and coordinate these tasks.
>
> With respect to the difficulty in retaining a bilingual lawyer, the Law Society plays an important role in increasing this access. In 2006, the *Law Society Act* was amended to provide that the Law Society has the duty to "facilitate access to justice for the people of Ontario." Given the French-speaking populations' right to access justice in French, and their apparent failure to exercise this right, the Law Society should consider whether timely access to bilingual lawyers is a cause it wishes to promote. If so, it should consider ways that it, alone, or in conjunction with law faculties and lawyers' associations, could increase the availability and number of lawyers who can represent clients in French. (*Access to Justice in French*, p. 46)

If the Law Society decides to terminate the LPP after the 2016-2017, it is vital that the program be replaced with another measure that will play the same role for Ontario's Francophone community. It is unthinkable not to take advantage of all the work done by the LPP team at the University of Ottawa to develop an alternative that would continue to promote access to justice in French in Ontario.

Moreover, since the LPP's first year, a large number of candidates registering in the program have been members of racialized groups. This fact is consistent with the Law Society report entitled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, which contains the following statement: "Information obtained to date suggests that racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement." (p. 6). The LPP is therefore an important means of supporting racialized candidates in the licensing process.

I encourage the Law Society to review the Professional Development and Competence Committee's decision to abolish the LPP after the 2016-2017 cohort. Alternatively, if the Law Society decides to abolish the LPP, it must do so with another program to take its place that will be able to continue to play a part in promoting the importance of access to justice in French, but also as an alternative to the traditional licensing process, including for racialized candidates.

Yours truly,

François Boileau
French Language Services Commissioner of Ontario

Encl.

Commissariat aux services en français de l'Ontario

Office of the French Language Services Commissioner of Ontario

800, rue Bay, bureau 402
Toronto (Ontario) M5S 3A9
1 866 246-5262 / 416 847-1515
416 847-1520
ATS 416 640-0093
flsc-csf@csfontario.ca
csfontario.ca

800 Bay Street, Suite 402
Toronto (Ontario) M5S 3A9
1 866 246-5262 / 416 847-1515
416 847-1520
TTY 416 640-0093
flsc-csf@flscontario.ca
flscontario.ca

19 octobre 2016

Rapport d'évaluation et d'amélioration du projet pilote Voies d'accès à la profession
Secrétariat des politiques
Barreau du Haut-Canada
Osgoode Hall, 130, rue Queen Ouest
Toronto, ON, M5H 2N6
policy@lsuc.on.ca

J'ai lu avec intérêt le rapport au Conseil du 22 septembre 2016 du Comité du perfectionnement professionnel. À ma grande stupéfaction, j'ai remarqué que la majorité des membres du Comité ont voté pour l'abolition du projet pilote *Voie d'accès à la profession* et le Programme de pratique du droit (« PPD ») après la cohorte de 2016-2017. Bien que je suis conscient que ce n'était qu'un vote préliminaire, j'aimerais prendre cette occasion pour exprimer mon point de vue au sujet du PPD et de son importance pour l'accès à la justice en français.

De prime abord, je souhaite noter que je n'envoie pas ce commentaire dans le cadre d'une enquête sous la *Loi sur les services en français*.

L'accès à la justice en français est un enjeu important qui a suscité beaucoup d'indignation auprès des communautés francophones, en plus de soulever des questions importantes sur l'intégrité du système juridique en place. D'ailleurs, l'affaire *Belende c. Patel* illustre le parfait exemple, notamment suite à la décision très médiatisée de la Cour d'appel de l'Ontario, alors que cette dernière reconnaissait que :

> L'anglais et le français sont les deux langues officielles des tribunaux de l'Ontario, et il appartient aux tribunaux d'assurer le respect des droits linguistiques prévus à l'article 126 de la *Loi sur les tribunaux judiciaires*. L'interprétation correcte de cet article en est une qui est compatible avec le maintien et l'épanouissement des collectivités de langue officielle au Canada et avec le respect de leurs cultures (*Belende c. Patel*, 2008 ONCA 148, au para. 24).

Je suis d'avis, comme d'autres d'ailleurs, que le PPD est une excellente mesure prise par le Barreau du Haut-Canada (« Barreau ») pour notamment contrer les problèmes liés à l'accès à la justice en français. Le PPD contribue à la pérennité de l'offre de services juridiques en français, car les organisateurs du programme ont su instiller chez

les stagiaires du PPD l'importance de l'accès à la justice en français. Lors d'un récent sondage effectué auprès des stagiaires au PPD, la grande majorité d'entre elles ont souligné le fait qu'elles comprennent mieux maintenant et valorisent l'accès à la justice en français en Ontario.

Sur ce point, je n'ai reçu que des commentaires qui faisaient l'éloge du programme. De là vient mon étonnement quant à la résolution prise le 22 septembre de suggérer l'abolition du programme, sans mesure alternative apparente. La décision d'abolir le programme, surtout sans solution de rechange, pourrait sérieusement mettre en péril les progrès qu'a effectués le PPD en matière de sensibilisation aux enjeux entourant l'accès à la justice en français. Cette décision serait, pour ma part, une grave erreur. Le Barreau se doit de continuer à jouer un rôle de leader dans le domaine de la formation d'avocats et d'avocates francophones. Dans leur rapport intitulé *Accès à la justice en français*, le juge Paul Rouleau et l'avocat Paul Le Vay ont noté que :

> Il est clair que le Barreau doit jouer un rôle de premier plan à [l'égard de la disponibilité des avocats francophones]. Bien que des associations représentant les avocats telles que l'AJEFO et l'Association du Barreau de l'Ontario puissent jouer un rôle secondaire, le Barreau est le mieux placé pour diriger et coordonner le travail à accomplir.
>
> En ce qui a trait à la difficulté de retenir les services d'un avocat bilingue, le Barreau remplit un rôle important pour ce qui est d'accroître cet accès. En 2006, la *Loi sur le Barreau* a été modifiée de manière à imposer au Barreau l'obligation de « faciliter l'accès à la justice pour la population ontarienne ». Compte tenu du droit de la population francophone d'avoir accès à la justice en français et du fait que celle-ci ne semble pas exercer ce droit, le Barreau devrait déterminer s'il souhaite faciliter l'accès en temps opportun à des avocats bilingues. Si tel est le cas, il devrait examiner les façons dont il pourrait, soit seul soit en collaboration avec des facultés de droit et des associations d'avocats, augmenter la disponibilité et le nombre d'avocats qui peuvent représenter des clients en français. (*Accès à la justice en français*, p. 46)

Si le Barreau décide d'abolir le PPD après la cohorte de 2016-2017, il est primordial qu'il le remplace par une autre mesure qui remplirait le même rôle chez la communauté francophone de l'Ontario. Il est impensable de ne pas tirer avantage de tout le travail qu'a effectué l'équipe du PPD à l'Université d'Ottawa pour la création d'une solution alternative qui continuerait mettre en valeur l'accès à la justice en français en Ontario.

De surcroit, depuis la première année du PPD, un nombre important de candidats qui s'inscrivent au PPD font partie de groupes racialisés. Cette réalité est en ligne avec le rapport du Barreau intitulé *Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face*, qui stipule que les « renseignements obtenus à ce jour suggèrent que la racialisation est un facteur constant et persistant qui touche les titulaires de permis à leur début dans la profession

et lors des possibilités d'avancement professionnel » (p. 6). Le PPD est donc une méthode importante pour appuyer les stagiaires racialisés à accéder à la profession.

J'invite donc le Barreau à revoir la décision du Comité du perfectionnement professionnel d'abolir le PPD après la cohorte de 2016-2017. Subsidiairement, si le Barreau décide d'abolir le PPD, il se doit de créer un programme similaire qui pourra continuer à jouer un rôle dans la promotion de l'accès à la justice en français, mais aussi comme une solution de rechange au processus d'accès à la profession traditionnel, y compris pour les stagiaires racialisés.

Aux fins de référence, je joins une version de cette lettre en anglais.

Je vous prie d'agréer l'expression de mes sentiments les meilleurs.

Me François Boileau
Commissaire aux services en français de l'Ontario

P.j.

October 11, 2016

BY EMAIL: ssperdak@lsuc.on.ca

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON
M5H 2N6

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing Report

The Indigenous Advisory Group has considered the September 22, 2016 Report to Convocation and accepts the findings that despite many positive features, the pathway of the pilot known as the Law Practice Program (LPP) does not appear to be providing a viable alternative to articling nor is it sustainable.

Stated it your own words,

> "[T]he 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." (*Pathways*, p. 5)

We believe experiential or on-the-job training is hugely important to the development of the skills and professional abilities needed to fully serve the public as a lawyer. We also believe that this experiential training can often serve to inform the law school graduate of their career path; a path they may decide to turn away from or solidify based on this experience.

The *Pathways Report* highlights the lack lustre enrollment in the program at the same time as it reinforces the concern that there continues to be articling placement shortages. While the focus of the report is on the experience of the candidates who did enroll, the majority of whom are internationally educated and we are not aware of the total number of Indigenous candidates, there is a generalized observation that the pathway was unable to significantly address Law Society's commitment to ensure a licensing process that is fair, accessible and objective. This is of particular concern knowing the scarcity of certain articling positions in the field of social justice.

The absence of a clear alternative to the LPP is a serious concern and we encourage the Law Society to work with both government and private sectors to explore the development a fund to facilitate the creation of articling placements. Through strategic partnerships with law schools, community clinics, prisons, and family law centres with a particular focus on the under-serviced locations of the province, the Law Society could both lead and facilitate a solution to concerns regarding access and its own licensing requirements in a post LPP world.

Respectfully,

Kathleen Lickers, Co-Chair
on behalf of the Indigenous Advisory Group

LAW PRACTICE PROGRAM CANDIDATES ASSOCIATION
www.lppca.com lppca.contact@gmail.com @LPPCAinfo

Wednesday, October 19, 2016

Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

VIA E-MAIL

ATTENTION: Convocation

Dear Sirs/Mesdames:

Re: Pathways Pilot Project Evaluation Report

We represent the 2016 - 2017 cohort of Ryerson University's Law Practice Program ("LPP"). With respect, we are writing to offer our humble response to the Report on the Pathways Pilot Project ("Report") released by the Professional Development and Competence Committee ("PD&C Committee") on September 22nd, 2016.

We are confident that our first-hand experience with the LPP is a source of valuable insight that is relevant to the evaluation of the Pathways Pilot Project, and we remain eager to contribute constructively in Convocation's discussions on this matter.

A. Effectiveness of the LPP

We respectfully submit that the Report did not adequately address the effectiveness of the Law Practice Program. The effectiveness of the LPP should be determined considering the initial objectives of its creation and development. We respectfully submit that Convocation should consider:

- What were the primary goals in establishing the LPP?
- Have those expectations changed over the three years?
- If so, has the program's mandate and structure been changed accordingly?

If the expectations have been changed, we believe the reasoning should be made readily available and open to comment from affected parties. We see these as important questions to keep in mind when reading the Report and conducting future discussions.

We direct your attention to the Articling Task Force Report dated October 25, 2012, which stated,

> While articling would continue to be the route through which *most candidates* become licensed, the LPP, which would include both a skills-training program and a co-operative work placement, would provide an *alternative path to licensing*. [*emphasis added*]

The Articling Task Force Report also stated that,

> Providing these two pathways to licensing would directly address the issue of access to the licensing process in an environment where there are insufficient articling positions.

Accordingly, the LPP was intended to

> measure competence through a fair process that provides access to the profession, fosters access to justice and does so while protecting the public interest.

Considering the goals mentioned by the The Articling Task Force Report, the LPP has been successful in fulfilling its initial objectives. According to the LPP report entitled, "Three years of the LPP", the LPP created 440 new work placements over two years and directly addressed the issue of access to the licensing process. These 440 work placement were not available prior to the creation of the LPP. 72% of the work placements were paid during Year II (stipends: 6.8% Year II down from 9.8% in Year I), which is in line with the percentage of paid placements in the articling stream.

We respectfully submit that the committee should not introduce novel expectations in its report to assess the effectiveness of the LPP, such as being called to the Bar in a Candidate's originating licensing year; graduating from law school in the same year as enrollment in the licensing process; and success in first writing of the bar exam.

It is our humble opinion that the effectiveness of the LPP has nothing to do with whether the LPP was a first or second choice for candidates. The program was created as an "alternative" approach to deal with the articling crisis in Ontario. The LPP has done exactly what it was originally designed to do, and in the process, has converted many sceptics into proponents.

B. Second-tier perception

We respectfully submit that the perception that the LPP is second tier is simply incorrect and is a sentiment that is perpetuated by a lack of information available to members of the profession.

As bright, talented and driven pioneers of the future of the legal profession, and as individuals and a group that is directly impacted by the consequences of the Committee's Report, our voices should be heard. The PD&C Committee's failure to acknowledge our repeated attempts to have

a dialogue and provide qualitative data in this matter only reinforces the two-tier perception and goes to the heart of whether adequate evidence was collected to come to the conclusion that there is a "second-tier perception".

It must be noted that the uncertainty regarding whether the LPP will be offered in subsequent years does not help to address the "second-tier perception". This would undoubtedly have an adverse impact on participation in future years of the LPP as well. A 2017 law school graduate could struggle to consider the LPP as their first option when the very existence of the LPP in coming years is uncertain.

Because the PD&C Committee have debated the matter in the relative infancy of the LPP, it is unsurprising that the program has been perceived as a second-tier option. The LPP was designed to be an *alternative option* to allow Candidates who could not find articling positions become qualified and be called to the bar in Ontario. This was its purpose. The need for an alternative has not ceased, but rather has continued to grow. The suggestion that the LPP should be discontinued without proposing an alternative approach to alleviating the articling crisis is worrisome.

Despite the second-tier view suggested by the PD&C report, it should be highlighted that many candidates have entered the LPP as their primary choice. Not all who entered law school, let alone completed it, had the intention of utilizing their legal education and accreditation for the traditional purposes. Instead, there are those who have sought to leverage the LPP's comprehensive training to further their professional abilities and other pursuits (e.g. entrepreneurial, corporate executive, etc). Providing an alternative to the traditional licensing approach has served to foster their growth in the profession itself, creating an avenue for their licensure and membership to the Law Society in an application-based and forward-thinking manner.

C. Insufficiency of Information on Which to Evaluate the Pilot Project

We draw your attention to page 15 of the "Pathways Evaluation Interim Results: Years One and Two", where it is identified that they cannot "reliably report results" of the surveys for which "there are [sic] relatively few data to report because of very low response rates". If, as stated in the Report, there is not sufficient data, then that data should not be relied upon to conclude that the program is not feasible.

According to the "Pathways Evaluation Interim Results", the Articling Program Candidates' Survey had only a 44% response rate in each of Year One and Year Two. On page 14 of the same document it is mentioned that a 44% response rate is a "less than accurate snapshot of the targeted population and the data may be viewed as unreliable; and *interpretations and findings are made with caution*." Further, there have been no reports on the demographics of the candidates surveyed. We respectfully submit that this component is an important consideration in addressing those results and using these figures as a snapshot to represent the whole of the Year I and Year II cohorts (while not providing this information publicly in the released report) leads to the support of a misleading conclusion that the LPP should be terminated.

The LPP Entry Survey is the initial survey conducted on the first day of the LPP and therefore cannot demonstrate more than initial perceptions of participants entering the program. These same participants include those who have applied to the LPP program as a fallback option while still pursuing traditional articling positions, including unpaid positions, perhaps due to their personal prejudices formed due to the second-tier perception. As we have learned from surveys distributed to the candidates and alumni of the program (along with our own experience), initial perceptions are subject to change throughout the course of the program.

The surveys relied on by the Committee also only provide information on the first and second year of the program. An entire year of the pilot program has not been given a voice; the first year of the program, we add, that has a fully elected student government, demonstrative of the growth and awareness of the participant body itself. We respectfully submit that as this pilot was supposed to run for three full years, it is premature to use an incomplete data set.

All new programs expect to face challenges at the outset. Innovation and change are a constant throughout history, including Ontario's own legal history. We would argue, that with further opportunity and evaluation, the LPP will demonstrate itself to be a next step in that evolution. Ongoing feedback from program participants, including mentors, and an open discussion with the Law Society, is the only way to cure any defects in the still infant LPP.

D. Fairness

We believe there are three significant issues that are not properly addressed by the Committee's Report that go to the heart of fairness. First, the passage rates of candidate's first attempts at the barrister or solicitor exams has never before been considered as a measure of competency to become a lawyer (para. 93). Second, the focus on the difficulties with the work placement process ignore the continuing issues with discrimination in the articling process. Third, the report has failed to examine the performance of LPP candidates in the profession post-call, and compare their involvement in the profession to that of the traditional articling licensing route.

1. Bar Exam Failure Rates

Using bar exam pass rates on the first attempt is problematic as candidates are given three years in which to complete their licensing requirements. Nowhere is it stated that a candidate must pass the bar exam on the first attempt to be considered a respectable or qualified practitioner. The only requirement related to the bar exams is that the candidate must pass both the barrister and solicitor exams within their three year licensing term within three attempts.

The report also seems to fail to account for its own additional data, in regard to the student body makeup of the LPP. While it is noted that there is a larger proportion of NCA candidates in the LPP, the data on testing does not reflect the additional pressures and time restraints on those same NCA candidates. While the majority of Canadian graduates write their licensing exams in the June sittings, many NCA Candidates are still engaged in obtaining their NCA qualifications. They are then poised to undertake their bar exams during the November sittings; while actively engaged in the workload of the LPP. The fact that NCA candidates must study for the Bar

during the LPP almost certainly contributes to a higher rate of first attempt failure for NCA candidates enrolled in the LPP, without taking into account any other pertinent demographic factors.

Further, it must be noted that within 6 months of their call, 75% of LPP candidates were employed in law (Source: http://www.lpp.ryerson.ca/wp-content/uploads/2016/05/LPP-Ads-For-Website-May-2016.pdf). The depth of training, support, and networking opportunities that candidates in the program receive is extensive. Students receive practical training that gives them familiarity with each of the LSUC's core competencies, compared to many articling students who simply do not get that exposure in their articling experiences.

As the Report notes in paragraph 59, there is no evidence to suggest that the LPP is in fact a second-tier option. Accordingly, the second-tier perception is not a reliable nor correct premise from which to begin discussing the future of licensing in Ontario. Relying on this perception runs the risk of discounting the fantastic training provided to candidates in the LPP program, and discounts the challenges faced by fresh graduates from Ontario law schools in securing articling positions.

Closing off an option on the pathway to licensing for those who wish to enter the profession while acknowledging the glaring shortcomings of the traditional articling process has made many candidates feel that the Law Society is out of touch not just with the interests of entrants to the profession, but also with the need and expectation of the public to receive prompt, competent and cost-effective legal services. After all, the LPP program was designed by the profession, for the profession (Source: http://www.lpp.ryerson.ca/wp-content/uploads/2016/05/LPP-Ads-For-Website-May-2016.pdf).

2. The LPP work placement process

At paragraph 37, the Report commented on the unfairness of LPP work placement process and raised 4 points of contention. We address each point below (PD&C's points are italicized):

The lack of choice in work placements; candidates were offered a single placement:
This is quite simply false. Candidates are free to choose their placements and the LPP administrators conduct a great deal of outreach with employers to ensure that a diversity of placement opportunities are available for candidates to apply to. Further, the flexibility of the work placement process allows and encourages candidates to reach out to prospective employers to "create" their own placement. Given the limited number of articling positions available, the possibility that a licensing candidate may not secure a position in the practice area of predilection is one that affects traditional articling candidates just as much as LPP candidates.

The significantly shorter time for hands-on learning in the real world and networking exposure:
While the work placement period is shorter, the training component is designed to simulate a "real world" work environment, with candidates reporting to a licensed practitioner on a weekly basis. There are also a number of networking events that students are invited and encouraged to attend during the 4-month training component during in-person weeks and otherwise. Further,

students are encouraged to seek out areas of interest and get involved by contacting practitioners and associations directly.

The reduced opportunity to develop a relationship with supervisors, to prove oneself with supervisors, and to prove oneself worthy of responsibility and hire back:
LPP candidates build relationships with a variety of practitioners, including mentors that candidates meet with weekly throughout the training component and their supervisors in their work placements. We are also encouraged to find mentorship opportunities beyond the LPP during our experience, which has a twofold effect of teaching us how to creatively connect with people. In fact, the LPP acts as a nexus for candidates to meet practitioners in a variety of fields through organized events that are simply not available to those in the traditional articling stream.

The discrepancy in percentage of LPP candidates paid for placements (70%-73%) as against articling candidates (90%):
The traditional articling process has been in place for years, and is more familiar to employers as the infrastructure for traditional articling is already firmly in place. In the three years since its inception, the LPP program has managed to garner enough support from the profession to have 7 out of every 10 candidates secure paid work placements. Many who have not received remuneration for their work placement were hired back with pay and more have said that their experience was excellent.

3. Alleged unfairness of the LPP over articling
The Report argued that perceptions around unfairness of the LPP over articling relate to metrics such as number of candidates who have been called to the bar in their originating licensing year (para. 37.f.ii). However, getting called to the bar in one's originating licensing year cannot be considered an appropriate criterion for assessing the ability of the candidates and the LPP. It is completely irrelevant to the competence and ability of candidates.

The Report also alleged lower hire-back statistics exist for those in the LPP (para. 37.f.iii). However, the statistics provided by the LPP show remarkable success of the candidates. The following information has been extracted from page 16 of the report provided by the LPP titled, "Three Years of the LPP":

- 75% of Year I who are Called were employed full time in law 6 months post-LPP;
- 75% of Year I who are Called are employed in law or law-related positions one year post-LPP (plus 5% are otherwise employed and 3 Candidates have reported being on Family Leave);
- Post-placement success Year II: as of May 2016, 44% were either hired or extended, up from 35% in Year I.

Further, a sampling of the position titles of Year I and Year II Candidates include Anti-Money Laundering Client Analyst Associate Lawyer; Associate Legal Counsel Bilingual Staff Lawyer; Business Manager; Compliance Officer; Contract Reviewer Duty Counsel; Early Resolutions Officer; In-House Corporate Counsel; In-House Counsel Junior Lawyer; Junior Partner Lawyer In Association; Leasing Manager Legal Clinic Staff Lawyer; Legal Counsel; Legal Counsel and Compliance Coordinator; Legal Editor Legal Manager; Legal Officer Listings Analyst;

Operations Partner; Private Practitioner Project Coordinator; Resolution Manager Returning Officer and Board Secretariat; Sole Practitioner Strategic Planner; and Tech Start-Up Developer Trust Officer.

When further data and information is reviewed, it is clear that LPP candidates are more than ready to jump into the legal profession, work in highly demanding positions, and perform to the highest standard.

E. Readiness for Licensing

The Report argued that LPP candidates are not "ready" for the licensing process (paras. 91, 93). This position is based on lower rate of success on the first writing of the bar examination, lower rate of enrolment in the licensing process in the same year of graduation and lower rate of getting called to the bar in the originating licensing year. As we have submitted above, these criteria are simply not pertinent and cannot appropriately assess the readiness of Candidates for practice.

F. Failure to Provide an Alternative Solution

We respectfully reiterate: the LPP has met the objectives for which it was created. While the Committee recommended putting an end to the LPP, it has failed to provide any alternative solutions to address the continuing articling crisis in this province.

G. Advantages of the LPP:

As we discussed in our 2 page letter to the PD&C Committee the LPP is superior in several respects.

The PD&C Report has identified the drawbacks of the articling pathway, namely:

- Complete competency coverage has been difficult to achieve (para. 105);
- Articling students surveyed were not as positive about their experiences as their colleagues who completed the LPP Exit Survey (para. 106);

The articling job search process unfairly disadvantages those who are out-of-province, out-of-country, or interested in social justice or child protection work (para. 107).

The reported data on articling students' impressions of the least valuable aspects of the Articling Program also shed valuable light on the superiority of the LPP in many respects. Articling students commented that the least valuable pieces of the Articling experience included the Experiential Training Program, the Ethics course, and the bar exams (para.108). Those surveyed called them "useless", "a waste of time", and "outdated" (para. 108). Such dissatisfaction must indicate that there is a need to address these issues. When students view their practical

experience as representing unrealistic standards in a stressful environment, something needs to change. The LPP provides that change while building competent, ethical practitioners.

In conclusion, we respectfully remind Convocation that Osgoode Hall itself encountered tumultuous change in its early days in 1889 and the following years, when it became the first law school in Ontario. We believe it is fair to suggest that some difficulties must have arisen with the transition to the "University Model", when the Law Society changed its requirements for the practice of law during the 1950s. We, too, would like to see improvements in the LPP and we look forward to the opportunity to be part of those discussions with the LSUC as the representatives of our cohort. However, terminating the LPP at this early juncture would have a detrimental effect on the current candidates, the alumni and the legal profession as a whole. We respectfully urge Convocation to defer to your best judgment and consider the continuation of the LPP.

With utmost respect and best wishes,

The 2016-2017 LPPCA Executive

Shiva Khatibi Sepehr

Yusuf Khan

Rachel Sachs

Michael Larrett

Stefan Hnatiuk

ASSOCIATION DES ÉTUDIANT(E)S EN DROIT DE L'UNIVERSITÉ MCGILL

LSA AÉD

MCGILL UNIVERSITY LAW STUDENTS' ASSOCIATION

To the Law Society of Upper Canada

On behalf of the McGill Law Students' Association

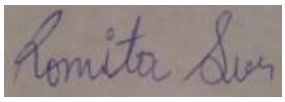
Re: Law Practice Program, addressing the concerns of future Ontario lawyers currently studying out-of-province

Students outside the province of Ontario are an important demographic that might be forgotten by Ontario-based decision makers. The traditional articling regime depends highly on in-person networking or OCIs organized by top firms. Out-of-province law students wishing to practice in Ontario do not have many in-person networking opportunities available to them. The Law Practice Program provides the flexibility to move to Toronto or Ottawa for the in-class portion and, once in the province, conduct extensive networking for the work placement component. Students having planned their career paths around the Law Practice Program have networked with this in mind.

Cancelling the program now would be a regressive step as it would greatly impact students within the McGill Law Faculty who have already signed up for the program and are relying on it carrying forward next fall. The McGill Law Students' Association does not hereby support the program as a whole, but rather its due completion.

Thank you for your time and consideration,

Sincerely,



Romita Sur
VP External/ VP Externe
Law Students' Association / Association des étudiant(e)s en droit
McGill Faculty of Law / Faculté de droit de McGill
3644 Peel, Montréal, Québec, H3A 1W9
http://www.lsa-aed.ca

Law Students' Society of Ontario
Société des étudiants et étudiantes en droit de l'Ontario
105-1070 Sheppard Ave. W. • 105-1070, av. Sheppard O.
Toronto, Ontario M3J 0G8 Canada
info@lsso.ca • www.lsso.ca • @LSSOnt

October 192016

Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
[via email: policy@lsuc.on.ca]

To Whom It May Concern;

On September 22, 2016, the Law Society of Upper Canada ("LSUC") called for consultation on its Pathways Pilot Project Evaluation and Enhancements to Licensing Report (the "Report"). In response to this call for consultation, the Law Students' Society of Upper Canada ("LSSO") undertook to consult with its constituents, i.e., all law students in Ontario.

This submission reflects the input provided to us by students across the province. We have not identified which input came from which school, but rather have aggregated all the comments into one submission. On the whole, most students agreed with the LSUC's decision to end the Pathways Pilot Project ("LPP"). Specific concerns about the LPP included:

- Students in the LPP may have been put in unpaid or underpaid positions;
- The LPP was perceived by employers and students as a second-rate option to articling;
- The cost of implementing the LPP was borne by articling students, resulting in a significant increase in articling fees (an increase of more than $2000); and
- The LPP failed to address articling shortages in a way that justified its cost.

While the LPP is at an end, the issue the LPP attempted to address still remains. Law students still face the uncertainty of finding adequately paid articling work to fulfil their licensing requirements while facing massive student debt. In order to

facilitate discussion on alternative solutions, students feel strongly that more information on the LPP is needed. The information students felt would be useful for LSUC to provide included:

- The cost of implementing the LPP;
- The number of placements secured;
- Which firms took on LPP students;
- What kind of compensation LPP students received; and
- The demographic make-up of LPP students (to understand which groups of students may be particularly disadvantaged by both the loss of the LPP and the remaining lack of articling positions).

Thank you for the opportunity to participate in this consultation. As always, we look forward to future opportunities to provide input and work with the LSUC on these important issues.

Yours truly,

Leslie de Meulles
President, Law Students' Society of Ontario

Ministry of the Attorney General

Office of the Assistant Deputy Attorney General

Policy Division

McMurtry-Scott Building
720 Bay Street, 7th Floor
Toronto ON M7A 2S9

Tel: 416 212-5365
Fax: 416 326-2699

Ministère du Procureur général

Bureau du sous-procureur général adjoint

Division des politiques

Édifice McMurtry-Scott
720, rue Bay, 7e étage
Toronto ON M7A 2S9

Tél. : 416 212-5365
Téléc. : 416 326-2699

Ontario

October 25, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON, M5H 2N6
policy@lsuc.on.ca

Dear Policy Secretariat,

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing Report

In response to the Law Society of Upper Canada's consultations undertaken in 2008 and 2012, the Ministry of the Attorney General ("MAG") previously reviewed the issue of articling as a requirement to becoming licensed to practice law in Ontario. More recently, in response to the Law Society's call for comments on its Pathways report, MAG has undertaken a further review of both the articling and Law Practice Program ("LPP") in Ontario.

We are providing our comments to you in our capacity as the employer with the largest number of articling students in this province, as well as an employer of LPP students, for your consideration.

MAG's Continuing Support for Articling

MAG continues to strongly support the ten-month articling requirement for lawyer licencing in Ontario. Articling has always been, and should continue to be, the crucial bridge between legal education and practice. This form of experiential learning provides critical training needed to prepare students to enter the profession. Our ministry continues to take this view, not because we are averse to change but, rather, because we strongly believe that the articling requirement

has, for the most part, proven to be an excellent method for law students to gain valuable and necessary experience under the supervision and mentorship of a lawyer or a group of lawyers.

The articling experience teaches students to develop an appreciation of many ethical issues encountered by lawyers and, importantly, provides a mentor(s) to help navigate through these challenges. It is MAG's view that there is a direct link between the strength of the Ontario bar and the benefits obtained from the mentoring, teaching and learning processes encompassed in the articling experience. Additionally, the presence of articling students in the public sector, and elsewhere, provides a source of fresh ideas and new perspectives that serves us all well.

Given our strong support for the articling requirement in licensing lawyers, MAG commends the Law Society's continued efforts to increase the number of articling placements in Ontario. It is important to note that, despite a downturn in the economy in 2008, MAG has continued to demonstrate its leadership in the provision of articling opportunities by increasing its articling contingent by approximately ten percent. We will continue to explore ways to increase the number of articling students whom we hire, in order to demonstrate our strong support for this program, as well as our commitment to inclusion and diversity in the profession.

As an aside, MAG believes that current and prospective law students should more explicitly be made aware of the shortage of articling positions in Ontario. Towards this end, MAG recommends that the Law Society engage with law schools in the province (and possibly elsewhere) so that current and prospective students (e.g. on admission application documents and on faculty websites) are advised that graduation from law school does not guarantee a position as an articling student and thus call to the bar. The Law Society should also consider placing a similar notice on its own website.

The Law Society's Proposal to Terminate the LPP

It is clear that there are insufficient numbers of articling positions in the province to meet the demands of the annual student cohort. The LPP pilot project was put in place because of the concern that many students were unable to become licensed due to the inability to secure an articling position. The concern was put succinctly in the 2011 Articling Task Force Consultation Report as follows:

> Because the Law Society *requires* completion of articles as a condition of licensing the question for consideration is whether it should be concerned if unfair barriers to licensing exist because there are too few jobs for the number of candidates. The question does not imply that the process must guarantee every candidate for licensing a place *regardless of competence*, but rather speaks to the issue of regulatory fairness.

As indicated in paragraph 72 of the Pathways report, part of the discussion of 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." Significantly, many of these students reflect the diversity of the population of Ontario which the legal profession seeks to properly serve.

You may recall that in our 2012 submission on this topic, MAG was of the view that establishing a Practical Legal Training Course as an alternative to articling was not a desirable option. While we continue to believe that articling is the best path of transitional learning, we also recognize the challenges associated with meeting the demand for articling placements. If given the choice between removing or replacing the articling program, and retaining the articling program and also providing another credible path to licensing, MAG would support the latter option.

Although we agree that the LPP may not be sustainable in the long term, we have concerns about the termination of the LPP program pending the implementation of a more viable alternative. To be clear, we are not suggesting an extension of the LPP for further evaluation; instead, we believe that the LPP should serve an interim role to continue to allow students the opportunity to become licensed who would otherwise not have this ability. Despite the negative perception that many students and members of the profession hold towards the LPP, it has been MAG's experience that the LPP does, in fact, provide students with good substantive training in tandem with practical training.

In the meantime, we would recommend that the Law Society continue its comprehensive examination of ways to better match the number of articling positions with demand, and/or find a credible and fulsome alternative to the LPP as a mechanism for ensuring more equal access to the profession. If an alternative is sought, it should be structured so that it would not attract the same stigma that the Law Society indicates is associated with the LPP, so as to make it an attractive option to a more diverse and greater number of students. We would encourage the direct involvement of students and lawyers in this process, to legitimize any alternatives.

We also fully support the motion for the Law Society to 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. MAG continues to work to ensure ongoing improvement in the availability of French-language services within the justice system. Clearly, the work done in establishing the French LPP is extremely valuable in this regard.

Thank you once again for the opportunity to provide our comments on this important issue.

Yours truly,

Patricia Bishop for

Irwin Glasberg
Assistant Deputy Attorney General

Neighbourhood Legal Services
London & Middlesex

October 17, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON, M5H 2N6
policy@lsuc.on.ca

Re: Pathways Pilot Project Evaluation and Enhancement to Licensing report

Our clinic has a mandate to promote poverty law issues and serve low income clients in the community. Partnering with the Law Practice Program (LPP) has given us the opportunity to train new lawyers in this underserved but extremely important area of law. Without the continued support of the LPP, there will be fewer resources available for social justice causes.

Our legal clinic has participated in the Law Practice Program for the past three years by offering work placements to candidates. We have had two in each of the last two years and will have at least two more this year. Many of these candidates are members of groups that you note as being underrepresented in traditional articling programs: racialized minorities, foreign-trained or over 40.

The work placement at our clinic offers unique training opportunities. Unlike traditional articling programs, candidates get to meet with clients, conduct research, draft letters and submissions, appear at Tribunals and participate in law reform activities. Our candidates tell us that the work is rewarding and challenging. It also sets them up for success beyond the placement after their Call to the Bar. Of the four candidates who have completed the program, one has a full-time job at another Legal Aid clinic and another is working here on a job-share. The clinic also hired an LPP graduate from another clinic to a full-time employment law position.

We believe that the LPP candidates who work with us benefit immensely from the experience and they have done excellent work for our clients and for the clinic. We urge you to support the program and give it more time to prove its worth.

Yours Truly,

Jeff Schlemmer
Executive Director

Market Tower, Suite 507 - 151 Dundas St., London, ON N6A 5R7 (519) 438.2890 Fax (519) 438.3145 nlslm.com

Nelligan Obrien Payne LLP

NOP Concerns re Professional Development and Competence Committee Report

Below you will find concerns expressed by lawyers working at Nelligan O'Brien Payne LLP ("NOP"), an Ottawa-based full-service law firm, with respect to the proposal from the Professional Development & Competence Committee on enhancements to the licensing process. These concerns are based on the Professional Development and Competence Committee Report to Convocation dated April 28, 2016 from the Law Society of Upper Canada, and the more informed Pathways Pilot Project Evaluation and Enhancements to Licensing Report presented at Convocation on September 22, 2016.

To begin, we believe there is insufficient information in these reports enabling those in the legal profession to provide a fulsome response. Nevertheless, below are preliminary concerns of some of the NOP lawyers, including a list of the questions at the end of this document that we feel need to be answered in order for us and others in this profession to more fully understand these proposed changes and how these changes will affect those in the province. Please note that not all lawyers at NOP provided an opinion on this topic and their opinion may differ from that listed below.

1. The Practice and Procedure Examination ("PPE")

Although we at NOP do not have great concern in switching from two exams (the Barrister and Solicitor Examinations) to one exam, the new Practice and Procedure Examination ("PPE"), we do have concerns with the proposed timeline for completing the PPE.

First of all, many firms spend a lot of time and money in their articling student recruitment process. Especially in Ottawa, there is a very regimented system in place, including an established interviewing period and a call day. Firms have to review application packages, interview applicants and then decide who to hire within a set timeframe. Once that decision has been made, call day occurs at 8 am for all Ottawa firms. The students then have the option of taking the position or waiting for a different offer. Within hours, this process is over and firms have filled their articling spots.

If students would now be required to complete the PPE prior to starting their articling term, many issues and unknowns will certainly arise for those who fail this exam, the main one being that you may have one or several articling students, who were all hired for the same firm, not able to begin their articling term because of a failed exam. Where does that leave the firm? They are now left with empty positions, positions they need to fill in order to continue business as usual. Other candidates who were considered but were not offered a position have generally found positions elsewhere, or they may too have failed the exam. This would force firms to do a further recruitment process to try and fill positions. Or would the firms be required to hold that articling position for the student?

Certain questions that we have are:

- Would the firm have to reserve the articling position to every student who fails the PPE or can their offer of an articling position be conditional upon them passing the PPE?
- Would the students lose their PPE material, as they currently do after writing the bar exams?

- How quickly would the students get their result from the PPE?
- What would the student do, work-wise, while awaiting the next writing of the bar exam?

Furthermore, this would limit a firm's ability to choose when its articling process occurs. Although some firms currently require students to write their bar exam prior to starting articling, and therefore they generally start in late summer, other firms prefer their students to start working right after law school. This new system would prevent these latter firms from having students start working right away, as they would not yet have written their exam.

This would also force students into having to write the PPE right after finishing law school. Instead of being able to take a summer vacation, which may be one reason why they choose to apply to certain firms – knowing their program starts later in the summer – they would instead be forced to write their PPE first in order to be able to begin articling that year.

2. A Three-month Abridgment of Articling

Articling is not easy. It is hard work in a fast-paced environment. Students often only start getting the hang of articling after a few months. As such, reducing the articling term by 3 months for those who have completed an approved program, making it so that articling would only last 6 months, is not sufficient experience. That is, six months is not enough time for articling, which is arguably the most useful and representative experience a student will get prior to becoming a lawyer. It is not possible to cram everything one should be learning during articling into 6 months instead of 10 months (or the now proposed 9 months).

Certain questions that we have are:

- Would only the Law Society get to determine what programs would be approved? Would this be regardless of the law school attended? What if they attended a school outside of Ontario?
- Would these be paid programs offered by the Law Society?
- Would this program also count as credits toward law school completion?
- Would a student have to disclose that they have completed an approved program in their application for an articling position?
- For employers who already spent time and money recruiting students, what would they do with the last 3 months of articling? Would they need to hire another student for only 3 months?
- What if one Articling Principal does not approve the abridgement but another would – would the students have access to this information prior to accepting an articling position? They would probably want to know ahead of time if they will be completing 10 (or 9) months of articling, or whether they are only required to complete 6 months.

Another concern is that these students who only require a 6 month articling term may actually be deemed less desirable to a firm that has an existing articling program and that prefers a student who can work the full 10 months (or 9 months, should articling be reduced). If one firm generally hires 4

students, and half completed an accredited program, the firm may be forced to either find two replacement students for what would have been their final 3 months of articling, or continue with two less students and therefore less help overall.

Furthermore, some firms rely heavily on articling students to function (for purposes of research, small claims court matters, administrative tribunals, etc.) and need them for most of the year, filling in the remainder of the year with summer students. These firms generally give their articling students meaningful work to assist the lawyers. Losing them for part of the year would create administrative problems and also probably lead to associates having to do more of the more typical articling student work, meaning that the cost of legal services will increase. This certainly goes against the access to justice goal.

Finally, an employer may be more inclined to hire a student who worked for them for 9 months instead of 6, given that they had more time to get to know them and that student provided more examples of work product.

3. The Practice Skills Examination ("PSE")

We understand the Law Society's concerns about the content of an articling experience. However, every student does not currently receive the same articling experience, and we do not think that is necessarily a negative. Students seek out specific firms or individuals with whom they wish to work based on various factors including, but not limited to, (a) areas of law, (b) lawyers and employees at that location, and (c) that firm's articling program. Some programs are more regimented than others. At larger firms, students will generally have the ability to try out several different areas of law. At smaller firms or with sole practitioners, that student may only do one type of law. Some articling experiences may include litigation-type work whereas others may not.

Not everyone wants to try every area of the law or litigate. A concern with the requirement of a post-articling test is its content. Given that every articling experience is different, it would be almost impossible to design a test that would test abilities based on what that student learned because what is being tested might not be relevant for that student's future practice. What skills are developed would depend on individual articling experiences.

We are concerned that the PSE may be a deterrent for employers who are more specialized, and/or in a boutique setting. They may avoid hiring students altogether as to avoid the necessity of teaching their students things they have not taught them in the past, as it has never been relevant to their own practice. Just like a student currently has to write two bar exams covering areas they may have chosen to avoid in which they know they will never work, they may now be forced to write a further test, following articling, that touches on skills they may never need.

Another concern is related to hire-backs. Would a firm now avoid offering a position to one of their articling students until they know they passed the test? If they do, they risk losing talent to another. On

the other hand, what if they offer a position to a student right after articling, only to have that student fail the PSE? Can the firm make their offer conditional on the student passing the PSE? Will that student lose out on an opportunity if the firm needs help right away but the student cannot start working as they need to first pass the PSE?

Other questions that we have are:

- Who would administer the test?
- Would the Law Society require all employers to regiment their articling program in a similar way?
- Why can there not be a more tailored approach to this type of testing? That is, why not have a performance evaluation, for example, one half-way through and one at the end of articling by the Articling Principal at the law firm? They are in a better position to assess how good a job that student is doing. This would appear to be a better way to achieve the Law Society's stated goal

4. Final Questions

We also have some general questions that center around the need for these proposed changes:

- Why the need to change the articling program now?
- Why are the changes, as currently proposed, being proposed as the only solution?
- Have there been an increase in the number of complaints against lawyers?
- Is the Law Society looking at ways to decrease the numbers of lawyers in Ontario? If so, we feel as though the "weeding out" process should be done at the entry-level stage, not after law school has been completed. It would be a shame for an individual to spend all that time and money on law school, and possibly articling as well, just to not be able to pass one exam or one test that may or may not touch on issues that would be relevant to their practice, and therefore never be able to get called to the bar. If the overarching issue is the number of lawyers, they are other and better options for resolving that issue. For example, at least with the University of Ottawa:
    - French common law students do not currently have to write the LSAT. Many people go into French common law to avoid writing that exam, because they may not be good exam writers. If the English students have to write the exam, perhaps the French students should have to as well.
    - Those students who do a combined civil and common law degree can start with their civil law degree and finish with both degrees, but do all of this right out of high school. They are not required to first complete an undergraduate degree, or even a few years of university, and generally become lawyers approximately 3 years earlier than those who choose to simply do a common law degree. Perhaps those who intend on doing a combined degree should have the same prerequisites as those that only do a common law degree.

- Can the Law Society determine how many students get accepted into law school? Can they impose limits on students who get accepted?

Office of the Fairness Commissioner's comments on the Pathways Pilot Project Evaluation and Enhancement to Licensing Report

General Comments

- The report covers varied and complex aspects of the LSUC's licensing process and the information and ideas are easy to read and follow.

- Given the complexity of the issues reviewed, the OFC is concerned that the data obtained may be insufficient for deciding whether or not the Law Practice Program (LPP) is a viable alternative to the articling program. The report provides only two years of data and in some areas only for one year. It seems that the response rates for some data instruments are low and as such, the data may not be considered reliable. This is especially noticeable for instruments used to obtain input from the articling program's participants and employers.

- The Committee concludes that the articling program is more effective in delivering experiential training than the LPP. However, the data provided are not conclusive in supporting this view. Data show that both programs enable most applicants to meet or exceed competency expectations. It is not at all obvious to the OFC that the "hire back" trends are an indicator of how one program is more effective than the other.

- It would seem that the real issue is with how both programs are perceived by participants and the LSUC. The report indicates that "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…" This rationale is not convincing. It seems that the Committee believes that the perception will remain unchanged despite any efforts to mitigate the issue of perception, for example, with appropriate communication efforts. This conclusion would be reasonable if the report provided evidence that sufficient efforts were made to improve the image of the LPP program. However, it is not evident from the report what, if anything, has been done to promote a more positive image of the LPP.

- The report discusses only one option for the LPP's future that is to end the LPP at the end of the current licensing year and does not offer any other possible solutions. It would be important for the OFC to know which other options were considered. For example, did the Committee consider

continuation of the LPP as an interim solution while developing a more feasible and sustainable option? If not, why not? To address the perception issue, would it be feasible to discontinue the articling program and continue with the LPP only? If not, why not? It would seem that participants of the articling program would also be successful in the LPP. What can be done, if anything, to improve perception of the LPP? Are there opportunities for collaboration with stakeholders in which the responsibility for experiential training is shared among the stakeholders? Could the LSUC collaborate with Ontario's law schools in creating educational programs that graduate practice-ready candidates for licensing? If not, why not?

- Given that the issue of a lack of articling placements is not resolved, it would be untimely to discontinue the alternative pathway that was created to mitigate the problem. The report would have been more helpful if it discussed other possible solutions and explained why the Committee's recommendation is the most feasible at this time.

- Depth of analysis varies between issues covered in the report. While some recommendations are supported by a reasonable amount of data and analysis, it is not always obvious how the Committee arrived at all of its recommendations. Further analysis and review may be needed to substantiate all of the Committee's recommendations.

The comments below address the report's recommendations with respect to specific licensing requirements.

The OFC believes that the registration process is fair when the registration requirements are necessary and relevant to the practice of the profession. To achieve this, the following conditions must be met:

a) each registration requirement should be mapped to the specific competency or groups of competencies it addresses
b) each registration requirement needs to be developed through a transparent, objective, impartial and fair process
c) when one or more of the requirements present a registration barrier for potentially qualified applicants, there is a process:
    i. to consider circumstances preventing applicants from meeting the requirement(s)
    ii. to provide an alternative registration pathway when registration of qualified applicants is not possible under the traditional registration pathways
d) each registration requirement is the ***only*** safe way to determine whether an applicant has the specific competency (or competencies) the requirement addresses.

The OFC applied this lens when reviewing the recommendations addressing the LSUC's registration requirements.

Ending the Law Practice Program (LPP) at the end of this licensing year

The LPP was created as an alternative to the licensing requirement that applicants complete an experiential training through the articling program. Lack of availability of articling placements was a concern when the need for this alternative pathway was identified initially. This report shows that the lack of articling placements is still a barrier in 2016. In particular, the report specifies that **only 27%** of respondents to the LPP Entry in Year Two indicated that that this pathway was their first choice for experiential training[1].

The report also indicates that in Year One about two-thirds of LPP candidates were called to the Bar in June 2015; and in Year Two, just a little fewer candidates (57 %) were called to the Bar in June 2016. What registration pathways would be available to those applicants if the LPP were not available? It is also unclear from the report what immediate recourse would be available to applicants starting 2017-2018 and later cohorts who will not be able to secure placements in the articling program.

From a fairness perspective, eliminating an alternative pathway when registration of qualified applicants is not possible under the traditional registration pathway (i.e., due to lack of articling program placements) is problematic. The OFC hopes that the LSUC will continue offering its applicants a registration process that does not exclude them from being licensed because of a persistent barrier. If the current LPP program is the only alternative, the OFC hopes that the LSUC will continue to offer this alternative until another more effective or more feasible alternative is developed.

Introducing a Practice Skills Examination (PSE)

It is important that each registration requirement be developed through a transparent, objective, impartial and a fair process. Fairness requires that the registration requirements be necessary and relevant to the professions' entry-to-practice competencies. It is not obvious to the OFC how this new requirement is necessary and relevant. It is our understanding that the LSUC has assessment methods in place already to measure applicants' competencies obtained during the experiential training.

Generally speaking, when deciding on the necessity and relevance of the new exam, regulators should assess the following:

[1] See page 84 of the report.

- What specific competencies or group of competencies the new assessment method intends to measure that are not already measured using existing assessment methods?
- Is the proposed assessment method the only safe way to determine whether an applicant has the specific competency (or competencies) this assessment method intends to measure? What evidence exists that this assessment method is necessary?
- Could the existing assessment methods be enhanced or modified to allow for measuring competencies obtained through the experiential training without the need to introduce another requirement?

Introducing this new exam without analysing it for necessity and relevance would be problematic from a fairness perspective. If the LSUC has not completed such analysis yet, the OFC suggests that the LSUC complete the analysis to inform its decision. Furthermore, if the analysis will not have provided factual evidence that the assessment method would be necessary, introducing the new requirement would be contrary to the principle of fairness.

The report proposes that the requirement be implemented for the 2018-2019 licensing year. If that is the case, some applicants who have initiated the licensing process this licensing year may still be completing the registration requirements when this new requirement may be introduced.

It would be important that when and if the new requirement is introduced, it is done in a transparent and fair manner. It would be important for the LSUC to identify how the change would affect different groups of applicants. This should include applicants who will be just about to enter the licensing process (e.g., pending graduates of Ontario law schools, applicants pursuing NCA certification, etc.), who will have entered the licensing process, and who will be near completion of the experiential training, etc.

The LSUC will have to give applicants and potential applicants sufficient notice for them to make informed decisions about the transition. From a fairness perspective, the LSUC may consider "grandparenting" provisions for applicants who have entered the licensing process under the existing registration requirements. These applicants should be allowed to complete the licensing process without having to meet additional requirements. Applicants who have entered the licensing process under the existing requirements shouldn't be expected to complete them faster than it was initially planned. Communication plans will have to address all those who will be affected by the change.

Articling Exemption for Internationally-Educated Candidates

Currently, internationally-educated applicants licensed in a common law jurisdiction may be eligible for exemption from the articling requirement if they have at least ten months of acceptable practice experience. The report recommends increasing eligibility requirement from 10 months to three years.

The report states that this increase is "to reflect a commitment to enhanced standards." What evidence is the increase based on? The report argues that because the actual average practice experience of those who have received an exemption ranges between 12.5 years and 2.5 years, it is reasonable to establish eligibility requirement at 3 years. The report also explains that many applicants eligible for a full exemption opt instead for an abridgment of a few months.

However, from a fairness perspective, these arguments are not relevant. Substantive fairness requires that the requirements be mapped to the specific entry-to-practice competencies that those requirements intend to address. Furthermore, depending on the nature and complexity of the practice experience completed, applicants may develop similar competencies within different timelines. What some individuals can learn to do after completing three years of experience, others may learn to do in less time; and yet for others it may take longer. Because of this, stating the criteria in number of years may be challenging from an objectivity perspective.

It would be important for the LSUC to link its criteria for eligibility for exemption from the articling requirement to the LSUC's entry-to-practice requirements. This may require finding answers to the following or similar questions:

- How the profession's entry-to-practice competencies have changed since the 10-month eligibility requirement was established?
- What are the specific competencies that applicants practicing in common law jurisdictions outside Canada can only obtain through three-years of practice experience while applicants practicing in Canada may obtain them in 10 months?
- What is the substantive difference between practice experiences in Canada and in common law jurisdictions outside Canada?

Increasing the eligibility requirement from 10 months to three years without completing such analysis would be problematic from a fairness perspective. If the LSUC has not yet completed such an analysis, the OFC suggests that the LSUC complete the analysis to inform its decision. Furthermore, if the analysis does not provide factual evidence that the change is necessary, making the change would be contrary to the principle of fairness.

Licensing Process Framework Enhancements

The report 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.

The OFC understands the rationale provided in the report indicating that "the current approach … undermines the competence-based philosophy that should underpin the process." However, the OFC is concerned that the change may create unintended hurdles for applicants.

For example, applicants who will have failed PPE on the first attempt could miss the experiential training opportunities which they may not regain after successful completion of the exam. Subsequently, this may result in a longer licensing process for many applicants. Furthermore, if this approach is implemented, most likely, the LSUC will have to introduce additional administrative checkpoints at which it will decide and inform applicants about their eligibility to proceed to the next step in the registration process.

Even if these procedures were nominal, this would result in additional timelines and probably, in increased registration costs for all applicants. If the LSUC implements this change and continues with the requirement that applicants complete all of the licensing requirements within three years, some applicants may even be inadvertently excluded from the process.

While the report doesn't offer an analysis of how this change may increase or decrease the overall length of the registration process or how it may potentially improve or worsen access to the profession, it indicates that the fairness provisions were considered.

The OFC suggests that the LSUC consider the stated above factors in detail while deciding on the change. For example, what evidence exists that, if implemented, the proposed approach will provide for "a balancing of standards and fairness?"[2]

[2] See p. 47 of the report

The Voice of the Legal Profession

Law Society of Upper Canada
Pathways Pilot Project Evaluation and Enhancements to Licensing Report

Date: October 19, 2016

Submitted to: Policy Secretariat, Law Society of Upper Canada

Submitted by: The Ontario Bar Association

ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

Table of Contents

ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

Introduction

The Ontario Bar Association (the "OBA") appreciates the opportunity to provide input on the Law Society of Upper Canada (the "Law Society") Professional Development and Competence Committee (the "Committee") report to convocation dated September 22, 2016 (the "Pathways Pilot Project Evaluation and Enhancements to Licensing Report" or, the "Report").

The OBA

As the largest voluntary legal organization in the province, the OBA represents approximately 16,000 lawyers, judges, law professors and students in Ontario. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA is pleased to assist government, the Law Society, and other decision-makers with dozens of policy initiatives each year – in the interests of the public, the profession, and the administration of justice.

In the brief period of consultation available for this submission, the OBA has sought input from our governing council of members representing a critical cross-section of the bar, including senior and junior lawyers from managing partners to new calls, who practice across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province. The submission has also received input from members of the OBA's Equality Committee, Young Lawyers Divisions, and our new Student Section.

Pathways Pilot Project Evaluation

Overview

Transitional training and the lawyer licensing process are issues that are fundamental to the future of the profession; both provide a mechanism that helps protect the public and foster access to high quality justice. The issues and the recommendations in the Committee's report also engage significant questions of access, fairness, and diversity that are critical to lawyers and to future generations of law graduates seeking admission to the bar.

As noted in the OBA's November 2012 submission regarding the Future of Articling:

> We have provided the Law Society of Upper Canada with our advice on where a consensus solution lies between the imperfect extremes of doing nothing to address the articling job gap and over-reacting to the problem by eliminating what is otherwise considered a useful transitional training process. The OBA's approach to this growing crisis is designed to reflect and maintain the strength and honour of our highly skilled profession. We understand that the Law Society has a public protection mandate. Recognizing that the practice of law requires both specialized

> knowledge and a unique set of well-honed practical skills is the best way to protect the public and offer them access to high quality justice.[1]

When the Law Society made a decision to launch the Law Practice Program ("LPP") pilot, the OBA accepted Ryerson University's offer to enter into a strategic alliance to ensure that the design and delivery of the program benefitted from those who best understand the issues and the skills required – the practicing bar.

To date, a number of our members have served as LPP work placement employers, mentors, assessors, curriculum developers and candidates. While our members have participated in the pilot to ensure that it has the best opportunity to remedy the concerns it was designed to address, the OBA encourages a thorough assessment of the Pathways options as critical to informing the future of transitional experiential training. It is with this objective that our members have considered the Committee's current recommendations and report.

Timeframe Permitted for Comment

The recent release of the report – numbering some 200 pages – is the first opportunity for the profession to consider the Law Society Evaluation Consultant's Interim Results report and the Committee's accompanying analysis and recommendations.[2]

We note that the Committee has allowed roughly a 3½ week period from the presentation of the Report to Convocation on September 22, 2016 to its deadline for comment of October 19, 2016.[3]

In our view, the allotted timeframe is entirely inadequate for the bar to meaningfully comment on the numerous important issues within the Report, both with respect to the cancellation of the LPP and the proposed changes to the lawyer licensing process.

The Law Society has indicated that the extraordinarily short review period is necessary to accommodate its cancellation notification period requirements for its LPP service providers. Regardless of the reason(s) why the Law Society finds itself under such time pressures, our members feel that it is unacceptable to rush decisions on matters of such significance, especially given the substantial investment required to launch the pilot, the reported effectiveness to date,

---

[1] Ontario Bar Association, The Future of Articling, November 12, 2012. (http://www.oba.org/submissions) ["OBA 2012 Report"]
[2] "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." Report, para. 28.
[3] The Report was first sent out by email from the Treasurer one week earlier on September 16, 2016.

and the expected challenges its elimination would present to would-be candidates seeking admission to the bar.[4]

However, separate from concerns about the limited period of consultation and the consequential inability to address many of the important issues implicated in the Report, our members have expressed overwhelming consensus on a number of fundamental issues relating to the Committee's recommendations. These issues are summarized in the remainder of this submission.

Key Findings & Recommendations in the Pathways Report

Focus of the LSUC Licensing Process

The Report notes that "[t]he 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."[5]

This focus reflects earlier comments by the 2012 Law Society Articling Task Force that:

> "A fair and effective licensing process that is grounded in the achievement of entry-level competence is essential to the profession's renewal. Moreover, that licensing process is an integral part of the Law Society's mandate to regulate the profession in the public interest."[6]
>
> "[T]he competence of those who seek admission must be the Law Society's primary substantive concern. The fairness of the requirement must be its primary process concern. In this context fairness means the removal of unreasonable process barriers, but the objective of the process remains: ensuring the competence of those who are licensed."[7]

Competence and Effectiveness

In now assessing the LPP and articling pathways to licensing ("both pathways"), the Committee reaches the following conclusions related to effectiveness:

---

[4] As noted in the Report, the investment goes beyond financial costs and includes the multitudinous efforts of the bar: "… 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." (Report, para. 50)
[5] Report, Executive Summary, Conclusion, at p. 5.
[6] Articling Task Force Final Report, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, para. 28 ["LSUC 2012 Report]
[7] LSUC 2012 Report, para. 29.

> "Both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback."[8]
>
> "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."[9]
>
> "Both [pathways] show high participant ratings for value and effectiveness of the programs in addressing the five goals of transitional training."[10]
>
> "Generally, the pathways are seen as delivering fair, objective and accessible transitional, experiential training, though some aspects are not viewed as fair."[11]
>
> "… 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."[12]
>
> "With two years of information, the Committee is unanimously of the view … that both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback."[13]

Collectively these comments indicate that the Committee has a positive view of the effectiveness of both pathways in imparting the necessary entry-level competence on candidates.

The Report also briefly considers the effectiveness of both pathways with respect to each other. After noting that each pathway has its own structure, delivery and assessment tools, the Report notes the Consultant's view that it is not necessary "to make this determination now, especially since we have post-licensing data from just one cohort at this juncture."[14]

However, the report goes on to note the Consultant's view that the comparison would require:

---

[8] Report at para. 37.
[9] Report, para. 37(a).
[10] Report, para. 37(c).
[11] Report, para. 37(b).
[12] Report, para. 58.
[13] Report, para. 43.
[14] Report, para. 39(c).

> "… 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."[15]

In the OBA's view, the objective of the licensing process is properly articulated elsewhere in the Report (and in earlier Law Society reports) as ensuring that candidates have demonstrated they possess the required competencies at an entry level to provide legal services effectively and in the public interest. Consequently, it is not clear why rates of hire-back and call to the bar are introduced as relevant metrics for assessing the effectiveness of the pathways. The former metric pertains to market considerations outside of the licensing purview and the latter pertains to a finding which is likely influenced by factors unrelated to either pathway.[16]

In any event, it is also not clear why comparing the relative effectiveness of the pathways is relevant to a decision to cancel the LPP, unless and until there is confidence that the remaining pathway or new alternatives are sufficient to fulfil the role that the LPP is playing in addressing the problems that gave rise to the pilot and that are expected to persist.

In sum, our view is that the Committee's conclusion that both pathways are effective in imparting entry-level competencies militates strongly in favour of continuing with the LPP and the enhanced articling process, at least until the Law Society has properly reviewed the pathways and fully assessed and developed effective alternative options that better achieve the objectives of the licensing process.

Fairness & Accessibility

The Committee indicates that its recommendation to cancel the LPP is not rooted in concerns about effectiveness but rather concerns about the program's lack of acceptance and financial realities that make the program unsustainable:

> "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."[17]

---

[15] Report, para. 39.
[16] To the extent that differences in the rate of call relate to difference in passing licensing examinations, the Report notes that "neither pathway is intended to serve a licensing examination preparatory function." (at p. 32).
[17] Report, para. 88.

With respect to second-tier status, the Committee states that:

> "… 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."[18]

The OBA has significant concerns about the limited/incomplete data upon which the Committee has based its recommendations and the associated need for further consideration of relevant metrics. This concern is particularly acute with respect to the purported "second-tier perception".

The LSUC Consultant states that: "With only one (1) response, there are insufficient data to report on the perceptions of the employers of new lawyers who completed the LPP."[19] The Report also acknowledges: "The Committee accepts that there is little concrete evidence yet about law firm attitudes toward hiring the graduates ..."[20]

More specifically on the issue of second-tier status, the Consultant states: "… we have not heard the relevant thoughts from employers or post-call graduates of the LPP at this point, so any "stigma" associated with LPP as far as obtaining employment is merely speculation."[21] Moreover, the Report offers no evidence of a stigma or perception of second-tier status within the profession at large.

According to the Committee:

> "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 appear to consider the LPP alternative as a second choice or, indeed, no choice at all."[22]

OBA members have several further comments with respect to the perception of second-tier status.

First, the Report notes that the "LPP is a new program and there is general lack of accurate awareness of it in the legal community, which helps stigmatize the LPP."[23] As adverted to by some of the Committee members, we agree that it would be hard for any new initiative to overcome initial perceptions within such a short timeframe.[24]

---

[18] Report, para. 59. [emphasis in original]
[19] Report, p. 67.
[20] Report, para. 79.
[21] Report, p. 192
[22] Report, para. 60.
[23] Report, p. 134.
[24] Report, para. 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

Second, the Report has little commentary on the means by which the Law Society could or should work to overcome unfounded negative perceptions. In this regard, a number of OBA members pointed out a stark incongruity between the Committee's acceptance of unfounded perceptions of second-tier status as a rationale for cancelling the LPP, and the recent LSUC Equity and Aboriginal Issues Committee's call for the need to work together for change to overcome barriers faced by racialized licensees – including stereotyping – as an essential component of ensuring a healthy and successful legal profession and for advancing the public interest.[25]

Other members expressed the view that continuing to focus on an unfounded perception needs to be addressed as itself a significant factor in perpetuating the perception.

Under the rubric of fairness, the Committee also mentions a shorter work placement period (and consequentially shorter income earning timeframes), higher withdrawal rate, lower rate of call in the originating license year, and lower expectation of hire-back as negatively impacting on the fairness to equality-seeking groups.

In the view of our members, these topics are underexplored in the Report and, as such, don't persuasively support the recommendation to cancel the program. For example, members questioned whether a higher withdrawal rate could indicate that the program is appropriately working towards ensuring entry-level competence and simply proving unsuitable for those who are unable to attain that benchmark. Shorter work placements and lower hire-back may be helpful tradeoffs in facilitating access to valuable work placement opportunities in a broader range of practice settings, including those that have historically been unable to offer longer articling placements and where access to justice is a concern. The relevance of the call in the originating license year is also underexplored in its relation to many other factors unrelated to the LPP itself. Lastly, some members noted that an unequal application of data and expectations as between both pathways undermines the reliance on these factors in the recommendations with respect to the LPP.[26] Collectively, these may be important issues to properly consider, but as such they are also reasons not to rush to conclusions based on two years-worth of data.[27]

Regardless of the ultimate outcome of any further examination of these factors, our members felt that they do not presently comprise a sufficient rationale for cancelling the LPP without more

---

nonetheless garnered positive feedback in a number of quarters and has offered an alternative for a number of candidates."

[25] Challenges Faced by Racialized Licensees Working Group Final Report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*, Executive Summary at p. 3-4 ["LSUC Working Together for Change"].

[26] For example, there is no suggestion that articling students who do not pass the licensing exams on the first try or who are not hired back reflect negatively upon the entire concept of articling.

[27] In fact, the Report notes that there is "post-licensing data from just one cohort at this juncture." (at para. 37(c))

effective solutions in place. As one member aptly put it, at this time the factors identified are a luxury for those candidates who, but-for the LPP, would be denied any real opportunity to complete the licensing process and be called to the bar. In the absence of more effective alternatives, the critical factor is the report's finding that the LPP is delivering fair, objective and accessible transitional experiential training.

The report also raises concerns about the LPP's financial sustainability, noting that:

> "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 … 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 … Deferring the decision for a year or two will not, in the Committee's view, likely change that reality."[28]

Our members have several responses to this element of the Report.

First, it goes without saying that the Law Society has a responsibility to deliver pathways to licensing that provide fair, objective and accessible transitional experiential training at the lowest possible cost to achieve those requirements.

While the Committee may reasonably consider the cost impact that any pathway has on all licensing candidates, including those not in it, we caution against an approach that either visits the cost of overcoming systemic barriers on those who utilize such programs, or that suggests the cost for such programs is too high because only a subset of the population utilize them. Elsewhere in the report, the Committee states that the majority of LPP candidates have no choice in participating in the program as their only avenue to licensing. Some members expressed the view that the recommendation to cancel the LPP made those who faced barriers to traditional articling feel "too small to count". Other members analogized that it would be equally inappropriate to avoid installing a ramp to make a building accessible because the cost would be deemed too high on a per-use basis. Building on that analogy, still others pointed out that the Committee's recommendation is more aptly described as tearing down an accessibly ramp that is already in place and working well, in order to avoid the costs of maintenance and perceived stigma involved with using it.

Second, the Report does not provide any details about future costs after noting that "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."[29] This left our members wondering whether the cost to carry the program forward in future years might be lowered by avoiding unnecessary

[28] Report, para. 82-83, 87.
[29] Report, at para. 87.

expenses and because original start-up costs had already been incurred. As an example of the former, some of our members who served as mentors and assessors said they had not expected any remuneration, and would have volunteered without the stipends that were offered. Given the absence of further information about potential costs it is not clear how the Committee concludes they are necessarily unsustainable.

Third, even if the Committee is correct in its conclusion about "the long term sustainability" of the LPP, that finding should not count against the short-term viability of the pilot.[30] To the contrary, taking the pilot to the completion of the 5 year window originally permitted in the Convocation decision would allow the Law Society to better measure and assess the data generated and to implement any more effective alternatives that are developed.

Specific Equity Considerations

In our 2012 submission on the future of articling, the OBA noted that:

> "Based on the statistics in the Report of the Taskforce, observations by practitioners and presentations from affected law-school graduates at the OBA Council meetings, it is evident that the failure to secure an articling position is not necessarily a reliable measure of a candidate's merit. This fact not only adds to the injustice for affected persons but also weakens the legitimacy of articling as an entry-to-practice criterion. Any transition program has to ensure that there are no arbitrary or non-merit-based hurdles that foreclose a candidate's ability to fulfill the licensing requirement."[31]

The 2012 Report of the LSUC Articling Task Force recommended the pilot project to satisfy a number of concerns, including the concern that the articling placement shortage disproportionately affects equality seeking groups:

> "The pilot project will provide not only enhanced access to the licensing process but also a wealth of information. This information will be analyzed and used not only to compare the two methods of transitional training, but also to continue to address a wide range of issues that arose during the consultation process, such as the challenges confronted by equality-seeking groups. The Task Force received numerous submissions from equality-seeking groups, nearly all of which rejected

[30] At para. 84, the Committee notes that while the approach taken with respect to funding "was considered appropriate for the duration of the pilot project, [it] questions whether it is sustainable or fair to extend the pilot or make the LPP permanent on this same basis." Again this does not undermine a short-term continuation of the program.
[31] OBA 2012 Report, p. 5.

> the status quo out of concern that it fails to solve the articling placement shortages that are believed to disproportionately affect these groups."[32]

With respect to this objective, the Report notes that:

> "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."[33]

We also note that the recently released report of the LSUC Challenges Faced by Racialized Licensees Working Group states that:

> "Racial and ethnic barriers were ranked highly among the barriers to entry and advancement. Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry to practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier … Racialized licensees were also more likely to have struggled to find an articling position or training placement."[34]

In light of the Report's finding that articling position shortages will continue to be an issue in future years,[35] the OBA is concerned that eliminating the LPP will have a disproportionately negative impact on equality seeking groups, and return many candidates facing barriers to the same unacceptable position they were in three years ago.[36]

Alternative Strategies to Address Persisting Concerns

As set out in our 2012 Future of Articling submission, the OBA recognizes:

> "… that if the current system arbitrarily excludes potential candidates from the opportunity to fulfill the entry-to-practice criterion, it will not continue to survive scrutiny. The question

---

[32] LSUC 2012 Report, p. 4
[33] Report, para. 37(g).
[34] LSUC Working Together for Change, p. 39.
[35] Report, para 138.
[36] As the Report also notes: "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." (Report, para. 125). In our view, this focus impacts access to justice for the French speaking public, by preparing lawyers who can serve such clients directly, accept judicial appointments, contribute broadly as members of the bar to Francophone legal issues, etc.

becomes: What is the best solution to maintain the benefits of the current model and solve the Gap problem…?"[37]

In our view, this remains the fundamental issue for the Committee to consider, which the Report does not adequately address.

The Report states: "It is clear to the Committee that many of the issues that prompted the pilot remain."[38] The Report goes on to note that the Committee has developed a number of additional recommendations for strategies to address issues that continue to exist in transitional experiential training.

In particular, the Committee states that "Serious attention, effort and collaboration in the areas identified below can address some of the issues that the pilot has revealed or confirmed:"[39]

- *Continued use of LPP program content, networks, professional placements etc. in other contexts so that the invaluable resources are not lost.*

  The Report notes that for both French and English LPPs: "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 … Effort should be made to make use of the English and French LPP resources." With respect to work placements specifically, the report notes that "Most of the placements were with those who had not previously taken an articling candidate." The proposed motion to Convocation states that the Law Society will explore ways of "adapting work placements developed during the LPP to the articling context wherever possible and appropriate."[40]

- *Consideration of the National Committee on Accreditation (NCA) process, readiness for licensing issues and exploration of bridging programs for internationally-educated candidates*.

  The Report states that "the Law Society is committed to a vibrant, competent and diverse profession that in turn supports the diversity of the Ontario population." As noted above, the Report does not describe the way in which cancelling the LPP serves to advance that commitment. The report also states that "the Law Society should explore possible approaches to voluntary and robust bridging programs for internationally-educated

[37] OBA 2012 Report, p. 11.
[38] Report, at para. 122.
[39] Report, Executive Summary at p. 3.
[40] Report, Executive Summary at p. 3.

candidates to enhance their readiness for licensing in Ontario."[41]

- *Attention to issues of fairness, including the Articling Program's impact on equality seeking candidates and its accessibility and objectivity*.

  As noted in the Report, the "Committee continues to have concerns with aspects of the Articling Program … 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 ... 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 … 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-serviced communities and appropriate job locations."[42]

Throughout our discussions, OBA members expressed concern that the program content from the LPP should not be lost, given the significant investment needed to develop it and the positive reviews of its utility. If the LPP is discontinued, we therefore support the general recommendation to consider the ways in which the resources developed might be utilized. However, on the critical issue of placements, members questioned why the Committee hopes that employers who offered a four-month placement to a candidate trained under the LPP would be likely to take an articling student instead, given that those employers could have done so in the past and did not.

In summary, given the very brief descriptions, it is difficult to provide any significant feedback on the feasibility of the Committee's alternative strategies. As noted several times throughout this submission, OBA members are overwhelmingly of the view that the options articulated above are far too general in nature to serve as reliable alternative options if the LPP pilot is abandoned at this time. The incomplete assessment of effective alternatives is highlighted by the Committee's allowance of nine months to propose a plan to Convocation to address these recommendations.[43] Although the Committee intends to "explore possible approaches" with "serious attention, effort and collaboration", we are concerned that the Law Society is far from being able to implement any alternatives at any time soon – with the danger that the profession simply reverts to the same position it was in before the pilot.

---

[41] Report, Executive Summary at p. 3.
[42] Report, Executive Summary at p. 3.
[43] Report at para. 3. "By June 2017 the Professional Development & Competence Committee will provide Convocation with a proposed process plan for addressing issues under a-e."

Licensing Process Enhancements

In the time permitted for comment on the Report, the OBA received little substantive feedback on the proposed enhancements to the lawyer licensing process. This was in part owing to the attention members devoted to the Committee's recommendations with respect to the LPP, which comprised the majority of the material in the Report.

However, our members also expressed a concern about the lack of information pertaining to each of the recommendations, or the potential interaction of the recommendations collectively in affecting the licensing process in the future. This concern, along with a concern about minimal consultation, was raised when a similar package of proposals was put forward by the Committee in April 2016.

At that time, the Committee indicated that it had decided to address and respond to concerns raised over the following months and consider the enhancements in conjunction with its assessment of the Pathways Pilot Project commencing in September 2016. The Committee indicated that as a result, the licensing process changes that were discussed in the April 2016 report to Convocation would not be implemented for the 2017-18 licensing year.[44]

In our view, the concerns previously expressed about short time period and the limited information available regarding the proposed licensing process enhancements continue to exist. Moreover, as a result of the concerns expressed about the Committee's recommendations pertaining to the LPP, we believe that it is not possible to consider the enhancements in conjunction with the assessment of the Pathways Pilot Project as the Committee had intended. As a result, the recommendations relating to licensing enhancements should be deferred along with the recommendation to cancel the LPP.

Conclusion

The OBA appreciates the opportunity to comment, although we believe the extraordinarily short timeframe has not allowed for adequate consideration of the significant issues at stake.

The Report suggests that the LPP has been successful in addressing the central challenges that it was undertaken to overcome; including providing an opportunity for candidates who could not find articling positions to become eligible to be called to the bar, and in doing so, bridging a gap that disproportionately impacts equality seeking and especially racialized candidates. By all accounts, this is a significant achievement.

[44] May 2016 Convocation. https://www.lsuc.on.ca/with.aspx?id=2147502500

The OBA's view is that the Committee's recommendation to cancel the LPP should be rejected in light of:

- the Committee's positive findings about the effectiveness of the program in meeting the objective of imparting candidates with the required entry-level competencies;
- the reliance on limited/incomplete data from two-years of the pilot, and the need for further consideration of relevant metrics, especially given the Committee's recognition that the purported "second-tier perception" problem is ill-informed and unfounded; and,
- the absence or inadequacy of any alternative measures to satisfactorily fill the role that the LPP is currently playing.

Instead, taking the pilot to the completion of the five-year window permitted in the original Convocation decision would allow the Law Society to better measure and assess the data produced and to potentially implement more effective alternatives.

OSGOODE
OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

Office of the Dean

4700 KEELE ST.
TORONTO ON
CANADA M3J 1P3
T 416 736 5199
F 416 736 5736
lawdean@osgoode.yorku.ca
www.osgoode.yorku.ca

October 17, 2016

Via email: policy@lsuc.on.ca
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON, M5H 2N6

Dear Policy Secretariat,

Re: Osgoode Hall Law School Response to Pathways Pilot Project Evaluation and Enhancements to Licensing Report

Further to the Law Society of Upper Canada's Pathways Pilot Project Evaluation and Enhancements to Licensing report from the Professional Development and Competence Committee (PD&C), and the request for comments, these brief responses are shared on behalf of the Osgoode Hall Law School community.

The Osgoode community is diverse and I emphasize at the outset that the views that follow do not represent all the many different perspectives that Osgoode community members will have about the Report. I have sought to highlight those issues on which there is the broadest consensus. I also understand that Osgoode students will be participating in the specific feedback that has been sought from the Law Students' Society of Ontario (LSSO).
In discussions with Osgoode's Legal Education Working Group, which was formed in 2012 (partially as a response to the developments which led to the LSUC's original Pathways Report), and includes Osgoode students, staff and faculty, the following points were raised in relation to the Report.

1) Time for Consultation

In their letter to the Treasurer, the Ontario Law Deans expressed significant concerns around the lack of consultations in connection with the proposal from the Professional Development & Competency Committee in April 2016, proposing broad changes to the licensing process. With this most recent Report, the LSUC has proceeded in a more consultative fashion, but on a very tight timeline, which may preclude full and considered comments from many important voices in the legal community. For example, the LSSO has indicated it is meeting on October 21st – two days after the deadline for consultations.

YORK
UNIVERSITÉ
UNIVERSITY

The tight timeline may result in an inability to identify and address avoidable problems with implementation. For example, the new Practice and Procedure Examination is proposed to take place in May of each year. Given that graduating Law Students are writing final exams in April (and into May where final exam deferrals are applicable), the May timing may not allow a sufficient and fair opportunity for preparation and transition, while the July timing may unduly delay the current start date for many students' articles. In consultation with Law Schools and employers, this problem may be easily remedied, but it is illustrative of the kind of issue that would no doubt benefit from time to speak with Law Schools, employers and students to ensure a successful transition from Law School to licensing for as many students/candidates as possible.

While a decision on the LPP may need to be communicated by November given the timelines for winding up the pilot initiative, it is unclear why other aspects of the proposed reforms could not be subject to additional consultation.

2) Alternatives to the LPP

While the views on the LPP itself at Osgoode vary, there is broad consensus that the problem to which the LPP was directed — i.e. a shortage of articling placements in relation to the number of qualified candidates seeking articles — remains a pressing (and growing) concern. As many have observed, a profession regulated in the public interest must have merit-based "gatekeeping" thresholds. The supply of articling positions primarily depends on market conditions, which fluctuate, and result in qualified candidates shut out of access to the licensing process.

The Report is vague as to specific alternatives to the LPP that will allow qualified candidates to complete the licensing process. While increasing the number of funded articling places in underserved communities is laudable (if funding for such an initiative is committed), it is unlikely to make an appreciable dent in this gap.

3) The Abridgement of Articles and the Role of Law Schools

The Ontario Law Deans' concerns with the earlier proposal to abridge articles, and in particular to recognize portions of Law School JD programs as giving some students eligibility for abridged articles, are worth reiterating, given that the Report defers rather than abandons consideration of these aspects of the earlier April proposal, and seeks further exploration of the idea of an abridgment of articles based on "prior skills training" accredited by the Law Society (at para. 181).

First, the concept of abridging articles based on accredited pre-articling skills programs appears premised on the distinctions between experiential programs at Law School that will qualify and those that may not. Determining a basis

for such a distinction will prove both difficult and divisive amongst law schools and within law school programs. Ultimately, experiential education has been pursued by each Law School to further its particular academic objectives. Deciding to accredit some of these programs (but not others) based on criteria developed for regulatory rather than pedagogical purposes, will inevitably lead to distinctions that many will see as arbitrary and/or unprincipled. While abridging articles on this basis will do little to advance the goals of the licensing process (equity, consistency, coherence, etc), this approach may give rise to real harms to some Law School programs, such as affecting student enrollments and altering or distorting the nature of the programs to fit the vision of a skills training exercise that serves regulatory purposes, rather than an experiential education program that has very different learning goals.

More broadly, LSUC reform proposals that impact Law School curriculum should acknowledge the importance of Law Schools' autonomy and governance. As Law Schools have learned through the Federation of Law Societies of Canada's Approval Committee process of implementing the "National Requirement" for Common Law Schools, the recognition of certain aspects of legal education as "required" by Law Societies can inadvertently distort the process by which Law Schools plan and implement their curriculum. The process by which Law Schools develop and reform curriculum is built on substantial pedagogical experience and expertise, and is informed by collegial governance, input from students, staff, faculty and alumni, featuring both detailed academic planning and rigorous academic oversight (including external program reviews at regular intervals).

The Report suggests that a point of departure for future proposals would be that Law Schools might or might not choose to submit programs for accreditation under some future criteria, and that Articling Principals would in turn be free to accept or reject involvements (para. 178). While the goal may be simply to allow those Law Schools and Articling Principals who are willing to participate in abridgment of articles based on Law School experiential programs, the result, as suggested above, is likely to stymie rather than enhance innovation and to create distinctions between those programs accredited and those not, and those students completing accredited programs who receive an abridgment of articles and those who do not, which may be unjustified, unsustainable, and unfair.

The Report to some extent acknowledges these concerns by indicating that the original April 2016 proposals were not intended to introduce a new mandatory requirement or shift responsibility for transitional training on to the Law Schools (at para. 177), and that they were intended, rather, to "expand the conversation and integrate flexibility into the process." (at para. 179) There are significant areas for robust collaboration between Law Schools and Law Societies (recent Indigenization initiatives responding to the Truth and Reconciliation Commission represent an important example), but these are

most successful when premised on mutual respect for the distinct roles, missions and public interest mandates of both Law Societies and Law Schools.

The Osgoode Hall Law School community looks forward to continuing dialogue around the licensing process, and to a productive and engaged relationship with the Law Society of Upper Canada as this process unfolds.

Sincerely,

Lorne Sossin
Dean & Professor, Osgoode Hall Law School, York University

Stewart Pilon Legal Professional Corporation

DELIVERED BY EMAIL

Ottawa, October 19, 2016

Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street W.
Toronto, Ontario
M5H 2N6

RE: *Pathways Pilot Project Evaluation and Enhancements to Licensing Report– Response from the PPD Advisory Committee*

Members of the Professional Development and Competence Committee:

We are writing to you in the name of the Advisory Committee of the French Law Practice Program (CCPPD). As you may know, in 2013, we were invited to become members of CCPPD because of our expertise in our respective areas of law and also because of our close ties to the francophone legal community in Ontario. Generally speaking, CCPPD's mandate is that of study and recommendations. Members are also called upon to contribute to the PPD's influence in the legal community and to support the directors, staff, and team of lawyer-instructors in developing a practical curriculum that reflects the unique needs of the Franco-Ontarian community.

We have read the interim evaluation report *Pathways to the Profession* dated June 30, 2016, and the Professional Development and Competence Committee (the Committee) report dated September 22, 2016, with a great deal of interest. We thank you for this opportunity to comment on the report as directed by the Treasurer. Our comments and suggestions are offered with respect to the following:

- Information to be disclosed to the Board before the vote on November 9, 2016, in order to facilitate adoption of an informed decision;
- Our response to the Committee's report; and
- Our specific concerns presented to the Board of the LSUC.

In its report, the Committee recognized the unique and important work accomplished by the PPD team. Since its inception, more than 250 Francophone lawyers have become involved with the PPD. There is no denying this is, in all aspects, a community project. We are particularly proud of the role that the PPD has played in training future lawyers in the capacity of serving the Franco-Ontarian community and in actively working to promote access to justice in French.

We congratulate the LSUC and the Committee for having recognized the importance of privileging linguistic duality as part of the services and communications offered by the LSUC.

We strongly encourage the LSUC to continue to respect this principle within the context of the decision-making process relating to the future of the Pathways to the Profession pilot project and to the PPD in particular. Any decision-making process relating to the PPD should be carried out solely in light of the data, statistics, and specific results of the PPD. In this respect, the Committee's report contains many quantitative and qualitative gaps with respect to the PPD, to the point that an informed decision with respect to the future of the PPD cannot be taken solely in light of the information contained in the report.

1. Information to be provided to Convocation in order to ensure adoption of an informed decision

a) Data broken down according to program

Although the Committee's report cites the importance of respect for linguistic duality, it is regrettable that the Committee and the assessor have not applied the principle of linguistic duality in their report or their evaluation. This is indispensable both for assuring fairness towards Francophones as part of the process of evaluation and for avoiding erroneous conclusions in the evaluation.

In this particular case, the failure to examine the French and English-language programs separately, and the absence of clearly broken-down data for the French and English programs have resulted in conclusions that are inaccurate and unsubstantiated by LPP/PPD's evaluator. For example, in the evaluation's executive summary, the following observation is made about the LPP/PPD:

> The LPP is made up mostly of candidates that did not choose the LPP as their first choice for transitional, experiential training. The population of the LPP is 50% internationally educated and 50% Canadian-educated, most candidates are English-speaking; and the LPP has greater proportional representation in candidates that identify themselves as "Racialized," "Francophone," "People with a Disability," "Aboriginal," and "Age 40+" than the Articling Program population.[1]

This description in no way corresponds to the reality of the PPD. First, all the candidates of the PPD during its three years of existence hold a degree in some aspect of Canadian law. Second, the PPD not only has "a much larger portion" of candidates who identify as Francophone, but all these candidates identify as such. Finally, an internal survey in addition to an independent study carried out on the PPD candidates confirm that a large number of the candidates of the PPD have chosen this pathway into the profession.

The misleading conclusions exposed below relating to the PPD are only a few examples of the numerous, unsound conclusions articulated in the report, due both to the absence of data broken down according to the two programs, and to the fact that the two programs are erroneously represented as a unified entity for the purpose of the evaluation. We also note that several data and conclusions presented in the evaluation only related to the LPP in English. More specifically, the conclusions presented in this report with respect to the following do not take into account qualitative data or research on the PPD:

[1] Evaluator's Report, page 3

- Fairness, Accessibility, and Objectivity of the Training (pages 25 to 29)
- Exposure to the Experiential Training Competencies (pages 33 to 40)
- Growth in Practical Skills Development (pages 41 to 47)
- Search for placements (pages 91 to 96)

To address this significant gap, we are thus requesting the LSUC staff to provide Convocation with the following data in a manner that is broken down according to the two programs so that the LSUC can better evaluate the efficiency and importance of the PPD.

i. *The PPD/LLP as first choice for the Pathways to the Profession:*

According to the report, the PPD/LPP was the first choice as a pathway into the profession for 38% of the candidates in 2014, while in 2015 the PPD/LPP was the first choice for 27% of the candidates.

The CCPPD is of the opinion that these statistics do not reflect the reality of the PPD. For example, according to a study led by Professor Michelle Flaherty and Professor Alain Roussy, more than 40% of candidates in the Francophone PPD chose to participate in the Francophone PPD instead of seeking traditional articles.[2] According to Flaherty and Roussy, "this choice by over 40 % of the French LPP candidates could be interpreted as a vote of confidence in the new program."[3]

According to a survey of PPD candidates from 2014-2015 and 2015-16, the primary reasons that motivated the candidates to choose the PPD are as follows:

24% the possibility of learning more about diverse areas of practice
20% training grounded in practical experience
16% work placement opportunities availability only for PPD candidates
12% no alternative work placement was offered to me
8% networking opportunities available only for PPD candidates
8% access to personalized training
4% option of a professional article did not fulfil my needs (financial, familial)
4% The PPD's reputation
4% Other[4]

The primary reasons that motivated candidates to choose the PPD this year are as follows:

50% training based on practical experience
21% placement opportunities available only for PPD candidates
14% the possibility of learning more about diverse areas of practice
7% option of a professional work placement did not fulfil my needs (financial,

[2] *Ibid* p. 17.
[3] *Ibid* p. 19.
[4] Survey done with PPD candidates 2014-2015 and 2015-2016. August 8, 2016.

familial)
7% no alternative work placement was offered to me[5]

The CCPPD requests that specific data concerning the percentage of candidates for whom the PPD (in French) represents the first choice for a pathway into the profession be presented to Convocation in order to make an informed opinion with respect to the PPD's future.

ii. Percentage of racialized candidates:

According to the report, 32 to 33% of LPP/PPD candidates self-identify as being racialized. However, according to Professor Michelle Flaherty and Professor Alain Roussy, 65% of PPD candidates in 2014 were racialized and 27% of candidates were racialized in the second year of the program. This year, 65% of the candidates self-identified as being racialized or members of an equity group.[6]

The CCPPD is of the opinion that Francophone and racialized candidates enrolled in a process of accreditation encounter unique barriers due to the fact that they are, in effect, members of two groups under-represented at the heart of the legal community of Ontario. The Committee's report in no way takes into account this complex and pertinent reality for the PPD.

The CCPPD requests that Convocation take into account the unique barriers that racialized Francophone candidates encounter and requests that specific data concerning the percentage of racialized candidates be presented to Convocation before a decision with respect to the PPD's future is taken.

iii. Results of the LSUC exam:

According to the report, the failure rate of PPD/LPP candidates is higher than for those candidates in a traditional articling position. The report states:

> 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.[7]

The report concludes that this higher failure rate perpetuates stereotypes with respect to the PPD/LPP as a second-class pathway into the profession. According to the authors of the report, "this feeds into the issue of perception of second-tier status for those in the LPP".[8]

The CCPPD wishes to point out that Francophone candidates enrolled in the process of accreditation have long denounced the failure level among Francophones taking the LSUC

[5] Survey done with PPD candidates 2016-2017. October 18, 2016.
[6] Survey done with PPD candidates 2016-2017. October 18, 2016
[7] Committee report, par. 97
[8] Committee report, par. 102

exams. Some maintain that the quality of the French-language materials and exams is weak and that this leads to greater rates of failure among Francophones.[9] The CCPPD is of the opinion that the data with respect to the failure rate of PPD candidates should be contextualized with respect to the relevant data concerning the failure rate of all Francophone candidates enrolled in the process of accreditation at the LSUC, in addition to the concerns that have arisen with respect to the quality of French-language academic materials at the LSUC over recent years.

The CCPPD requests that specific data concerning the failure rate of PPD candidates compared to the failure rate of Francophone candidates engaged in traditional articles be presented to Convocation before an informed decision with respect to the PPD's future is taken.

ii. Other

The CCPPD is of the opinion that some of the data in the report on the subject of the PPD/LPP is presented in a manner that masks the reality of the PPD. The CCPPD submits that it is important that the benchers should have access to a clear and precise picture of the PPD before considering its future.

In addition to the data mentioned above, the CCPPD requests that specific data concerning the following topics in the evaluative report of July 2016 be presented to Convocation before a decision with respect to the future of the PPD is taken:

(1) Executive Summary (page 3)
(2) About the candidates (page 74)
(3) About the placements (page 97)
(4) Effects on Career Goals (page 109)
(5) Call to the Bar, Hire-Backs, Withdrawal from the Program, and Year One Post Licence Practice Data (page 117)
(6) Value of the Law Practice Program and the Articling Program (page 125)

b) Pathways in French

In a context where English is the primary language of the province, few Francophone lawyers in Ontario can work solely or even primarily in their first language. It necessarily follows that traditional articles offers limited opportunities for candidates to work solely, or primarily, in French. In addition, in view of the many concerns raised by several candidates with respect to the quality of the French-language educational materials of the LSUC, several Francophones were compelled to write the LSUC exams in English. The CCPPD is concerned about the growing number of Francophone candidates who are taking the process of evaluation at the LSUC (the articles and exams) in English. The CCPPD fears that this phenomenon could represent for many future lawyers the first step towards assimilation and, thus, undermine access to justice for French-language rights in Ontario. The CCPPD is of the opinion that the LSUC must take proactive measures to encourage those students who have studied law in French to complete the licensing process in that language.

[9] RECLEF letter to LSUC dated April 15, 2013. See also Students slam French licensing materials, Law Times, August 26, 2007. http://www.lawtimesnews.com/200708271518/headline-news/students-slam-french-licensing-material.

The PPD offers a unique opportunity to Francophone candidates to follow a pathway into the LSUC in their first language, particularly through their training component. In all the modules of the training program, the instructor-practitioners discuss with the candidates the realities of practising law in French in this field and also offer practical advice with respect to exercising linguistic rights in their particular area. Thanks to this contextualized and targeted training within the environment of a linguistic minority, the PPD candidates learn to navigate within the legal system in order to ensure that services in French are more accessible to the Francophone client and to reduce potential challenges tied to initiating proceedings in French in Ontario. All these different duties are assigned to the candidates with a view to training lawyers who can service and respond to the unique needs of the Francophone community.

While a greater number of Francophone candidates are engaging in traditional articles or LSUC exams in English, the PPD succeeds in recruiting a significant proportion of Francophone candidates who prefer the PPD as a pathway into the profession. The CCPPD requests, therefore, that Convocation take into account the unique role that the PPD plays in the struggle against the assimilation effect within the licensing process.

The CCPPD requests that comparative data reflecting the percentage of Francophone candidates who pursue each pathway in French be presented to Convocation before a decision concerning the future of the PPD is taken.

2. RESPONSE TO THE REPORT

Although the LSUC has given the PPD a mandate to take into account the unique needs of the Franco-Ontarian community, neither the evaluation nor the report of the committee makes reference to this objective. In our letter dated August 21, 2016, we asked the Treasurer at the time to make sure that the criteria for evaluation at the PPD and the LPP were different so that the PPD could be evaluated in a manner that takes into account the different realities of the Francophone community. This has quite obviously not been done.

The CCPPD requests that the decisions regarding the fate of the PPD and the LLP in English be made separately, taking into account the unique role of the PPD, the needs of the Francophone legal community, in addition to the factors listed below:

a) The PPD as a tool to promote access to justice

Although the PPD and the LPP were created by the LSUC to improve the availability of articles, the PPD is also involved in the solution to another major concern within the legal profession: access to justice in French.[10] Over the last two years of its existence, the PPD has demonstrated that its legacy was not limited to finding a solution to the legal articling shortage. The PPD has also crafted for itself a unique place as a major player in the collective effort that is the government policy to ensure improved access to justice in French in Ontario. To do this, the PPD relies on the following three fundamentals: responsibility towards the Franco-Ontarian community, promoting

[10] See A. Roussy, "Le Programme de pratique du droit à mi-parcours : une étude empirique. ". *Ottawa Law Review, Vol. 48, No. 1, 2016, Ottawa Faculty of Law Working Paper No. 2017-1 pour une analyse de trois questionnaires administrés aux candidats inscrits au PPD offerts en français.*

the linguistic rights, and community engagement. These fundamentals are presented in Appendix A of this letter.

The CCPPD requests that the distinct objectives of the PPD to serve the Francophone community in Ontario and to promote access to justice in French be considered during the decision-making process of Convocation.

b) The PPD as a tool of integration into the profession for all Francophone candidates, including racialized Francophone candidates

In its report, the Committee recognizes that the PPD has contributed to the development of "a particular focus on the issues surrounding the enhancement and broadening of ability to offer quality legal services in French across the province."[11] In addition, the Committee recognizes the collaborative approach that has led to the establishment of the PPD. In fact, the PPD is fundamentally a community program. From its inception, more than 250 Franco-Ontarians have been involved in establishing the PPD.

In light of the massive support enjoyed by the PPD in the Francophone community, the CCPPD submits that the perception of this program as a second-class pathway does not exist in the Francophone legal community. A large number of testimonies by candidates, employers, and members of the Francophone legal community in support of this statement are presented in Appendix B of this letter.

In view of the significant support enjoyed by the PPD from the Francophone legal community, the CCPPD is of the opinion that the PPD offers not only a pathway into the profession, but also a pathway of integration. Indeed, from 2015–2016, the vocational training program offered candidates more than 25 networking events in the community. As Ms. Andrée-Anne Martel, Executive Director of AJEFO explains, "the Franco-Ontarian community has very close ties and the PPD allows itself to be integrated into this community."[12]

The welcome that candidates of the PPD have received from the legal community is particularly important for candidates from groups that have been historically marginalized in the legal profession, which are disproportionality represented in the PPD. As mentioned above, more than 64% of PPD candidates from this year identified as being racialized or members of an equity group. This could reveal unique barriers that racialized Francophone candidates are facing.

During its decision-making process with respect to the future of the PPD, the CCPPD requests that Convocation take into consideration the unique barriers facing racialized Francophone candidates, and the opportunities to network and integrate into the Francophone legal community offered by the PPD.

3. Specific requests presented to the LSUC Convocation:

As mentioned at the beginning of this letter, the CCPPD is proud of the work of the PPD team and of the community support that the latter has generated in the three years of its existence. The PPD has, in our opinion, an exemplary practice in matters relating to the linguistic duality because it is

[11] Committee report, par. 125

[12] Promotional video of the PPD, recorded on April 23, 2016

fundamentally a program for, and supported by, Francophones.

Thus, the CCPPD requests the following from the LSUC Convocation:

1) **That the fate of the PPD be decided according to a decision-making process distinct from the one that is considered to decide the fate of the LLP;**

2) **That this decision with respect to the fate of the PPD be based on accurate data about the PPD;**

3) **That the decision relating to the PPD take into consideration the distinct objectives of the PPD to serve the Francophone community of Ontario and to promote access to justice in French;**

4) **That the PPD's Pathways Pilot Project component become permanent;**

5) **Alternatively, that the LSUC fund consultations with the Francophone community—such as AJEFO, the University of Ottawa's Common Law Program, The Francophone Network of Legal Clinics of Ontario, The Offices of French Language Services, the CCPPD—and be tasked to identify a new pathway model into the profession that takes into account the unique needs of the Franco-Ontarian community and concerns expressed by the Committee with respect to the PPD/LPP.**

We would like to thank you for your consideration if this letter.

Brigitte Pilon
On behalf of the Advisory Committee of the PPD

cc François Boileau, Commissioner of French Language Services in Ontario

APPENDIX I—THE THREE FUNDAMENTALS OF THE PPD

i. Accountability to the community

The PPD was established with a view to being accountable to the Franco-Ontarian community. Before its inception, experienced Franco-Ontarian judges and lawyers were recruited by the directors of the PPD to sit on the advisory committee. During this initial stage of the project's conception, a strategic planning and brainstorming meeting took place among the members of the advisory committee with a view to guiding the overall direction of the PPD to ensure that it successfully met the needs of the community. During the PPD's first year, the advisory committee met once a month to allow members to closely follow the implementation of their vision of the project. During this second year, the members of the advisory committee communicated among themselves twice by telephone and met on one occasion. In addition, we communicated regularly with members of the advisory committee to update them on recent issues that arose within the framework of the PPD to obtain their advice when it was deemed necessary. This regular communication among members of the advisory committee allows us to ensure that the PPD remains accountable to our community and continues to respond to the needs of Franco-Ontarians in matters of justice over the years.

In addition to offering an intense, simulated learning experience, the PPD aims to train future lawyers as anchors in their community. For this reason an advisory committee of experts composed of judges and lawyers from different areas of the profession including legal clinics, in-house lawyers, small legal firms, and not-for-profit organizations was created. The members of the advisory committee assisted in suggesting general guidance relating to the overall direction and content of the PPD to ensure that candidates are trained to respond to the unique needs of the Franco-Ontarian community. They additionally serve as ambassadors for the PPD within the legal community.

ii. Promotion of Linguistic Rights

Rising awareness and understanding of litigants' linguistic rights are essential to realizing these rights, including the right to access justice in the official language of choice in certain situations. This is the reason that the Law Society of Upper Canada's Rules of Professional Conduct provide that the lawyer must inform the client of his or her linguistic rights. In order to ensure that the candidates respect or surpass their professional responsibilities in matters of linguistic rights, the PPD has added the skills listed below to the list of essential skills required for completion of the training component:

- To respect and promote clients' linguistic rights; and
- To demonstrate understanding of the duty of a lawyer to ensure without fail access to justice and services in French

These skills are evaluated several times during the training component. For example, during the simulated interview with a client, candidates are evaluated on their ability to counsel their fictitious clients about their linguistic rights and the best way to assert them in the given context.[13] In 2014–

[13] It should be noted that section 3.2-2A of the *Rules of Professional Conduct of the Law Society of Upper Canada* requires that

2015 and 2015–2016, all the candidates demonstrated that they had mastered the skills associated with accessing justice in French. It is thus not surprising that 100% of the candidates say that thanks to the PPD, they are now more sensitive to the linguistic rights of litigants and the obligation of lawyers to inform them about these rights.[14]

In addition, in all the modules of the training component, the instructor-practitioners discuss with the candidates the realities of practising law in French in this field and also offer practical advice with respect to exercising linguistic rights in their particular area of focus. For example, in civil litigation, our instructor-practitioners give candidates practical advice to succeed in a cross-examination through an interpreter. In addition, our training component Clio, our case management software, is managed by a legal firm specialized in linguistic rights and focuses on the software features that facilitate the creation of invoices and time-keeping in French. Thanks to this focused and context-specific training in an area of linguistic minorities, the PPD candidates learn to navigate the justice system in order to minimize the challenges of a procedure carried out in French and to provide more accessible services in French to the Francophone client. All these different duties are set with a view to training lawyers who can serve and respond to the unique needs of the Francophone community.

Community Engagement

Having a Francophone client requires a holistic approach and a close collaboration with community partners in order to ensure a uniform and continuous experience. A collective effort by an entire community is required to service the Francophone client. This is the reason why the PPD believed it was essential to anchor the training in the community. At the end of the training component, candidates have the opportunity to meet several Francophone partners with pro bono services and connections to legal services, such as not-for-profit organizations offering assistance to renters, legal clinics, and accountants or insurance brokers to whom they can refer future clients to ensure a faultless experience of service in French.

Respect for the client's linguistic rights and the promotion of access to justice in French also

---

"A lawyer shall, when appropriate, advise a client of the client's language rights, including the right to use.

(i) the official language of the client's choice; and

(ii) a language recognized in provincial or territorial legislation as a language in which a matter may be pursued, including, where applicable, aboriginal languages."

Section 3.2-2B provides:

"If a client proposes to use a language of his or her choice, and the lawyer is not competent in that language to provide the required services, the lawyer shall not undertake the matter unless he or she is otherwise able to competently provide those services and the client consents in writing".

Rules of Professional Conduct Adopted by Convocation on June 22, 2000, effective November 1, 2000
Amendments based on the Federation of Law Societies Model Code of Professional Conduct adopted by Convocation October 24, 2013, effective October 1, 2014.

This competency is directly related to the recommendation made in the *Rouleau/LeVay Report*. In particular, it is recommended: "In consultation with police services and lawyers' associations: develop and implement procedures that ensure that persons are informed of their language rights at the earliest opportunity; and that French legal services are offered and made available at the same time as English legal services".

14 Survey with PPD candidates 2014–2015 and 2015–2016. August 8, 2016

requires a close understanding among the Francophone legal partners. This is the reason why the directors of the PPD insist on ensuring that candidates are well embedded in the Francophone legal community. Thus, more than 250 lawyers have contributed under various titles to the development and implementation of the PPD since its inception. Such a commitment on the part of the Franco-Ontarian legal community attests to its enthusiasm towards the PPD's mission. Thanks to this support, the PPD offers many opportunities for candidates to partner with members of the community. This community approach to training future lawyers is intended to encourage collaboration between candidates and other members of the legal community in our common goal of promoting access to justice in French. It also allows for French to be legitimized as a working language before the courts and in professional interaction between candidates and their future clients.

The PPD also relies on several other community partners in order to ensure that its candidates learn the importance of community engagement through their practical training. As such, during the training component, Francophone community groups and organizations, such as Action Logement and the Ottawa Legal Information Centre, will become their future partners in a seamless comprehensive delivery of legal services for members of the community.

In addition, within the context of Ontario Francophones, practising law in French and subsequent engagement with the community are inseparable. Candidates are thus called upon to give back to the community that has welcomed them with open arms. Thus, in 2014 and 2015, the candidates participated in a legal information outreach activity for the Ottawa Legal Information Centre. This activity was intended to stir up interest in this area and in pro bono work among the candidates, and to encourage them to recognize the unique contribution that lawyers can make to not-for-profit organizations. In 2016, they participated in a community engagement and in an access to justice activity in Northern Ontario. It is thus not surprising that 95% of PPD candidates from 2014–2015 and 2015–2016 state that the PPD allowed them to better appreciate the importance of giving back to the community. In addition, more than 70% of the candidates continue to be involved with the community since they completed their training under the PPD.

APPENDIX B — Testimonies

(a) Employers

"The candidate always submits work of a superior quality. She is proud of her work and has a lot of initiative. She is the type of candidate who knows how to make herself indispensable during her work placement, she has integrated well into the team and always asks for constructive feedback, which she then incorporates."[15]

"The candidate takes on all duties with a comprehensive sense of the larger context in which he operates. This allows him to produce a final product that meets the intended needs. He takes on files and problematic situations given to him with an active curiosity and an open mind. He doesn't hesitate to question and offer good ideas."[16]

"The candidate exceeded all expectations. She was motivated and hard-working. She performed a wide variety of tasks and always completed these tasks on time. Most importantly she knew when to ask for clarification or further information to ensure that she was on the right track. Her judgment and ability are exceptional. She demonstrated that she was able to understand the requirements of any assigned task. She particularly excelled at reviewing large numbers of documents. Most importantly she was eager to take on work."[17]

"He excelled in his duties. He was always very keen and hard-working. He picked up the law and legal issues very quickly. He always showed initiative and assisted when needed often without being asked. He worked very well as a member of our team and fit in well. He has a great demeanour when dealing with our clients who are often hard to manage. He shows a good level of maturity and professionalism when dealing with the stakeholders in the courthouse. He has gained confidence in assisting clients on his own under the supervisor of a lawyer and was careful always to confirm with a lawyer if needed before advising the client."[18]

"He managed his time well and was always on time for work. He is very good at speaking on his feet and is grasping the skill of thinking on his feet in court. He was always keen to learn more and help the lawyers with whatever they needed."[19]

"I was impressed by the quality of the candidate's work. He delivered all tasks on time and with minimum supervision. His work was reliable and thorough. He put in the time necessary to ensure that his work was complete and relevant, and he successfully balanced competing priorities and deliverables."[20]

---

[15] Employer 2015

[16] Employer 2015

[17] Employer 2015

[18] Employer 2015

[19] Employer 2015

[20] Employer 2015

"He is able to hit the ground running on files of significant complexity. He grasps new concepts quickly and asks relevant and important questions. He is also very committed to his work and demonstrates a keen interest in expanding his knowledge. He is also fluent in both English and French, which is a definite asset. I would not hesitate to offer a placement to a LPP candidate next year."[21]

"The candidate performed his duties very well. We were quite impressed with his work from the first day he joined our team. He gets along with colleagues and is always eager to help with assignments."[22]

"His research and drafting skills are quite advanced for someone at his level. He definitely ranks very high when compared to his peers; he performed above his expected level."[23]

"The candidate is hard-working and conscientious. She has performed all tasks assigned to her well, and we have given her increased responsibilities. She has done client representation from start to finish."[24]

"The candidate performed his duties. He likes learning and working with diligence. He worked on complex issues and demonstrated that he had a strong ability to analyze. He is capable of applying the law related to the Commissioner's office, and his research is comprehensive and pertinent. Throughout his work placement he has recognized how to improve the quality of his work. He is a very good listener and accepts all feedback with an open mind. I am more than satisfied with his performance."[25]

"More than one of the counsel with whom the candidate did work indicated that she would be recommended for hire-back if it were that person's decision. One of my colleagues indicated that she is proof that the LPP program is made up of articling students who easily match, if not surpass the average articling student."[26]

"The excellent submissions she prepared for one of my clients have resulted in her being granted without having to go to a Social Benefits Tribunal hearing. Because the client suffers from significant mental health issues, this is a very big deal."[27]

"This candidate performed his duties so well that we hired him! He performed well above expectations.

---

[21] Employer 2015

[22] Employer 2015

[23] Employer 2015

[24] Employer 2015

[25] Employer 2015

[26] Employer 2015

[27] Employer 2015

Our entire section has thoroughly engaged and benefited from having him work for us. He is engaging and energetic and a hard, smart worker."[28]

"The LPP placement was a very positive experience. It provided me with the chance to share legal knowledge and experience in my field of practice: civil, regulatory, criminal and quasi-criminal litigation. The assigned candidate had a strong interest in litigation, and therefore it was an effective placement."[29]

"All counsel who have worked with this candidate have praised his work and his initiative. He has undertaken difficult and complex legal work and has achieved excellent results. He properly identified issues and took the initiative in resolving problems. This candidate always worked well with counsel obtaining instructions, consulting, keeping counsel's advice on developments and follow-up where appropriate. His work has been described as 'thoughtful and intelligent".[30]

"This candidate shows a keen interest in litigation and has shown an aptitude for the work required for a successful legal career. His French language skills have proven to be a real asset to our legal branch. He has always been punctual and pleasant to be around; he has been described as "willing to assist and eager to learn." He is a pleasure to have at the office."[31]

'All counsel who have worked with this candidate complimented his work and initiative. He undertook a difficult and complex legal task and obtained excellent results. He correctly identified the questions being litigated and took the initiative in resolving the issues. He always worked well with the lawyers when receiving instruction, advice, and was discreet regarding developments and follow-up as needed. His work has been described as "thoughtful and intelligent."[32]

"He shows a keen interest in litigation and has shown an aptitude for the work required for a successful legal career. His French language skills have proven to be a real asset to our legal branch. He has always been punctual and pleasant to be around; he has been described as "willing to assist and eager to learn". He is a pleasure to have at the office."[33]

"I wish to reiterate that I strongly believe that this candidate will make an excellent litigator. Certainly, she has impressed me and her colleagues with the quality of her advocacy. She is professional and personable and has been a wonderful addition to the office. She has remained calm and acted with integrity at all times in what can be a fast-paced, unpredictable environment."[34]

---

[28] Employer 2016

[29] Employer 2016

[30] Employer 2016

[31] Employer 2016

[32] Employer 2016

[33] Employer 2016

[34] Employer 2016

"She possesses excellent legal research skills. She takes advantage of all the research tools available to her and makes full use of them".[35]

(b) PPD Candidates

"I chose to train with the PPD to gain practical experience and thereby speed up my entry into the workplace. I could potentially have asked my employer if I could have done my work placement there for 10 months instead and thereby made about $19,000 more, but I don't know if they would have accepted me without the experience I received at the PPD. I believe that giving up this income for 16 weeks was very much worth the effort and that I am investing in my future."[36]

"The PPD was my first choice because it is a rare opportunity to gain experience and a profound understanding of various areas of practice. The fact that the candidates write procedural documents, participate in interrogations, prepare a motion, participate in mediation, and organize hard-copy files helps them enormously to understand the daily practice of a law firm, and also before tribunals or courts of law. In addition our experience included preparing financial statements, invoices, end of mandate letters, and meetings with clients. All of this underlines the importance of having a clear line of communication with the client while also meeting ethical obligations.[37]

"I had the opportunity to read a brochure on the PPD, and I immediately realized that this was a unique opportunity for me to take advantage of a complete and varied training that I would never receive in a traditional article. In addition, one of the reasons that persuaded me to enter a law school was the desire to contribute to the struggle for access to justice. The majority of work placements offered after the PPD training are located in community or minority areas, and I saw in this an opportunity to receive a practical training focused on access to justice in general, but above all one that favours access to justice in minority contexts." [38]

"The PPD allowed me to move towards practising law with more confidence and helped me realize the objective I had before I had even been admitted to law school. Thanks to the PPD, I am rubbing shoulders with most of the highly respected practitioners in their respective areas of practice, in addition to other candidates who represent another source of contact for the future. I strongly doubt that I would have had all these advantages in a traditional article!"[39]

"The PPD is great because it offers a very practical training. Thanks to the PPD, I have come to better identify and understand the concepts of the study materials for the Bar exams.[40]

---

[35] Employer 2016

[36] PPD candidate, 2016-2017

[37] PPD candidate, 2016-2017

[38] PPD candidate, 2016-2017

[39] PPD candidate, 2016-2017

[40] PPD candidate, 2016-2017

"At the PPD, we have the opportunity to work in different areas of law in French. It is a privilege to be able to continue to work in this language. The services that we will offer our Francophone clients can only benefit."

"The networking opportunities are amazing. Along with other candidates, we often meet Francophone lawyers and judges in the community."

"The program has surpassed my expectations. I was far from imagining that I was enamoured with civil litigation and wills. Among other things, I now know how to meet clients, write mandate letters and end-of-mandate letters, make wills and powers of attorney, make a motion in civil litigation, make a family's legal financial statement, conduct a discovery, and cross-interrogate witnesses."

"I'm very grateful to the program. Every day, I remind myself that I've made a good choice."

"The PPD is an extraordinary social and intellectual experience for the candidates." [41]

"When someone consults you as a lawyer, it's a moment in his life when all could be lost, it's a moment when he needs to be able to communicate in his native language, he needs to be represented by someone who understands. The PPD has truly inspired my interest in being able to help and to understand why I want to do so."[42]

"My experience with the Law Practice Program (PPD) will have been a success beyond my expectations."[43]

"[T]he training modules cover almost all the areas of law, from the perspective of a practising lawyer. The quality and quantity of the accumulated training in such a short period of time cannot be acquired in law school nor in a law firm, no matter how grand."[44]

"[T]he wise choices of the instructor-practitioners will allow us to enter into contact and develop professional relationships with the best lawyers in the region. A unique networking opportunity, the short—and long-term advantages of which are undeniable."[45]

"[T]he directors, the staff, and the partners of the PPD made enormous efforts to make us competitive in the marketplace and to prepare us to transition into the second practical training component. The support services for composing the C.V. and letters of introduction were essential to obtaining a work placement. The practical experience acquired during the first training period facilitated our adaptation

[41] PPD candidate, 2015-2016

[42] PPD candidate, 2015-2016

[43] PPD candidate, 2014-2015

[44] PPD candidate, 2014-2015

[45] PPD candidate, 2014-2015

into the environment and tasks of the placement."[46]

"I would readily recommend the PPD Program for its high quality of professional training and integration into the legal community."[47]

(c) Members of the Francophone legal community

"The PPD offers a complete training program: from preparing a client's file, to billing, to office management. I also had the pleasure of interacting with Francophone lawyers in Ontario and through the training component of the PPD, but also in networking events such as the annual meeting of the Association des juristes francophones de l'Ontario."[48]

"The PPD has been an experience without parallel. The training that we received has well prepared us for the practicum component, and well prepared us for our entry into the legal community. The PPD has provided us with the confidence and professionalism necessary to working in the profession, which is not always the case in "traditional" articles."[49]

"We have the mission to train lawyers to serve the Francophone population in Ontario and we do this very well."[50]

"The PPD presents a very interesting alternative for the law student who wants to have actual experience of working in a law office."[51]

"Another positive element of the PPD is the community spirit that the program builds. The connections nurtured among the interns, the instructor-practitioners, and the members of the legal community are ties that will last."[52]

"At the PPD students don't work alone: they work in groups and deal with issues together.[53]"

"Members of the community know that lawyers trained by the PPD have received the necessary training to help them."[54]

---

[46] PPD candidate, 2014–2015

[47] PPD candidate, 2014–2015

[48] PPD candidate, 2014–2015

[49] PPD candidate, 2014–2015

[50] Professor in the Program of common law in French, Faculty of Law, University of Ottawa and member of the Advisory Committee of the PPD

[51] Member of the Advisory Committee of the PPD and lawyer from the North

[52] French-speaking lawyer

[53] Teacher practitioner of the PPD

[54] Member of the Advisory Committee of the PPD

Stewart Pilon Legal Professional Corporation

Barristers & Solicitors

200 Elgin Street, Suite 402
Ottawa, Ontario K2P 1L5
Telephone: (613) 235-0453
Fax: (613) 235-3304

PAR COURRIEL

Ottawa, le 19 octobre 2016

Secrétariat des politiques
Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6

Objet : ***Rapport d'évaluation et d'amélioration du projet pilote Voies d'accès à la profession – Réponse du Comité consultatif du Programme de pratique du droit***

Membres du Comité du perfectionnement professionnel,

Nous vous écrivons au nom du Comité consultatif au Programme de pratique du droit (CCPPD). Comme vous le savez peut-être, en 2013, nous avons été invités à devenir membres du CCPPC en raison de notre expertise dans nos domaines de droit respectifs et aussi en raison de nos liens étroits dans la communauté juridique francophone de l'Ontario. De façon générale, le mandat du CCPPD en est un d'étude et de recommandation. Les membres sont aussi appelés à contribuer au rayonnement du PPD dans la communauté juridique et à appuyer les directrices, le personnel et l'équipe d'avocats formateurs dans le développement d'un cursus pratique qui tient compte des besoins uniques de la communauté franco-ontarienne.

Nous avons lu avec beaucoup d'intérêt l'évaluation intérimaire du projet *Voies d'accès à la profession* en date du 30 juin 2016 et le rapport du Comité de perfectionnement professionnel (le Comité) en date du 22 septembre 2016. Nous vous remercions de l'occasion de commenter le rapport conformément aux directives du Trésorier. Nos commentaires et suggestions porteront sur les éléments suivants :

- Informations à fournir au Conseil avant le vote du 9 novembre 2016 afin de permettre la prise d'une décision éclairée;
- Notre réplique au rapport du Comité; et
- Nos revendications spécifiques auprès du Conseil du BHC.

Dans son rapport, le Comité a reconnu le travail unique et important accompli par l'équipe du PPD. Depuis son début, plus de 250 avocats francophones se sont impliqués dans le PPD. Il s'agit sans contredit et à tout point de vue d'un projet communautaire. Nous sommes particulièrement fiers du rôle que le PPD a joué à former de futurs avocats pouvant desservir la communauté franco-ontarienne et prêts à activement s'engager à promouvoir l'accès à la justice en français.

Nous félicitons le BHC et le Comité d'avoir reconnu l'importance du respect de la dualité linguistique dans l'offre des services et communications offerts par le BHC. Nous incitons vivement le BHC de continuer à respecter ce principe dans le cadre du processus décisionnel relativement au futur du projet pilote Voies d'accès et du PPD en particulier. Tout processus décisionnel relativement au PPD devrait s'effectuer uniquement à la lumière de données, statistiques et résultats propres du PPD. À cet égard, le rapport du Comité comporte de nombreuses lacunes quantitatives et qualitatives à l'égard du PPD, faisant en sorte qu'une décision éclairée relativement au futur du PPD ne peut être prise uniquement à la lumière des renseignements qui figurent au rapport.

1. Informations à fournir au Conseil pour permettre la prise d'une décision éclairée

a) Données ventilées selon les programmes

Alors que le rapport du Comité fait allusion à l'importance du respect de la dualité linguistique, il est regrettable que le Comité et l'évaluateur n'aient pas appliqué le principe de la dualité linguistique dans son rapport ou son évaluation. Ceci est indispensable tant pour assurer l'équité envers les francophones dans le cadre de cette évaluation que pour éviter des conclusions erronées dans l'évaluation.

En l'espèce, le défaut d'examiner les programmes de langue française et anglaise individuellement et l'omission de données ventilées pour les programmes français et anglais a donné lieu à des conclusions inexactes et sans fondement de la part de l'évaluateur du LPP/PPD. À titre d'exemple, dans le sommaire exécutif d'évaluation, on présente l'aperçu suivant du LPP/PPD :

> The LPP is made up mostly of candidates that did not choose the LPP as their first choice for transitional, experiential training. The population of the LPP is 50% internationally-educated and 50% Canadian-educated, most candidates are English-speaking; and the LPP has greater proportional representation in candidates that identify themselves as "Racialized," "Francophone," "People with a Disability," "Aboriginal," and "Age 40+" than the Articling Program population.[1]

Cette description ne correspond aucunement à la réalité du PPD. En premier lieu, tous les candidats du PPD depuis ses trois ans d'existence détiennent un diplôme d'une faculté de droit canadienne. Deuxièmement, le PPD a non seulement « une plus grande proportion » de candidats qui s'identifient comme francophones mais tous ses candidats s'identifient ainsi. Enfin, un sondage interne ainsi qu'une étude indépendante menée au sujet des candidats du PPD confirment qu'un grand nombre de candidats du PPD ont choisi cette voie d'accès à la profession.

Les conclusions erronées relativement au PPD exposées ci-dessus ne sont que quelques exemples des nombreuses conclusions mal fondées énoncées dans le rapport, à la fois en raison de l'absence de données ventilées selon les deux programmes, à la fois en raison du fait que les deux programmes ont erronément été traités comme un tout indissociable aux fins de l'exercice d'évaluation. Nous notons aussi que plusieurs données et conclusions présentées dans l'évaluation concernant uniquement le LPP en anglais. Plus particulièrement, les conclusions présentées dans le rapport au sujet des thèmes suivants ne comprennent pas de données ou de description qualitative au sujet du PPD :

[1] Report de l'évaluateur, page 3.

- Fairness, Accessibility and Objectivity of the Training (pages 25 à 29)
- Exposure to the Experiential Training Competencies (pages 33 à 40)
- Growth in Practical Skills Development (pages 41 à 47)
- Search for placements (pages 91 à 96)

Pour combler à cette lacune importante, nous demandons ainsi au personnel du BHC de fournir au Conseil les données suivantes de façon ventilée, en fonction des deux programmes afin que le BHC puisse mieux évaluer l'efficacité et l'importance du PPD:

i. *Le PPD/LLP comme premier choix de voie d'accès à la profession :*

Selon le rapport, le PPD/LPP était le premier choix comme voie d'accès à la profession de 38 % des candidats en 2014 tandis qu'en 2015, le PPD/LPP était le premier choix de 27 % des candidats.

Le CCPPD est d'avis que ces statistiques ne reflètent pas la réalité du PPD. Par exemple, selon une étude menée par la professeure Michelle Flaherty et le professeur Alain Roussy, plus de 40 % des candidats au PPD francophone ont choisi de participer au PPD francophone au lieu de poursuivre un stage traditionnel[2]. Selon Flaherty et Roussy, « this choice by over 40 % of the French LPP candidates could be interpreted as a vote of confidence in the new program[3] ».

Selon un sondage des candidats du PPD de 2014-2015 et 2015-2016, les raisons principales qui ont motivé les candidats à choisir le PPD sont les suivantes :

24 % possibilité de se familiariser avec une diversité de domaines de pratique
20 % formation axée sur l'expérience pratique
16 % opportunités de stages réservés aux candidats du PPD
12 % aucune autre option de stage ne m'a été offerte
8 % opportunités de réseautage réservées aux candidats du PPD
8 % accès à une formation personnalisée
4 % les opportunités de stage traditionnel ne répondaient pas à mes besoins (financiers, familiaux)
4 % réputation du PPD
4 % autres[4]

Les raisons principales qui ont motivé les candidats à choisir le PPD cette année sont les suivantes :

50 % formation axée sur l'expérience pratique
21 % opportunités de stages réservés aux candidats du PPD
14 % possibilité de se familiariser avec une diversité de domaines de pratique
7 % les opportunités de stage traditionnel ne répondaient pas à mes besoins (financiers, familiaux)

[2] *Ibid* à la p. 17.
[3] *Ibid* à la p. 19.
[4] Sondage fait auprès des candidats du PPD 2014-2015 et 2015-2016. Le 8 août 2016.

7 % aucune autre option de stage ne m'a été offerte [5]

Le CCPPD demande que des données ventilées concernant le pourcentage de candidats pour qui le PPD (en français) constitue le premier choix de voie d'accès au BHC soient présentées au Conseil afin d'alimenter sa réflexion quant à l'avenir du PPD.

ii. Pourcentage de candidats racialisés :

Selon le rapport, 32 à 33 % des candidats du LPP/PPD s'identifient comme étant racialisés. Or, selon l'étude de la professeure Michelle Flaherty et de professeur Alain Roussy, 65 % des candidats du PPD en 2014 étaient racialisés et 27 % des candidats étaient racialisés dans la deuxième année du programme. Cette année, 65 % des candidats s'identifient comme étant racalisés ou membre d'un groupe d'équité.[6]

Le CCPPD est d'avis que les candidats francophones et racialisés inscrits au processus d'accréditation se heurtent à des barrières uniques du fait qu'ils sont, de fait, membres de deux groupes historiquement sous représentés au sein de la communauté juridique de l'Ontario. Le rapport du Comité n'a aucunement tenu compte de cette réalité complexe et propre au PPD.

Le CCPPD demande que le Conseil tienne compte des barrières uniques contre lesquelles se heurtent les candidats racialisés francophones et demande que des données ventilées concernant le pourcentage de candidats racialisés soient présentées au Conseil avant qu'une décision à l'égard de l'avenir du PPD soit prise.

iii. Résultats de l'examen du BHC

Selon le rapport, le taux d'échec des candidats du PPD/LPP est plus élevé que celui des candidats au stage traditionnel. Le rapport dit :

> Après avoir terminé la première année du PPD (année du processus 2014-2015 commençant le 1er mai 2014 et se terminant le 30 avril 2015), et une année entière par la suite, 20 % des candidats du PPD n'ont pas encore été reçus au barreau soit à cause de leur incapacité à réussir les examens d'admission ou parce qu'ils ont épuisé leurs trois possibilités de le faire. Dans le groupe de comparaison de non PPD, 10 % des candidats de la même année d'entrée au processus d'accès à la profession n'ont pas encore été admis au Barreau en raison d'échecs aux examens.[7]

Le rapport conclut que ce taux d'échec élevé perpétue des stéréotypes par rapport au PPD/LPP comme voie d'accès de seconde classe. Selon les auteurs du rapport, « cela alimente les préoccupations quant à la perception voulant que les candidats inscrits au PPD soient de deuxième rang. »[8]

Le CCPPD tient à souligner que les candidats francophones inscrits au processus d'accréditation dénoncent

[5] Sondage fait auprès des candidats du PPD 2016-2017. Le 18 octobre 2016.
[6] Sondage fait auprès des candidats du PPD 2016-2017. Le 18 octobre 2016.
[7] Rapport du Comité, paragraphe 97.
[8] Rapport du Comité, paragraphe 102.

depuis longtemps le taux d'échec des francophones aux examens du BHC. Certains maintiennent que la qualité du français du matériel et des examens est faible et que ceci mène à des taux d'échec plus élevés chez les francophones[9]. Le CCPPD est d'avis que les données à l'égard du taux d'échec des candidats du PPD doivent être contextualisées avec les données relatives au taux d'échec de tous les candidats francophones inscrits au processus d'accréditation au BHC et les préoccupations qui ont été manifestées à l'égard de la qualité du français du matériel pédagogique du BHC depuis plusieurs années.

Le CCPPD demande que des données ventilées concernant le taux d'échec des candidats du PPD par rapport au taux d'échec de candidats francophones qui font le stage traditionnel soient présentées au Conseil avant qu'une décision à l'égard de l'avenir du PPD soit prise.

iv. Autres

Le CCPPD est d'avis que plusieurs des données dans le report au sujet du PPD/LPP sont présentées de façon à masquer les réalités du PPD. Le CCPPD soumet qu'il soit important que les conseillers puissent avoir accès une image claire et précise du PPD avant de se pencher sur son avenir.

En plus des données mentionnées ci-dessous, le CCPPD demande que des données ventilées concernant les sujets suivants dans le rapport d'évaluation de juillet 2016 soient présentées au Conseil avant qu'une décision à l'égard de l'avenir du PPD soit prise :

(1) Executive Summary (page 3)
(2) About the candidates (page 74)
(3) About the placements (page 97)
(4) Effects on Career Goals (page 109)
(5) Call to the Bar, Hire-Backs, Withdrawal from the Program, and Year One Post License Practice Data (page 117)
(6) Value of the Law Practice Program and the Articling Program (page 125)

b) Les voies d'accès en français

Dans un contexte où l'anglais est la langue majoritaire de la province, peu d'avocats francophones en Ontario peuvent travailler uniquement ou même principalement dans leur langue maternelle. Il s'ensuit nécessairement que le stage traditionnel offre peu d'occasions pour les candidats de travailler uniquement, ou majoritairement, en français. De même, en raison des préoccupations manifestées par plusieurs candidats au sujet de la qualité du français du matériel pédagogique du BHC, plusieurs francophones sont portés à écrire les examens du BHC en anglais. Le CCPPD est préoccupé du nombre élevé de candidats francophones qui font le processus d'accréditation au BHC (évaluation de stage et examens) en anglais. Le CCPPD craint que ce phénomène puisse constituer pour plusieurs futurs avocats un premier pas vers l'assimilation et, ainsi, miner l'accès à la justice pour les justiciables d'expression française en Ontario. Le CCPPD est d'avis que le BHC doit prendre des mesures proactives pour encourager les candidats qui ont étudié le droit en français de compléter le processus d'accès à la profession dans cette langue.

[9] Lettre du RECLEF au BHC en date du 15 avril 2013. Voir aussi Students slam French licensing materials, Law Times, le 26 août 2007. http://www.lawtimesnews.com/200708271518/headline-news/students-slam-french-licensing-material.

Le PPD offre une occasion unique aux candidats francophones de poursuivre une voie d'accès au BHC dans leur langue maternelle, notamment lors du Volet formation. Dans tous les modules du Volet formation, les enseignants-praticiens discutent avec les candidats de la réalité de la pratique du droit en français dans ce domaine et offrent aussi des conseils pratiques par rapport à l'exercice de droits linguistiques dans leur contexte particulier. Grâce à cette formation contextualisée et ciblée à un milieu linguistique minoritaire, les candidats du PPD apprennent à naviguer dans le système judiciaire afin de rendre les services en français plus accessibles au client francophone et de réduire les défis qui peuvent être liés aux instances intentées en français en Ontario. Toutes ces différentes tâches sont assignées aux candidats sous l'optique de former des avocats qui peuvent servir et répondre aux besoins uniques de la communauté francophone.

Alors qu'une proportion élevée de candidats francophones font le stage traditionnel ou les examens du BHC en anglais, le PPD réussit à recruter une proportion importante des candidats francophones qui privilégient le PPD comme voie d'accès au BHC. Le CCPPD demande ainsi au Conseil de tenir compte du rôle particulier que joue le PPD dans la lutte contre l'effet assimilateur du processus d'accès au BHC.

Le CCPPD demande que des données comparatives du pourcentage de candidats francophones qui poursuivent chaque voie d'accès en français soient présentées au Conseil avant qu'une décision à l'égard de l'avenir du PPD soit prise.

2. RÉPLIQUE AU RAPPORT

Bien que le BHC ait conféré au PPD le mandat de tenir compte des besoins uniques de la communauté franco-ontarienne, ni l'évaluation ni le rapport du comité ne font allusion à cet objectif. Dans notre lettre du 21 août 2016, nous avons demandé à la trésorière de l'époque de s'assurer à ce que les critères d'évaluation du PPD et du LPP soient différents afin que le PPD puisse être évalué de manière à tenir compte de la différente réalité de la communauté francophone. Ceci n'a manifestement pas été fait.

Le CCPPD demande que les décisions en ce qui a trait aux sorts du PPD et le LLP en anglais soient prises séparément et en tenant compte du rôle unique du PPD, des besoins de la communauté juridique francophone ainsi que des facteurs ci-dessous :

a) Le PPD comme outil de promotion de l'accès à la justice

Alors que le PPD et le LPP ont été conçus par le BHC pour pallier la pénurie de stages, le PPD s'insère aussi dans la solution d'un autre enjeu majeur de la profession juridique : l'accès à la justice en français[10]. Au cours des deux dernières années de son existence, le PPD a démontré que sont lègue ne se limitait pas qu'à l'offre d'une solution de rechange au stage en droit. Le PPD s'est aussi taillé une place unique en tant que protagoniste dans l'effort collectif, voire la politique gouvernementale d'assurer un meilleur accès à la

[10] Voir A Roussy, « Le Programme de pratique du droit à mi-parcours : une étude empirique. » *Ottawa Law Review, Vol. 48, No. 1, 2016, Ottawa Faculty of Law Working Paper No. 2017-1 pour une analyse de trois questionnaires administrés aux candidats inscrits au PPD offerts en français.*

justice en français en Ontario. Pour se faire, le PPD s'appuie sur les trois piliers suivants : la responsabilité envers la communauté franco-ontarienne; la promotion des droits linguistiques et l'engagement communautaire. Ces piliers sont présentés à l'Annexe A de cette lettre.

Le CCPPD demande que les objectifs distincts du PPD de servir la communauté francophone de l'Ontario et de faire la promotion de l'accès à la justice en français soient considérés lors de la prise de décision du Conseil.

b) Le PPD comme outil d'intégration à la profession pour tous les candidats francophones, y compris les candidats francophones racialisés

Dans son rapport, le Comité reconnait que le PPD a contribué à « l'amélioration de la capacité d'offrir des services juridiques de qualité en français à travers la province »[11]. De même, le comité reconnait l'approche collaborative qui a mené à la mise en œuvre du PPD. En effet, le PPD est fondamentalement un programme communautaire. Depuis ses débuts, plus de 250 Franco-Ontariens ont été impliqués dans la mise en œuvre du PPD.

À la lumière du soutien massif dont jouit le PPD dans la communauté francophone, le CCPPD soumet que la perception de ce programme comme une voie d'accès de seconde classe n'existe pas dans la communauté juridique francophone. Un grand nombre de témoignages de la part des candidats, des employeurs et des membres de la communauté juridique francophone à l'appui de ce constat sont présentés à l'Annexe B de cette lettre.

En raison de l'appui important dont jouit le PPD de la communauté juridique francophone, le CCPPD est d'avis que le PPD offre plus qu'une voie d'accès à la profession mais aussi une voie d'intégration. En fait, en 2015-2016, le Volet formation a offert aux candidats plus de 25 activités de réseautage dans la communauté. Comme l'explique Me Andrée-Anne Martel, Directrice générale de l'AJEFO, « la communauté franco-ontarienne a des liens très serrés et le PPD permet de s'intégrer à cette communauté.»[12]
L'accueil de la communauté juridique reçu par les candidats du PPD est particulièrement important pour les candidats de groupes qui ont été historiquement marginalisés dans la profession juridique, qui sont représentés de façon disproportionnelle dans le PPD. Comme mentionné précédemment, plus de 64 % des candidats du PPD de cette année s'identifient comme étant racialisés ou membres d'un groupe d'équité. Ceci pourrait être révélateur de barrières uniques contre lesquelles se heurent les candidats racialisés francophones.

Lors de sa prise de décision relativement au futur du PPD, le CCPPD demande que le Conseil tienne compte des barrières uniques contre lesquelles se heurtent les candidats racialisés francophones et des occasions de réseautage et d'intégration à la communique juridique francophone offerte par le PPD.

[11] Report du Comité, paragraphe 125.
[12] Vidéo promotionnelle du PPD, enregistré le 23 avril 2016.

3. Revendications spécifiques auprès du Conseil du BHC

Comme mentionné au début de cette lettre, le CCPPD est fier du travail de l'équipe du PPD et du soutien communautaire que ce dernier a généré dans ses trois années d'existence. Le PPD constitue à notre avis une pratique exemplaire en matière de dualité linguistique car il s'agit d'un programme pour et par les francophones.

Ainsi, le CCPPD revendique ce qui suit du Conseil du BHC :

1) **Que le sort du PPD soit traité par le biais d'un processus décisionnel distinct de celui qui sera entrepris pour décider du sort du LLP ;**

2) **Que la décision en ce qui a trait au sort du PPD soit fondée sur des données propres au PPD ;**

3) **Que la décision relativement au sort du PPD soit prise en tenant compte des objectifs distincts du PPD de servir la communauté francophone de l'Ontario et de promouvoir l'accès à la justice en français ;**

4) **Que la composante du PPD du projet pilote des Voies d'accès devienne permanente ;**

5) **Subsidiairement, que le BHC finance des consultations avec la communauté francophone, dont l'AJEFO, le Programme de common law en français de l'Université d'Ottawa, le Réseau des cliniques juridiques francophones de l'Ontario, le Regroupement d'étudiants de common law en français de l'Université d'Ottawa, le Commissariat aux services en français, et le CCPPD, visant à identifier et proposer un nouveau modèle d'accès à la profession qui tient compte des besoins uniques de la communauté franco-ontarienne et des préoccupations manifestées par le Comité au sujet du PPD/LPP.**

Nous vous remercions de l'attention que vous accorderez à cette lettre.

Brigitte Pilon
Au nom du Comité consultatif du PPD

cc François Boileau, Commissaire aux services en français de l'Ontario

ANNEXE I – LES TROIS PILLIERS DU PPD

i. La responsabilisation envers la communauté

Le PPD a été conçu dans l'optique d'être redevable à la communauté franco-ontarienne. Avant son élaboration, des juges et des avocats chevronnés franco-ontariens ont été recrutés par la direction pour PPD pour siéger sur le comité consultatif. Lors de cette première étape de la conception du projet, une rencontre de planification stratégique et de remue-méninges a eu lieu avec les membres du comité consultatif afin de guider l'orientation générale du PPD de manière à s'assurer qu'il réponde bien aux besoins de la communauté. Pendant la première année du PPD, le comité consultatif s'est rencontré une fois par mois pour permettre aux membres de suivre de près la mise en œuvre de leur vision du projet. Au cours de cette deuxième année, les membres du comité consultatif ont communiqué entre eux à deux reprises par voie téléphonique et se sont rencontrés à une occasion. De plus, nous communiquons régulièrement avec les membres du comité consultatif pour les tenir au courant des nouveautés qui surviennent dans le cadre du PPD et pour obtenir leurs conseils lorsque cela s'avère nécessaire. This communication régulière entre les membres du comité consultatif nous permet de nous assurer que le PPD demeure redevable envers notre communauté et continuer à répondre aux besoins des Franco-Ontariens en matière de justice au fil des années.

En plus d'offrir une expérience d'apprentissage simulé intensive, le PPD vise à former de futurs avocats qui seront ancrés dans leur communauté. C'est pour cette raison qu'un comité consultatif d'experts, composé de juges et d'avocats des différentes couches de la profession, y compris les cliniques juridiques, les positions en interne, les petites entreprises, et les organismes sans but lucratif, a été créé. Les membres du comité consultatif aide fournissent des directives générales relatives à l'orientation globale du PPD et le contenu pour s'assurer que les candidats sont formés pour répondre aux besoins uniques de la communauté franco-ontarienne. Ils servent aussi d'ambassadeurs pour le PPD dans la communauté juridique.

ii. La promotion des droits linguistiques

La sensibilisation et la prise de conscience des justiciables quant à leurs droits linguistiques sont essentielles à la réalisation de ces droits, y compris le droit d'accéder à la justice dans la langue officielle de son choix dans certains contextes. C'est la raison pour laquelle le *Code de déontologie* du Barreau du Haut-Canada prévoit que l'avocat doit informateur fils client de ses droits linguistiques. Afin de s'assurer que les candidats respectent ou surpassent leurs responsabilités professionnelles en matière de droits linguistiques, le PPD a ajouté les compétences ci-dessous à la liste de compétences essentielles à démontrer pour réussir le volet formation :

- Respecter et promouvoir les droits linguistiques des clients; et

- Démontrer une compréhension du devoir de l'avocat d'assurer l'accès à la justice et des services en français sans faille

Ces compétences sont évaluées à plusieurs reprises lors du Volet formation. Par exemple, lors de la simulation d'une entrevue avec un client, les candidats sont évalués sur leur aptitude à conseiller leurs clients fictifs de leurs droits linguistiques et la meilleure façon de les faire valoir dans le contexte donné.[13] En 2014-2015 et en 2015-2016, tous les candidats ont démontré qu'ils maîtrisaient les compétences liées à l'accès à la justice en français. Il n'est donc pas surprenant que 100 % des candidats dissent que grâce au PPD, ils sont maintenant plus sensibilisés par rapport aux droits linguistiques des justiciables et des obligations des avocats de les renseigner au sujet de ces droits.[14]

De plus, dans tous les modules du Volet formation, les enseignants-praticiens discutent avec les candidats de la réalité de la pratique du droit en français dans ce domaine et offrent aussi des conseils pratiques par rapport à l'exercice de droits linguistiques dans leur contexte particulier. Par exemple, en contentieux civil, notre enseignant-praticien transmet aux candidats des conseils pratiques pour réussir un contre-interrogatoire par le biais d'un interprète. De même, notre formation axée sur Clio, notre logiciel de gestion de dossiers, est offerte par la gestionnaire d'un cabinet spécialisé en droits linguistiques et se concentrer sur les caractéristiques du logiciel qui permettent la création de factures et l'enregistrement du temps en français. Grâce à cette formation ciblée et contextualisée à un milieu linguistique minoritaire, les candidats du PPD apprennent à naviguer dans le système de justice afin de minimiser les défis d'une procédure en français et de rendre les services en français plus accessibles au client francophone. Toutes ces

---

[13] Il est à noter que l'article 3.2A du *Code de déontologie du Barreau du Haut-Canada* exige que

> « L'avocat informe son client, s'il y a lieu, de ses droits linguistiques, y compris de son droit à l'emploi
>
> (i) de la langue officielle de son choix;
>
> (ii) d'une langue reconnue dans les lois provinciales et territoriales en tant que langue dans laquelle un dossier peut être traité, y compris, le cas échéant, les langues autochtones ».

L'article 3.22B stipule :

> « Si un client propose d'utiliser une langue de son choix et que l'avocat n'a pas compétence dans cette langue pour fournir les services requis, l'avocat ne doit pas accepter le mandat à moins d'avoir les compétences pour fournir ces services et d'avoir le consentement du client par écrit »"

Code de déontologie du Barreau du Haut-Canada, Adopté par le Conseil le 22 juin 2000, en vigueur le 1er novembre 2000, Modifications basées sur le Code type de déontologie professionnelle de la Fédération des ordres professionnels de juristes adopté par le Conseil le 24 octobre 2013, en vigueur le 1er octobre 2014
http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147499499. Cette compétence est directement liée à la recommandation faite par le *Report Rouleau/LeVay*. En particulier, on recommande :

> « en collaboration avec les services de police et les associations d'avocats élabore et mette en œuvre des procédures garantissant que chaque personne est informée de ses droits linguistiques à la première occasion et que des services juridiques en français sont offerts et disponibles en même temps que les services juridiques en anglais »

[14] Sondage fait auprès des candidats du PPD 2014-2015 et 2015-2016. Le 8 août 2016.

différentes tâches sont attribuées sous l'optique de former des avocats qui peuvent servir et répondre aux besoins uniques de la communauté francophone.

iii. L'engagement communautaire

Avoir un client francophone requiert une approche holistique et une collaboration étroite avec des partenaires communautaires afin d'assurer une expérience en français uniforme et continue. Un effort collectif de toute une communauté est requis pour desservir le client francophone. C'est la raison pour laquelle le PPD a cru bon d'ancrer sa formation dans la communauté. Au cours du Volet formation, les candidats ont l'occasion de rencontrer plusieurs partenaires francophones ayant des services complémentaires et connexes aux services juridiques, tels que des organismes à but non lucratif offrant de l'assistance aux locataires, des cliniques juridiques, des comptables ou des courtiers d'assurance, à qui ils pourront référer leurs futurs clients pour assurer une expérience de service en français sans faille.

Le respect des droits linguistiques de son client et la promotion de l'accès à la justice en français requièrent aussi une connaissance étroite de partenaires francophones juridiques. C'est la raison pour laquelle la direction du PPD tient à s'assurer que les candidats sont bien enracinés dans la communauté juridique francophone. Ainsi, plus de 250 avocats ont contribué à différents titres à l'élaboration et la mise en œuvre du PPD depuis ses débuts. Un tel engagement de la communauté juridique franco-ontarienne atteste aussi de l'enthousiasme de celle-ci envers la mission du PPD. Grâce à ce soutien, le PPD offre maintes occasions de partage entre les membres de la communauté et les candidats. Cette approche communautaire à la formation de futurs avocats vise à encourager la collaboration entre les candidats et les autres membres de la communauté juridique dans notre projet commun de promouvoir l'accès à la justice en français. Elle est permet aussi à légitimer le français comme langue d'usage devant les tribunaux et dans les relations professionnelles auprès des candidats et de leurs futurs clients.

Le PPD s'appuie également sur plusieurs autres partenaires communautaires afin de s'assurer que ses candidats apprendre l'importance de ses engagements communautaires par le biais de leur formation pratique. En tant que telle, au cours de la composante de formation, les candidats sont introduits dans un large éventail de groupes et d'organisations communautaires francophones, comme Action logement et le Centre d'information juridique d'Ottawa, qui deviendra leurs futurs partenaires dans la prestation homogène et juridique globale et non de solutions juridiques en français aux membres de la communauté.

De même, dans le contexte de la francophonie ontarienne, la pratique du droit en français et l'engagement auprès de sa communauté sont indissociables. Les candidats sont ainsi appelés à redonner à la communauté qui les accueille à bras ouverts. Ainsi, en 2014 et en 2015, les candidats ont participé à une activité de vulgarisation d'information juridique pour le Centre d'information juridique d'Ottawa. Cette activité visait à semer un intérêt auprès des candidats à l'égard de l'engagement communautaire et du travail bénévole, et à les encourager à reconnaître la contribution unique que peuvent faire des juristes auprès d'organismes à but non lucratif. En 2016, ils participeront à une activité d'engagement communautaire et d'accès à la justice dans le Nord de l'Ontario. Il n'est ainsi pas surprenant que 95 % des candidats du PPD de 2014-2015 et

de 2015-2016 disent que le PPD leur a permis de mieux comprendre l'importance de s'impliquer dans la communauté. De même, près de 70 % des candidats continuent à s'engager dans la communauté depuis qu'ils ont complété le PPD.

ANNEXE B – Témoignages

(a) Employeurs

« La candidate remet toujours des travaux de qualité supérieure. Elle est fière de son travail et a beaucoup d'initiative. Elle est le genre de candidate qui a su se rendre indispensable pendant son stage, elle s'est bien intégrée à l'équipe et demande toujours des commentaires constructifs qu'elle se presse à appliquer. »[15]

« Le candidat approche toutes ses tâches avec un sens plus large du contexte dans lequel il opère. Cela lui permet de fournir un produit final qui rencontre les besoins auxquels il est destiné. Il aborde les dossiers et les situations problématiques qui lui sont présentés avec une grande curiosité et un esprit ouvert. Il n'hésite pas à poser des questions et proposer des pistes de solutions. » [16]

‘‘The candidate exceeded all expectations. She was motivated and hard working. She performed a wide variety of tasks and always completed these tasks on time. Most importantly she knew when to ask for clarification or further information to ensure that she was on the right track. Her judgment and ability are exceptional. She demonstrated that she was able to understand the requirements of any assigned task. She particularly excelled at reviewing large amounts of documents. Most importantly she has eager to take on work.’’ [17]

‘‘He excelled in his duties. He was always very keen and hard-working. He picked up the law and issues very quickly. He always showed initiative and assisted when needed often without being asked. He worked very well as a member of our team and fit it well. He has a great demeanor when dealing with our clients who are often hard to manage. He shows a good level of maturity and professionalism when dealing with the stakeholders in the courthouse. He has gained confidence in assisting clients on his own under the supervisor of a lawyer and was careful to always confirm with a lawyer if needed before advising the client.’’ [18]

‘‘He managed his time well and was always on time for work. He is very good speaking on his feet and is grasping the skill at thinking on your feet in court. He was always keen on learning more and helping the lawyers with whatever they needed.’’ [19]

‘‘I was impressed by the quality of the candidate's work. He delivered all tasks on time and with minimum supervision. His work was reliable and thorough. He put in the time necessary to ensure

[15] Employeur 2015
[16] Employeur 2015
[17] Employeur 2015
[18] Employeur 2015
[19] Employeur 2015

that his work was complete and relevant and he successfully balanced competing priorities and deliverables.'' [20]

''He is able to hit the ground running on files of significant complexity. He grasps new concepts quickly and asks relevant and important questions. He is also very committed to his work and demonstrates a keen interest in expanding his knowledge. He is also fluent in both English and French, which is a definite asset. I would not hesitate to offer a placement to a LPP candidate next year.'' [21]

''The candidate performed his duties very well. We were quite impressed with his work from the first day he joined our team. He gets along with colleagues and is always eager to help with assignments.''[22]

''His research and drafting skills are quite advanced for someone at his level. He definitely ranks very high when compared to his peers; he performed above his expected level.''[23]

''The candidate is hard-working and conscientious. She has performed all tasks assigned to her well, and we have given her increased responsibilities. She has done client representation from start to finish.''[24]

« Le candidat s'est acquitté de ses tâches. Il aime apprendre et travaille de façon assidue. Il a travaillé sur des questions complexes et a démontré qu'il a une très bonne capacité d'analyse. Il est capable de bien appliquer la loi qui s'applique au Commissariat et ses recherches sont complètes et pertinentes. Il a su tout au long de son stage améliorer la qualité de son travail. Il a une très bonne écoute et reçoit tout commentaire avec un esprit ouvert. Je suis plus que satisfaite de son rendement. » [25]

''More than one of the counsel with whom the candidate did work indicated that she would be recommended for hire-back if it was that person's decision. One of my colleagues indicated that she is proof that the LPP program is made up of articling students who easily match, if not surpass the average articling student.''[26]

''The excellent submissions she prepared for one of my clients have resulted in her being granted without having to go to a Social Benefits Tribunal hearing. As the client suffers from significant mental health issues, this is a very big deal.'' [27]

''This candidate performed his duties so well that we hired him! He performed well above expectations.

[20] Employeur 2015
[21] Employeur 2015
[22] Employeur 2015
[23] Employeur 2015
[24] Employeur 2015
[25] Employeur 2015
[26] Employeur 2015
[27] Employeur 2015

Our entire section has thoroughly engaged and benefited from having him work for us. He is engaging and energetic and a hard, smart worker.''[28]

''The LPP placement was a very positive experience. It provided me with the chance to share legal knowledge and experience in my field of practice, civil, regulatory, criminal and quasi-criminal litigation. The assigned candidate had a strong interest for litigation and therefore it was an effective placement.''[29]

''All counsel who have worked with this candidate have praised his work and his initiative. He has undertaken difficult and complex legal work and has achieved excellent results. He properly identified issues and took initiative in resolving problems. This candidate always worked well with counsel obtaining instructions, consulting, keeping counsel advised of developments and following up where appropriate. His work has been described as "thoughtful and intelligent".[30]

''This candidate shows a keen interest in litigation and has shown an aptitude for the work required for a successful legal career. His French language skills have proven to be a real asset to our legal branch. He has always been punctual and pleasant to be around; he has been described as "willing to assist and eager to learn". He is a pleasure to have at the office.''[31]

« Tous les avocats qui ont travaillé avec ce candidat ont félicité son travail et son initiative. Il a entrepris un travail juridique difficile et complexe et a obtenu d'excellents résultats. Il a identifié correctement les questions en litige et a pris l'initiative dans la résolution des problèmes. Il a toujours bien travaillé avec les avocats en obtenant des instructions, conseils, et en gardant le conseil avisé de l'évolution et le suivi le cas échéant. Son travail a été décrit comme « réfléchi et intelligent ».[32]

« Il montre un vif intérêt dans les litiges et a montré une aptitude pour le travail requis pour une carrière juridique réussie. Ses compétences en langue française se sont révélées être un véritable atout pour notre branche juridique. Il a toujours été ponctuel et agréable d'être en sa présence; il a été décrit comme « prêt à aider et désireux d'apprendre » Il est un plaisir d'avoir au bureau. » [33]

''I wish to reiterate that I strongly believe that this will make an excellent litigator. Certainly, she has impressed myself and her colleagues with the quality of her advocacy. She is professional and personable and has been a wonderful addition to the office. She has remained calm and acted with integrity at all times in what can be a fast-paced, unpredictable environment.'' [34]

« Elle possède d'excellentes habiletés en recherche juridique. Elle utilise tous les outils de recherche à sa disposition et les exploite pleinement. » [35]

[28] Employeur 2016
[29] Employeur 2016
[30] Employeur 2016
[31] Employeur 2016
[32] Employeur 2016
[33] Employeur 2016
[34] Employeur 2016
[35] Employeur 2016

(b) Candidat(e)s du PPD

«J'ai choisi de suivre la formation avec le PPD pour obtenir une formation pratique et ainsi arriver plus prêt en milieu de travail. J'aurais potentiellement pu demander à mon employeur de faire mon stage là pendant 10 mois au lieu et ainsi faire environ 19 000 $ de plus mais je ne suis pas certain s'ils auraient voulu sans la formation pratique que j'obtiens au PPD. Je crois que renoncer à ce salaire pour ces 16 semaines en vaut grandement la peine et que je suis en train d'investir dans mon futur.»[36]

«Le PPD était mon premier choix puisque c'est une rare opportunité d'avoir une expérience et une connaissance approfondie de divers domaines de pratique. Le fait que les candidats rédigent des actes de procédure, participent aux interrogatoires, préparent un dossier de motion, participent à une médiation et organisent des dossiers physiques, les aident énormément à assimiler la pratique courante aux cabinets ainsi que devant les tribunaux et les cours de justice. À cela s'ajoute la préparation des bilans financiers, des factures, des lettres de mandat, des lettres de fins de mandat, et les rencontres avec les clients. Ceux-ci soulignent l'importance d'avoir une communication claire avec le client tout en répondant aux obligations déontologiques. »[37]

«J'ai eu l'occasion de lire un pamphlet sur le PPD et j'ai tout de suite réalisé que c'était une opportunité unique pour moi de profiter d'une formation complète et variée que jamais je ne pourrais avoir dans un stage traditionnel. De plus, l'une des raisons qui m'a poussé à entrer à l'école de droit c'était de contribuer à la lutte pour l'accès à la justice, comme la plupart des stages offerts après la formation au PPD se trouvaient en milieu communautaire ou minoritaire, j'ai vu là une opportunité de recevoir une formation pratique orientée vers l'accès à la justice en général, mais surtout qui favorise l'accès à la justice dans un contexte minoritaire.»[38]

« Le PPD me permet d'avancer avec plus de confiance vers la pratique du droit et me facilite dans la réalisation de l'objectif que j'avais avant même d'avoir été admis à une école de droit. Grâce au PPD, je suis en train de frotter avec la plupart des praticiens les plus respectés dans leurs domaines de pratique respectifs en plus des autres candidats qui constituent un autre bassin de contact pour le futur. Je doute fort que j'aurais tous ces avantages dans un stage traditionnel! »[39]

« Le PPD est génial, parce qu'il offre une formation très pratique. Grâce au PPD, j'arrive à mieux repérer et comprendre les concepts du matériel d'examen du Barreau. »[40]

« Au PPD, nous avons l'opportunité de travailler dans des domaines de droit différents en français. C'est un privilège de pouvoir continuer de travailler dans cette langue. Les services que nous offrirons à nos clients francophones ne seront que meilleurs. »

[36] Candidat(e) du PPD, 2016-2017
[37] Candidat(e) du PPD, 2016-2017
[38] Candidat(e) du PPD, 2016-2017
[39] Candidat(e) du PPD, 2016-2017
[40] Candidat(e) du PPD, 2016-2017

« Les opportunités de réseautage sont extraordinaires. Avec les autres candidats, nous rencontrons souvent les avocats et les juges francophones de la communauté. »

« Le programme surpasse de loin mes attentes. J'étais loin de m'imaginer que j'adorerais le contentieux civil et les testaments. Entre autres, je sais maintenant rencontrer des clients, écrire des lettres de mandat et des lettres de fin de mandat, rédiger un testament et des procurations, faire un dossier de motion en contentieux civil, faire un bilan financier en droit de la famille, faire des interrogatoires préalables et contre-interroger des témoins. »

« Je suis très reconnaissante envers le programme. Tous les jours, je me dis que j'ai fait le bon choix.»

« Le PPD est une expérience sociale et intellectuelle extraordinaire pour les candidats.»[41]

« Lorsque quelqu'un vient te voir comme avocat, c'est un moment dans sa vie où il peut tout perdre, c'est un moment où il a besoin de pouvoir parler sa langue, il a besoin d'être représenté par quelqu'un qui le comprend. Le PPD m'a vraiment donné ce sentiment de pouvoir aider et de comprendre pourquoi je veux le faire. »[42]

« Mon expérience avec le Programme de pratique du droit (PPD) aura été un succès au-delà de mes attentes. »[43]

« [L]es modules de formation couvrent pratiquement tous les domaines du droit, dans la perspective d'un avocat pratiquant. La qualité et la quantité de la formation accumulée en si peu de temps ne peut s'acquérir à l'école de droit ni dans un cabinet d'avocat, si grand soit-il. »[44]

« [L]e choix judicieux des enseignants praticiens nous aura permis d'entrer en contact et de développer des relations professionnelles avec les meilleurs avocats de la région. Une occasion de réseautage unique dont les avantages à court, moyen et long terme sont indéniables. »[45]

« [L]a direction, le personnel et les partenaires du PPD ont déployé des efforts énormes pour nous rendre compétitifs au marché du travail, et nous préparer au passage au deuxième volet de la formation. Les services de soutien à la rédaction des C.V. et lettres de présentation ont été essentiels dans l'obtention du stage. L'expérience pratique acquise au cours du premier volet de formation a facilité notre adaptation à l'environnement et aux tâches du stage. »[46]

« [J]e recommanderais volontiers le Programme PPD pour ses qualités de formation professionnelle et d'intégration à la communauté juridique. »[47]

[41] Candidat(e) du PPD, 2015-2016
[42] Candidat(e) du PPD, 2015-2016
[43] Candidat(e) du PPD, 2014-2015
[44] Candidat(e) du PPD, 2014-2015
[45] Candidat(e) du PPD, 2014-2015
[46] Candidat(e) du PPD, 2014-2015
[47] Candidat(e) du PPD, 2014-2015

(c) Membres de la communauté juridique francophone

« Le PPD offre une formation complète : de la préparation du dossier du client jusqu'à la facturation et la gestion du cabinet. J'ai également eu le plaisir de côtoyer des avocats francophones de l'Ontario lors du Volet Formation du PPD, mais aussi dans le cadre d'événements de réseautage tels que l'assemblée annuelle de l'Association des juristes francophones de l'Ontario. »[48]

« Le PPD a été une expérience sans comparaison. La formation que nous avons reçue nous a bien préparés pour le milieu de stage, et nous a bien préparés pour notre entrée dans la communauté juridique. Le PPD nous a fourni avec la confiance et le professionnalisme nécessaire pour travailler dans la profession, ce qui n'est pas toujours le cas avec un stage « traditionnel. »[49]

« On a la vocation de former des avocats pour desservir la population francophone en Ontario et nous réussissons très bien. »[50]

« Le PPD présente une alternative très intéressante pour l'étudiant en droit qui veut avoir l'expérience réel de travailler au sein d'un cabinet. »[51]

« Un autre élément positif du PPD c'est l'esprit communautaire que le programme bâtit. Les liens noués entre les stagiaires, les avocats-praticiens et les membres de la communauté juridique, ce sont des liens qui vont perdurer. » [52]

« Au PPD les étudiants ne travaillent pas seul, ils travaillent en groupe et affrontent les questions ensemble. »[53]

« Les membres de la communauté savent que les avocats formés au PPD ont reçu une formation nécessaire pour les aider. »[54]

[48] Candidat(e) du PPD, 2014-2015
[49] Candidat(e) du PPD, 2014-20
[50] Professeur du Programme de common law en français, Faculté de droit, Université d'Ottawa et membre du Comité consultatif du PPD
[51] Membre du Comité consultatif du PPD et avocat(e) du Nord
[52] Avocat(e) francophone
[53] Enseignant(e)-pratien(ne) du PPD
[54] Membre du Comité consultatif du PPD

Thursday, October 13, 2016

Policy Secretariat Law
Society of Upper Canada
Osgoode Hall, 130, rue Queen Ouest
Toronto, ON M5H 2N6
policy@lsuc.on.ca

Dear Sir, Madam,

RE: Comments from the RÉCLEF on the elimination of the LPP

The student association of common law in French (RÉCLEF) wishes to make some comments regarding the *Pathways Pilot Project Evaluation and Enhancements to Licensing Report* (the Report). RÉCLEF represents the interests of the students of common law in French at the University of Ottawa. Also, RÉCLEF is active in promoting linguistic rights and in promoting access to justice in French. As members of the executive council of RÉCLEF, and also as law students in the French Common Law Program (PCLF) and in the Canadian Law Program (CLP), we have a particular interest in the future of the Law Practice Program (LPP).

After reviewing the Report and the recommendation of the Professional Development Committee to end the LPP at the end of cycle 2016–2017, we are of the opinion that Convocation should maintain the LPP, as this program helps make the legal profession accessible to lawyers belonging to minority groups, such as francophones, and it contributes to improving the quality of legal services, such as access to services in French. To that effect, it should be noted that the Law Society has specific legislative duties with regard to access to justice, especially "has a duty to act so as to facilitate access to justice for the people of Ontario"[1]. The Law Society must therefore take into consideration the beneficial effects of the LPP on that access.

Ontario is facing a lack of articles which limits access to the legal profession for many new law students. The limited number of articles is not reasonable and prevents a majority of students to complete their legal training. The LPP offers an alternative pathway to traditional articles and allows an increase in number of lawyers qualified to join the legal profession. According to a study done by professors Michelle Flaherty and Alain Roussy of the faculty of law of the University of Ottawa, the LPP plays an important role in mitigating the obstacles that have traditionally prevented some groups, such as the francophone minority in Ontario, to have access to the legal profession[2]. Among other things, the Flaherty-Roussy study indicates that the majority of the French LPP students are indeed part of marginalized groups such as ethno-cultural and linguistic

[1] Law Society Act, R.S.O. 1990, c. L.8, s. 4.2

[2] Michelle Flaherty and Alain Roussy, "The Law Practice Program: tackling racial inequality in the legal profession?", online: (2015) 39 WP <http://ssrn.com/abstract=2837782>

minorities, new immigrants and those who did not complete their legal studies in Canada[3]. Thus, the LPP allow these groups to access the legal profession. Also, this diversity benefits society in a larger context since it allows the citizens belonging to these minority groups to seek services from lawyers from the same environment. RÉCLEF hopes that the LPP can continue to promote not only access to the legal profession, but also access to legal services in French.

One of the main arguments against the LPP is that it could introduce the notion of a second class of lawyer[4]). Because of the less competitive nature of the LPP training in comparison to traditional articles, it is alleged that the LPP is less well perceived by the legal community and that the LPP candidates risk being considered as inferior to their peers who did traditional articles. However, the study of professors Flaherty and Roussy shows that over 40% of the French LPP candidates chose the program instead of doing traditional articles. The LPP is not a last resort for them, but a choice that shows that this notion of "inferior class of lawyers" is only a prejudicial stigma put on the LPP by certain factions of the legal community.

Also, we are aware that the French LPP represents an important financial investment funded by the candidates themselves. Since the LPP students are not paid during their studies and sometimes during their placement, students looking for articles could be deterred from participating in the LPP. However, given the promising results of the program and its important benefits for the French speaking jurists in Ontario, we think that Convocation should not adopt the Committee's recommendation. Convocation should rather continue to develop the French LPP and actively support access to the profession and to legal services in French on Ontario.

For these reasons, we hope that the Professional Development Committee of the Law Society of Upper Canada consider our comments and reconsider the decision to end the Law Practice Program.

Sincerely,

Members of RÉCLEF

[3] *Ibid* at par. 3
[4] *Ibid* at par. 32

Le jeudi 13 octobre 2016

Secrétariat des politiques
Barreau du Haut-Canada
Osgoode Hall, 130, rue Queen Ouest
Toronto, ON, M5H 2N6
policy@lsuc.on.ca

Madame, Monsieur,

RE : Commentaires par rapport à l'abolition du PPD de la part du RÉCLEF

Le Regroupement étudiant de common law en français (RÉCLEF) aimerait vous faire part de quelques commentaires en lien avec le Rapport d'évaluation et d'amélioration du projet pilote *Voies d'accès à la profession* (le Rapport). Le RÉCLEF représente les intérêts des élèves qui étudient la common law en français à l'Université d'Ottawa. De plus, le RÉCLEF est actif dans la promotion des droits linguistiques et dans la promotion de l'accès à la justice en français. En tant que membres du conseil exécutif du RÉCLEF, mais également en tant qu'élèves en droit dans le Programme de common law en français (PCLF) et dans le Programme de droit canadien (PDC), nous avons un intérêt particulier dans l'avenir du Programme de pratique du droit (PPD).

Après avoir examiné le Rapport et avoir pris connaissance de la recommandation du Comité du développement professionnel de mettre fin au PPD à la fin du cycle d'études 2016-2017, nous sommes d'avis que le Conseil devrait maintenir le PPD, car ce programme aide à rendre la profession juridique accessible pour les juristes appartenant à des groupes minoritaires, dont les francophones, et contribue à améliorer la qualité des services juridiques, dont l'accès aux services en français. D'ailleurs, il est à noter que le Barreau a des obligations législatives explicites quant à l'accès à la justice, notamment « d'agir de façon à faciliter l'accès à la justice pour la population ontarienne »[1]. Le Barreau se doit donc de prendre en considération les effets bénéfiques qu'a le PPD sur cet accès.

L'Ontario fait face à une pénurie de stages ce qui limite l'accès à la profession juridique pour de nombreux d'étudiants en droit. Le nombre limité de stages n'est pas raisonnable et empêche une majorité d'élèves d'achever leur formation juridique. Le PPD offre une voie alternative au stage traditionnel et permet d'augmenter le nombre d'avocats qualifiés à rejoindre la profession juridique. Selon une étude menée par les professeurs Michelle Flaherty et Alain Roussy de la Faculté de droit de l'Université d'Ottawa, le PPD joue un rôle important pour atténuer les barrières qui ont traditionnellement empêché certains

[1] *Loi sur le Barreau*, LRO 1990, c L-8, art 4.2

groupes, dont la minorité francophone en Ontario, d'avoir accès à la profession juridique[2]. Entres autres, l'étude Flaherty-Roussy indique que la majorité des élèves du PPD en français font en effet partie de groupes marginalisés tels que les minorités ethnoculturelles, linguistiques, les nouveaux immigrants et ceux qui n'ont pas fait leurs études juridiques au Canada[3]. Ainsi, le PPD permet à ces groupes d'accéder à la profession juridique. De plus, cette diversité bénéficie la société dans un contexte plus large puisqu'elle permet aux citoyens qui appartiennent à ces groupes minoritaires de solliciter les services d'avocats venant du même milieu qu'eux. Le RÉCLEF souhaite que le PPD puisse continuer à promouvoir non seulement l'accès à la profession juridique, mais aussi l'accès aux services juridiques en français.

L'un des principaux arguments à l'encontre du PPD est qu'il pourrait introduire la notion de deux classes d'avocats (« a second class of lawyer »[3]). Dû à la nature moins compétitive de la formation PPD par rapport au stage traditionnel, il est allégué que celle-ci est moins bien perçue par la communauté juridique et que les ressortissants du PPD risquent d'être classés comme inférieurs à leurs pairs qui ont fait un stage traditionnel. Cependant, l'étude des professeurs Flaherty et Roussy démontre que plus de 40% des candidats du PPD en français ont choisi le programme *au lieu* de faire un stage traditionnel[4]. Le PPD n'est pas un dernier recours pour eux, mais un choix qui témoigne du fait que cette notion de « classe inférieure d'avocats » n'est qu'un stigmate préjudiciable placé sur le PPD par certaines tranches de communauté juridique.

De plus, nous sommes conscients que le PPD représente un investissement financier important financé par les candidats eux-mêmes. Puisque les étudiants du PPD ne sont pas rémunérés durant leurs études et parfois ils ne le sont pas durant leur placement, ceci pourrait dissuader les étudiants à la recherche de stages de participer au PPD. Cependant, compte tenu des résultats prometteurs du programme et ses bénéfices importants pour les juristes francophones en Ontario, nous pensons que le Conseil ne devrait pas entériner la recommandation du Comité du perfectionnement professionnel. Le Conseil se doit plutôt de continuer à développer le PPD et soutenir activement l'accès à la profession et aux services juridiques en français en Ontario.

Pour ces raisons, nous souhaitons que le Comité du perfectionnement professionnel du Barreau du Haut-Canada prenne en considération nos commentaires et reconsidère la décision de mettre fin au Programme de pratique du droit.

Veuillez agréer, Madame, Monsieur l'expression de nos sentiments distingués.

Les membres du RÉCLEF

[2] Michelle Flaherty et Alain Roussy, "The Law Practice Program: tackling racial inequality in the legal profession?", en ligne: (2015) 39 WP <http://ssrn.com/abstract=2837782>.
[3] *Ibid* au para 3.
[4] *Ibid* au para 32.

October 12, 2016

Paul Schabas
Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Peter Wardle
Chair, Professional Development & Competence Committee
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer Schabas and Chair Wardle:

Re: Report: Pathways Pilot Evaluation and Enhancements to Licensing ("Pathways Report")

As the executive of the Roundtable of Diversity Associations ("RODA")[1], and further to our letter to the Professional Development & Competence Committee ("PDCC") dated May 3, 2016, we write to express once again our grave concerns over the latest recommendations coming from the Law Society of Upper Canada ("LSUC") Professional Development and Competence Committee (the "PDCC").

As you know, RODA's mandate is to promote equity, diversity, and inclusion in the legal community. As part of our mandate, we monitor policy developments within the profession, including those relating to the supply and training of new lawyers. We recognize that the PDCC believes that the recommendations in the Pathways Report were made in order to ensure that the licensing process adapts to new market realities, to economize redundancies, and to enhance the competency requirements reflected in Ontario's licensing process. RODA and

[1] RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

some of its member associations and allies have previously corresponded with the LSUC on equity considerations in the licensing process, including advocating for a single pathway for licensing.

Decision is Premature: More Public Consultation Needed

RODA is concerned regarding the absence of public consultation about the licensing process. There has been no real public consultation about an enhanced single licensing pathway. Instead, stakeholders have only just been presented with the PDCC recommendation that the LPP will end following the completion of Year Three (2016-2017). RODA believes that the elimination of the LPP without first addressing the issues that gave rise to the LPP is irresponsible on the part of the PDCC. There is no certainty that implementing a single enhanced pathway to licensing will cease creating the inequities that led to the creation of the LPP.

In fact, we are alarmed that RODA, its allies, and other stakeholders, are once again confronted with a tight timeline in which to consider and provide its input relating to this latest Report.[2] The Report, attaches the evaluation prepared by an external Senior Evaluation Consultant, Dr. A. Sidiq Ali, titled ***Pathways Evaluation Interim Results: Years One and Two***. The Report is close to 150 pages. As you are also aware, based on various informal discussions both of you have already had with various stakeholders, RODA's concerns are common across the legal community.

Notwithstanding the tight timelines, RODA submits that any decision to end the LPP is premature, without first giving stakeholders a real opportunity to contribute to recommendations regarding a single enhanced licensing pathway. Similarly, the PDCC needs to turn its mind to a licensing process that is fair and equitable while also addressing issues of competence that the "enhancements" are intended to improve.

The reality of the current licensing process is that there is a stark contrast between those with "traditional" articles and those who have registered for the LPP. The LPP was a solution for internationally-educated, racialized and Francophone candidates, who were represented in greater proportions amongst those unable to obtain traditional articling positions. RODA's position, which is consistent with that of a majority of RODA's member associations, is that while it is preferable to have a single pathway for licensing, the solution is not to simply end the

[2] This tight timeline also coincides with a call for input on the Challenges Faced by Racialized Licensees' Working Group's final report, titled ***Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*** ("Recommendations Report"), which contains 13 recommendations of strategies for enhanced inclusion in the legal profession at all career stages, including entry into the profession. The Recommendations fall within 5 broad categories of action: measuring progress, accelerating culture shift, educating for change, implementing supports and operations of the Law Society.

LPP without first finding a way to address the inequities that traditional articles have created for internationally-educated, racialized and Francophone candidates. Some of RODA's member associations will also submit written comments regarding the Pathways Report.

In light of our position, RODA encourages the PDCC to:

- Continue the LPP into at least Year Four, pending a decision regarding the entire licensing process.

- Engage in a proper consultation process, over an extended period as described below, which includes a formalized process for public and legal community input.

- Assuming the Recommendations are passed by Convocation, consider extending the PDCC timeline for the implementation of any changes to the licensing process, such that the PDCC work in tandem with timelines for the Recommendations. The recent Recommendations Report, which RODA urges all Benchers to pass at Convocation in December, addresses issues that intersect with the difficulties that internationally educated, racialized and Francophone candidates have in obtaining articling positions. The Recommendations have an implementation timeline starting in 2018, and the hope is that implementation of the recommendations will create a culture shift that will address inequities for racialized candidates and lawyers. If the PDCC works with that timeline, it would provide the PDCC and other stakeholders with a period of over one year in which a formalized process for public and legal community input can implemented, and the PDCC can develop solutions that both address the concerns that gave rise to the LPP and an equitable enhanced single licensing pathway.

RODA makes these recommendations on behalf of a majority of its member associations, on the basis that voting in favour of ending the LPP after Year Three is premature, and voting in favour of enhancements without addressing the inequities that gave rise to the LPP is a potential waste of both financial resources and time.

The Way Forward

Pending a proper period of consultation and input, it is our view that the LPP and licensing standards *status quo* be maintained. As noted above, the inequities that gave rise to the LPP, and the need to enhance licensing standards, are integrally related.

In light of the above, RODA respectfully requests that Convocation delay discussion of the Report until a proper consultation process is established and a longer timeline for eventual rolling out of a single enhanced pathway be timed with the implementation of the recommendations in the Recommendations Report.

We urge the PDCC to consider our recommendations and look forward to hearing from you.

Sincerely,

Lai-King Hum
Chair, Roundtable of Diversity Associations

Jayashree Goswami

Jayashree Goswami
Co-Vice Chair

Dina Awad

Dina Awad
Co-Vice-Chair

C. RODA member associations
Benchers of the Law Society of Upper Canada
Members of the LSUC Equity Advisory Group

RYERSON LAW PRACTICE PROGRAM

October 19, 2016

Dear Benchers:

Re: Pathways Report - Submission by Ryerson's Law Practice Program (LPP)

Please accept the following submission in response to the Professional Development and Competence Committee's request for comments about the Pathways Pilot Project.

Ryerson's Law Practice Program (LPP)

Ryerson University has developed and delivered the English Law Practice Program (LPP). We are now in the third year. We reviewed the Professional Development and Competence Committee Report to Convocation, September 22, 2016 ("Pathways Report") and the accompanying material.

We feel compelled to clarify certain matters about both the LPP and the people who take this Pathway to licensing. The Pathways Report was public. Our brief note will also be public.

Launching the LPP

The LPP represented a bold initiative by the Law Society of Upper Canada ("LSUC") to address 2 issues:

1. The need to strengthen the experiential component of licensing; and

2. The need to address a continuing shortage of articling positions, which prevented many who the LSUC deemed eligible to start licensing from having a path to success.

LPP Success

On both of the above counts, the LPP has been a resounding success:

1. First, the skills-based training has been of high quality, by practitioners, and is standardized, supervised and assessed. The Pathways Report acknowledges that the LPP training is at least as good, and in some ways "superior", to articling (Page 24, Paragraph 50, Pathways Report).

2. Second, by the end of this third year, almost 700 people who would otherwise have been prevented from meeting the LSUC experiential requirement and the opportunity to become licensed due to a shortage of articling positions or other factors, will have successfully met the LSUC experiential requirement. This group is disproportionately racialized compared to the articling cohort.

Chris Bentley
Executive Director

Gina Alexandris
Director

André B. Bacchus
Assistant Director. Work Placement Office

350 Victoria Street, Toronto, Ontario, Canada M5B 2K3 Email: lpp@ryerson.ca www.ryerson.ca/lpp, 416-979-5000, x 3024

RYERSON LAW PRACTICE PROGRAM

The Goal

Ryerson's goal in undertaking the significant task of developing and delivering the English LPP has been to benefit the Public, the Profession and potential licensing candidates. That remains our goal.

Therefore, Ryerson suggests that the LSUC continue to benefit from the results of the LPP for at least 2 additional years. This will provide the LSUC the opportunity to ensure that any new licensing process is strengthened, achieves its public duty, and does not repeat the mistakes and shortcomings of the past. We believe we can contribute to that future.

Evidence Over Perception

Hardly surprising was the observation that the new pathway was perceived to be less desirable than the 50 plus year traditional articling pathway. Surprising was the data used to show this: a survey of LPP candidates in August, before they had even started the program (Pathways Evaluation Interim Results: Years One and Two - "Consultant Report", page 12). Of course it was their second choice. The hiring dates and the LPP launch process meant they had all spent 1, 2 or more years looking for articling before the LPP had its first day. It is astonishing that so many (38% in Year 1 and 27% in Year 2, Pathways Report, Page 26) actually identified the LPP as their first choice! **That is the real story**.

Shocking was the Committee's acceptance of perception, not evidence, as a legitimate basis for ending the LPP. Perception that existed long before the LPP started.

In fact, the Consultant Report also referenced a Law Practice Program Exit Survey, as well as focus groups. From these data sources, the Consultant Report found that candidates were generally satisfied with "all of the aspects of the administration of the Law Practice Program" (Consultant Report, page 25).

We are a profession of evidence over perception. The rule of law demands it. Acceding to perception simply reaffirms the opinions of those who hold them in the face of and despite the evidence, hardly a publicly-reassuring basis for decision-making.

The Evaluation Questions

The four evaluation questions asked about the success of the two pathways within the Consultant Report, at page 10, are as follows:

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?

Chris Bentley
Executive Director

Gina Alexandris
Director

André B. Bacchus
Assistant Director. Work Placement Office

350 Victoria Street, Toronto, Ontario, Canada M5B 2K3 Email: lpp@ryerson.ca www.ryerson.ca/lpp, 416-979-5000, x 3024

RYERSON LAW PRACTICE PROGRAM

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?

However, the Subcommittee ultimately selected other criteria in its determining evaluation, including data relating to first-attempt licensing exam failure rates and hireback results, neither of which directly relates to the LPP's stated goals or are within the control of the LPP.

The Subcommittee changed the evidence (ie the criteria) needed for its evaluation of the LPP. In addition, neither the Pathways Report nor the Consultant Report have much evidentiary support with only one year of statistics, at best two. In fact, they have given so little time to evaluate a brand new program.

It is, therefore, not appropriate to cancel the LPP, based on such factors.

Failure Rate on First Attempt of Licensing Examinations Tables

The LPP is not a licensing examination preparation program. Having said that, the use of those tables (Pathways Report, page 34) was wrong, as was the proposition suggested.

The table only shows the percentage of passes on the first attempt of the licensing exams.

From the little information available through the LSUC, the only relevant statistic, frankly, is who actually passes, regardless of the number of attempts.

What does it all mean? Nothing. It is irrelevant according to the LSUC's own rules. The LSUC allows all licensing candidates three attempts (previously more). Once called to the Bar, all lawyers are equal. No asterisks. The LSUC is continuing the three attempt rule. Obviously, they are fine with it.

All licensing candidates follow the rules of the LSUC. Once they pass the licensing exams (having successfully completed an experiential component), they get called to the Bar. They have a right not to have an irrelevant factor cast a shadow on them and their future.

Shockingly, the Subcommittee suggests in the Pathways Report that this table is somehow evidence that people who write more than once cannot become competent lawyers (Pathways Report, page 33, paragraphs 92-93)! There is no evidence presented within the Reports to suggest this linkage at all, and in particular as it relates to LPP candidates. As indicated above, licensing failure rates was not one of the evaluation tools used in the Consultant's Report (page 12, Consultant Report), nor was it one of the four questions for the evaluation (page 10, Consultant Report).

Chris Bentley
Executive Director

Gina Alexandris
Director

André B. Bacchus
Assistant Director. Work Placement Office

350 Victoria Street, Toronto, Ontario, Canada M5B 2K3 Email: lpp@ryerson.ca www.ryerson.ca/lpp, 416-979-5000, x 3024

RYERSON LAW PRACTICE PROGRAM

The Subcommittee should be evaluating the program on its merits, not based on factors the LSUC itself has sole responsibility for (such as who's taking the licensing exams, when they are written and how many times).

Cost

Cost is always an issue.

Ryerson has delivered excellent value for money. Can we reduce the cost? It is a challenging question. How long? How many?

We will not sacrifice quality, and we take pride that every year the program gets stronger. We will not reduce our determination to find placements for everyone, even in a difficult market and with perceptions that are challenging. It is unfortunate that those perceptions stop some legal employers from even interviewing LPP candidates.

Regardless of what happens to the LPP, the Subcommittee has said that the licensing fees are not returning to where they were.

Furthermore, a strengthened licensing program is part of the LSUC's obligation to act in the public interest. The privilege of self-regulation comes with costs.

Finally, creating a fairer approach to licensing will cost money. If there is systemic racism, it will cost a lot more.

Having said all that, Ryerson can reconfigure some parts of the program to reduce costs.

Report #2: Challenges Faced By Racialized Licensees

At about the same time this Subcommittee delivered the Pathways Report, another Subcommittee of the LSUC tabled the report: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions ("Systemic Racism Report"). The Systemic Racism Report finds that systemic racism exists in the legal profession, including the hiring process and the licensing process.

The LPP includes many racialized licensees.

It is shocking that one LSUC Subcommittee finds systemic racism, at about the same time another LSUC Subcommittee recommends killing the most effective equity program the LSUC has for racialized licensees.

We don't style it as such - we know how they are perceived. Our program is inclusive.

Chris Bentley
Executive Director

Gina Alexandris
Director

André B. Bacchus
Assistant Director. Work Placement Office

350 Victoria Street, Toronto, Ontario, Canada M5B 2K3 Email: lpp@ryerson.ca www.ryerson.ca/lpp, 416-979-5000, x 3024

RYERSON LAW PRACTICE PROGRAM

The LSUC has no backup plan.

The fact is that the LPP delivers high quality training, finds placements, and offers **all** LPP licensees a path to success.

Canada and Ontario are about ensuring all talented people have a path to success. The public expects fairness. Systemic racism is not. Unfair processes are not.

The LPP has given the LSUC an answer and an excellent, skills-based solution, to a very difficult problem. Why end it with no alternative?

If the LSUC was to cancel the LPP, giving in to "perception", why would anyone have any confidence that the LSUC was either serious or capable of confronting and dealing with systemic racism.

Conclusion

The development and delivery of Ryerson's LPP has been challenging and energizing. We live every day with hope and success on faces that have only seen rejection. We see talented people that this province and country need, finally be given their chance to prove themselves, and their chance to succeed. Every successful person was given that same chance at some point. The profession is stronger for inclusivity. The public is better served. The LPP ensures that those subject to unfairness have a pathway to success.

The LPP is a new way to provide experiential training. We can, as lawyers, be proud of our traditions, but at the same time be open to evidence-based new approaches. The LPP strengthens experiential training.

The LSUC should take the opportunity to continue the LPP for at least an additional 2 years. It should benefit from the strong results and strengthened training that will continue with the LPP.

Ryerson has been pleased to contribute to the Profession, will continue to do so, and would be pleased to continue to do so via delivery of the LPP.

Sincerely,

Chris Bentley, Executive Director (LPP and LIZ)
Gina Alexandris, Senior Program Director
André Bacchus, Assistant Director, Work Placement Office

Chris Bentley
Executive Director

Gina Alexandris
Director

André B. Bacchus
Assistant Director. Work Placement Office

350 Victoria Street, Toronto, Ontario, Canada M5B 2K3 Email: lpp@ryerson.ca www.ryerson.ca/lpp, 416-979-5000, x 3024

South Asian Bar Association of Toronto
300-20 Toronto Street
Toronto, ON M5C 2B8
sabatoronto@gmail.com
sabatoronto.com
@SABAToronto

Via Email (policy@lsuc.on.ca)

October 21, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON, M5H 2N6

To Whom It May Concern:

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing Report

The South Asian Bar Association of Toronto (**SABA Toronto**) makes these written comments on the Pathways Pilot Project Evaluation and Enhancements to Licensing Report (the **Report**).

SABA Toronto is a voluntary bar organization and the local Toronto chapter of SABA North America. SABA Toronto provides professional growth and advancement for South Asian lawyers in the Greater Toronto Area and seeks to protect the rights and liberties of the South Asian community across Ontario.

SABA Toronto's position is that the Pathways Pilot Project should be extended for at least two more years (2017-2018 and 2018-2019) and any recommendation regarding it should be made at the same time as any recommendations regarding licensing and articling more generally.

At the outset, the Law Practice Program (**LPP**) is the Law Society's most successful diversity program.[1] The LPP has a disproportionate number of minority candidates and, we believe, South Asian candidates. That the Report was released at the same time as the Challenges Faced by Racialized Licensees Working Group's final report but no discussion in the Report is devoted to the unique challenges facing racialized licensing candidates is, in our view, telling of the narrow view the majority of the Professional Development & Competence Committee (the **Committee**) takes of the LPP. The LPP and its role in the licensing of lawyers must be viewed in the overall context of broader challenges facing the justice system, including the lack of diversity in the profession, the inability of ordinary Ontarians to access justice and the articling crisis.

As SABA Toronto has directly and indirectly participated in submissions from other stakeholders, this submission focuses on the three grounds that the Chair of the Committee has

[1] This submission is limited to the English LPP. SABA Toronto takes no position on the French LPP.

identified as bases for the recommendation. In addition, SABA Toronto repeats and relies on the submissions made by the Roundtable of Diversity Associations, dated October 12, 2016.

"Second-Tier" Perception

This is an invalid basis for the Report's conclusions. The Year One class was surely populated with candidates who had failed in obtaining a traditional articling job, and as such the LPP was "second-tier" in both their view and the view of the profession. This perception will be mitigated as more licensing candidates view the LPP as a true alternative to articling, provided the Law Society markets the LPP as such. To now, the Law Society has done an insufficient job of marketing the LPP as a true alternative to articling. The LPP is an ideal program for candidates that intend to practice in a sole or small practice, doing general legal work. Indeed, the LPP may be better training than traditional articling jobs, especially at a big organization.

Further, there are little or no LPP placements at traditional "First-Tier" employers, such as large Bay Street firms. Bay Street, in particular, has done an excellent job of marketing its articling programs as the best training for a law practice. Of course, a student that fails in landing a traditional articling job, especially at a pre-eminent firm or inhouse legal department, will perceive that the LPP is second-tier. And if the program is populated by candidates who failed in getting a traditional articling job, employers, their peers and future candidates will also perceive the LPP as second-tier. In our view, the Law Society needs to play a leadership role in changing the discussion around what kind of training makes a law student successful as a lawyer. If a law student's goal is to practice in an area of law that has few articling positions (such as immigration) or intends to immediately open her or his own firm or work inhouse, the LPP may be a better alternative to traditional articles. But the Law Society needs to take a lead in promoting this alternative.

Moreover, this argument is flawed in that it is based on the perception of a small minority of Ontarians: lawyers elected as benchers who are members of the Committee. The better standard is Ontarians themselves. Do ordinary Ontarians, when choosing a lawyer, actually care whether their lawyer articled at BigLaw or graduated from the LPP? Moreover, if they knew that their lawyer spent his or her "trainee" year doing document review and legal research motivated by the singular desire to get "hired back" as compared to engaging in high-quality experiential training in a small-group environment from some of the best lawyers in Ontario with an emphasis on digital and technological learning, would their view change?

As an aside, the Report does not deal with the challenges faced by foreign-trained or racialized lawyers in passing the licensing examinations or finding articling jobs for circumstances beyond their control, the latter of which makes the LPP the only option available to them (and ingraining the view that the LPP is for "other" candidates).

43%

That 43% of LPP candidates failed their first attempt of licensing examinations is being used to suggest that LPP candidates are less likely to be competent. This statistic is without context and entirely misplaced.

To determine if this statistic is meaningful, the Law Society should compare it to the failure rate of similarly-situated candidates in prior years. It is not necessarily that 43% of *LPP candidates* are failing the licensing examination but rather 43% of *candidates from certain demographics* (*i.e.*, internationally-educated, racialized, Age 40+) are failing the licensing examination. If this same cohort of candidates had traditional articling jobs, there is no reason to believe that the pass rate on the licensing examination would be better.

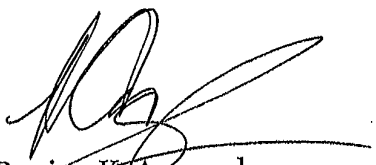
The Articling Gap

The Report suggests that LPP candidates would uniformly prefer an articling job, furthering the perception that the LPP is "second tier". If we accept that the 220 candidates in each of the two years of the English LPP had no other alternative but the LPP and 57% passed the licensing examinations, that means 125 otherwise qualified candidates for licensing as lawyers in Ontario are being left with no alternative. As the Report makes clear, these candidates are overwhelmingly foreign-education, racialized and older. It is inconceivable to us that the Law Society does not see how the termination of the LPP will have a disproportionate impact on the most vulnerable members of our profession.

Our profession is undergoing a profound cultural and demographic change. The challenges facing racialized candidates and licensees is but one example. The pathway to licensing needs to be examined holistically. Terminating the LPP now leaves at least 125 candidates without a viable pathway to a license, returning us to the articling crisis that precipitated the LPP. The Law Society cannot and should not leave them with no options. It created the licensing system. It must fix it. The better way forward is to extend the Pathways Pilot Project until comprehensive reform is recommended.

Sincerely,

SOUTH ASIAN BAR ASSOCIATION OF TORONTO



Ranjan K. Agarwal
President
Email: agarwalr@bennettjones.com
Telephone: +1 (416) 777-6503

Thunder Bay
Law Association

125 Brodie Street N.
Thunder Bay, ON P7C 0A3
tel 807.344.3481
fax 807.345.9091
web www.tbla.on.ca

October 19, 2016

Pathways Pilot Project Evaluation and Enhancements to Licensing report
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall,
130 Queen Street West
Toronto, ON, M5H 2N6

Professional Development and Competence Committee:

In response to your request for submissions from the profession, we would like to inform you of our position. At our Board meeting of October 14th the Thunder Bay Law Association passed a resolution offering full support for the continuation of the Law Practice Program (LLP) for its full five year mandate.

Reasons for passing this resolution include the need for more empirical evidence on the value of the program, both to the student and to the profession. Simply, there is a need for more time to study the LLP process, as well as the effect of its demise.

Regards,

Rene Larson
President, TBLA

TORONTO LAWYERS ASSOCIATION

October 19, 2016

Paul Schabas, Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON, M5H 2N6

Dear Treasurer Schabas,

RE: Toronto Lawyers Association Comments on the Pathways Pilot Project Evaluation and Enhancements to Licensing Report of September 22, 2016

The Toronto Lawyers' Association ("TLA") is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide comment to the Law Society of Upper Canada ("LSUC") in regard to the Pathways Report of September 22, 2016 (the "Report").

Similar to the diverse views expressed amongst the Benchers who authored the Report, the TLA Board members have differing views on the merits of terminating the Law Practice Program ("LPP") after only two years of operation.

Overall, the TLA believes that it is premature to cancel the LPP at this time. The main reasons for this are the significant efforts and resources expended to create this program, the recognition that the program is "*of very high quality*", and the fact that the LSUC does not appear to have any alternative plan in place to address the gap in the path to licensing that the LPP presently fills, particularly for many racialized candidates. After only two years, the LPP has not been in place for a sufficient length of time to conclusively determine that it is not serving its intended purpose, or that it is creating two tiers of graduated licensees. Instead, the TLA submits that the LSUC should continue the LPP program for a further pilot period of two years in order to allow for a greater volume of data to be obtained (i.e. more than 2 years). The TLA recommends that the LSUC obtain and review data over a minimum of a 4-year period prior to making any firm conclusions. Doing so will, in our view, lead to a better informed decision to either continue or end the program.

The TLA is also concerned that one of the reasons identified in the Report for cancelling the LPP is due to the perception of it being "*Second-Tier*". Given the long and important history of our articling regime, it is not surprising that some initial stigma may attach to the LPP. However, we are optimistic that any such stigma will likely erode over time, particularly as the profession becomes more generally aware of the "*high quality"* aspects of the program, as noted in the Report.

…/2

Court House Library 361 University Avenue Toronto Ontario Canada M5G 1T3 | T: 416 327-5700 F: 416 947-9148 www.tlaonline.ca

The TLA is mindful of the concerns raised in the Report relating to the financial sustainability of the LPP. These concerns are significant and need to be addressed. Indeed, in order for the LPP to be sustainable in the long-term, a greater number of licensing candidates will need to commit to the program, and/or the overall costs of the LPP will need to be reduced. Again, during the next two years, efforts could be made to determine whether the overall per-candidate cost of the program can be reduced. During this time, we recommend that the LSUC continue to explore ways of driving down the costs of the program, and also consider potential additional funding sources.

During any further pilot period, the TLA also believes that the LSUC should attempt to analyze and explain the underlying reasons for the discrepancies between LPP candidates' results and Articling candidates' results relating to (1) the pass rate for first attempts at the licensing exams; and (2) first year employment opportunities. We also recommend the LSUC further examine the discrepancy between Canadian Law School educated candidates and Non-Canadian Law School educated candidates. Given the short timeframe for data in the Report, it is not clear whether this discrepancy is due to the LPP itself or other factors.

Ultimately, there is simply an insufficient body of empirical data available to justify cancelling a program that the committee found delivers an "*excellent program design and delivery by both providers*" and may "*excel*" over articling in some aspects. Moreover, extending the time for the pilot in order to gather more data is preferable to ending the LPP program based on a Report that only had full data from one year of the program (2015-2016 attendees only just having been called in June). If the program is continued, there would be a growing database of results in LPP candidates' licensing exam achievement and/or first year employment. Obviously, if the data collected over a longer period of time continues to show gaps in licensing examination achievement and first year employment success between LPP candidates and those who article, there may be sufficient justification to terminate the LPP program. However, the short-term data that is currently available does not warrant such a decision.

For the reasons outlined above, the TLA recommends that the LSUC continue the LPP pilot for a further two years.

Finally, the TLA wishes to address the much broader issue that arises out of the Report, which is a larger issue than the LPP itself – being unemployment or underemployment of lawyers in Ontario. The exponential growth of licensed members has produced an over-supply of lawyers in many areas of the province (and the GTA in particular). Our profession is in crisis. The TLA believes that this is the fundamental issue that the LSUC, in partnership with provincial education funding authorities, must urgently address. Too many lawyers can lead to clients being poorly served by lawyers unable to charge reasonable fees for necessary and valuable work. This problem is compounded by the increasing debt load of new lawyer licensees, who often carry education costs as a significant component of practice overhead.

The TLA proposes that the LSUC direct some resources to study the numbers of lawyers in relation to population size in other common law jurisdictions (i.e. the U.K., Australia, New Zealand, etc.), in order to determine the appropriate number of new licensees to be admitted annually. If, as is anecdotally anticipated, the population of Ontario can optimally support fewer

…/3

numbers than are currently entering the profession annually, then the government of Ontario must be persuaded to limit funding to control law school populations. This should include declining funding for new (or expanding) law schools in areas of the province that are already over served with lawyers, such as the Toronto area. The LSUC must also take a hard look at the number of licenses granted each year and consider whether admission to the profession should be limited to the number of licensees that can realistically be sustained by Ontario's population. The answers to this apparent over supply of licensees may impact whether there will be a long-term need for the LPP, in light of the existing articling positions available in the province of Ontario.

Finally, the TLA urges the LSUC to immediately communicate to law school applicants, before they commit to a path towards admission to the bar, the hard realities of the cost of a legal education and the employment prospects for new calls.

The TLA appreciates the opportunity to comment on pressing and important issues for the profession and looks forward to a continuing dialogue with the LSUC as it addresses the challenges of regulating the practice of law in the twenty-first century.

Yours very truly,

Stephen Mullings
President
Toronto Lawyers Association

Université d'Ottawa
Faculté de droit
Section de common law
University of Ottawa
Faculty of Law
Common Law Section
613-562-5794
613-562-5124
57 Louis-Pasteur
Ottawa ON K1N 6N5
Canada
uOttawa.ca

Ottawa

October 19, 2016

Mr. Peter Wardle, Chair
Professional Development & Competence Committee
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Re: The Law Practice Program Advisory Committee's response to the *Pathways Pilot Project* evaluation of September 22, 2016

The Common Law Section of the Faculty of Law at the University of Ottawa (the Common Law Section) wishes to voice its reservations regarding the recommendations made by the Professional Development & Competence Committee in its report dated September 26, 2016, which is based on the conclusions of the *Pathways Pilot Project* interim evaluation report of June 30, 2016.

The Common Law Section is very concerned by the recommendation to terminate the *Programme de pratique du droit* (PPD) for two reasons: the impact on diversity and the effect of this termination on the ability to practise in French.

First, the lack of articling positions for qualified candidates continues to be a problem that must be solved, especially because racialized candidates are more affected by the lack of articling positions. The termination of the PPD will no doubt have a disproportionately adverse effect on Francophone, immigrants, and refugee lawyers, a clientele that the Common Law Section has been particularly supporting since 2010. We have created a summer pre-law program aimed at this clientele and we want to ensure its integration into the legal profession. In our opinion, terminating the PPD could negatively affect the Law Society's diversity goals.

Second, the PPD is a unique program. Created by and for the Franco-Ontarian community, it was meant to provide strong support for a licensing model suited to the practice of law in French. It must be evaluated in that context. In our opinion, decisions regarding the future of the program should be taken following a period of consultation with the Francophone communities and should take into account the Law Society of Upper Canada's By-Law 2 or French Language Services Policy.

There may exist solutions to the lack of articling positions problem other than the PPD, particularly for racialized candidates or to address the challenges of access to justice in French. In our opinion, it is important to formulate such solutions before terminating the *Programme de pratique du droit* (PPD).

The Common Law Section is certainly ready to collaborate with the Law Society of Upper Canada towards the development of solutions for our Francophone and racialized students and to ensure equitable access to the practice of law in French.

Sincerely,

Nathalie Des Rosiers
Dean
Common Law

Université d'Ottawa
Faculté de droit
Section de common law
University of Ottawa
Faculty of Law
Common Law Section
613-562-5794
613-562-5124
57 Louis-Pasteur
Ottawa ON K1N 6N5
Canada
uOttawa.ca

Ottawa, le 19 octobre 2016

Maître Peter Wardle, président
Comité du perfectionnement professionnel
Barreau du Haut-Canada
130, rue Queen ouest
Toronto (Ontario) M5H 2N6

Objet : Réponse du Comité consultatif du Programme de pratique de droit au rapport sur l'évaluation du projet pilote *Voies d'accès à la profession* du 22 septembre 2016

La Section de common law de la Faculté de droit de l'Université d'Ottawa (la Section de common law) désire exprimer ses réserves en rapport aux recommandations du Comité de perfectionnement professionnel proposées dans son rapport du 26 septembre 2016 qui se fonde sur les conclusions du rapport d'évaluation intérimaire du projet pilote *Voies d'accès à la profession* du 30 juin 2016.

La Section de common law est très inquiète de la recommandation de mettre fin au programme pratique de droit (PPD) pour deux raisons : l'impact sur la diversité et l'effet de l'abolition sur l'accès à la pratique en français.

Premièrement, le manque de stages pour des candidats qualifiés continue d'être un problème qui doit être résolu, d'autant plus que les candidats racialisés sont davantage affectés par l'absence de stages. L'abolition du PPD aura forcément un impact préjudiciable disproportionné sur les juristes francophones immigrants et réfugiés, une clientèle que la Section de common law s'emploie à soutenir particulièrement depuis 2010. Nous avons créé un programme d'été pré-droit pour cette clientèle et voulons nous assurer de leur intégration dans la profession juridique. À notre avis, l'abolition pourra nuire à l'atteinte des objectifs de diversité du Barreau du Haut Canada.

Deuxièmement, le PPD est unique en son genre. Conçu par et pour la communauté franco-ontarienne, il visait à bien soutenir un modèle d'accès à la profession qui soit adapté à la pratique du droit en français. Il doit être évalué dans ce contexte. Les décisions quant à son avenir devraient être prises, selon nous, après une consultation des communautés francophones et tenir compte du Règlement

administratif nº 2 du Barreau du Haut Canada ou de la Politique sur les services en français de 2015 du Barreau du Haut Canada.

Il y a peut-être d'autres solutions que le PPD au problème de manque de postes de stagiaires particulièrement pour les étudiants racialisés ou pour répondre aux défis de l'accès à la justice en français. A notre avis, il est important de formuler ces solutions avant d'abolir le Programme pratique de droit (PPD).

La Section de common law est certainement prête à collaborer avec le Barreau du Haut-Canada dans le développement de solutions pour nos étudiants francophones et racialisés ainsi que pour assurer un accès équitable à la pratique du droit en français.

Je vous veux assurer, Me Wardle, de l'expression de mes sentiments les meilleurs

Nathalie Des Rosiers
Doyenne
Common Law

Waterloo Region Law Association
Waterloo Region Courthouse
85 Frederick Street
Kitchener, ON N2H 0A7

T: 519.742.0872
F: 519.742.4102
www.waterloolaw.org

Sent via email: policy@lsuc.on.ca

October 20, 2016

Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Re: Waterloo Region Law Association Response to Pathways Pilot Report

The Waterloo Region Law Association (the "Association") is comprised of nearly 600 lawyers practicing in all areas of law within the Region of Waterloo. The Association has only had a brief opportunity, given the short time-line allowed, to consider the Report to Convocation dated September 22, 2016 by the Professional Development and Competence Committee (the "Report") on the Pathways Pilot Project.

On a broader note, we note that the short turnaround time to provide response is indicative of a disturbing trend, whereby the Law Society has recently attempted to solicit feedback from practicing lawyers in the Province on a number of important issues affecting the bar, without providing adequate or sufficient time to do so in a meaningful manner. We are concerned that the Law Society is simply paying lip service to the idea of consulting with the profession, while it attempts to force important decisions to be made quickly, without the opportunity for the profession (including our members) to engage with these issues and have their voices heard.

However, despite the limited time provided, we wish to provide our initial response as follows.

The Law Society's mandate, as we are frequently reminded, is to protect the public and to promote high standards of professionalism within the Ontario bar. Ensuring appropriate training for new lawyers entering the profession is a key part of that mandate. As a profession, we owe it to ourselves and future generations of lawyers to provide law school graduates with reasonable expectations about their prospects for call to the bar as well as maintaining appropriate avenues for them to accomplish that. We view the Report through that lens.

The Report notes that the Pathways Pilot Project ("the Project") was set up to address a number of issues regarding people entering the legal profession. It was initially conceived as a 5 year pilot but was subsequently reduced to a 3 year pilot program, with the Report now recommending that it be terminated early at the completion of year 3 (2016-2017). The Association is concerned with the premature termination of the Project and believes that the Project has not been given adequate time to fully determine its potential for success.

As noted in the Report, there have been a number of positive features introduced as a result of the Project, including providing real alternatives to new lawyers entering the profession that would otherwise not have been made available. In addition, it would be unfortunate to lose the significant resources that have been developed, along with the infrastructure that has been put in place, to deliver the Project. The Association also notes that little attention has been given in the Report to the potential costs consequences of terminating the Project.

Although the Report has accumulated some data on the effectiveness of the program, it is the Association's view that it is premature to terminate the Project at this time. There is insufficient data to make such a determination. The measure of the Project's success should not simply be limited to subjective perceptions of the participants, the profession, and the public, but should look at success more broadly and objectively, by measuring the number of people who actually enter the profession through the Project and tracking their subsequent success/failure rate, perhaps by measures such as a comparison of their longevity in the profession and their complaints and discipline history with those of lawyers who have entered the profession through the traditional articling stream.

There continue to be significant challenges for those individuals who have completed law school but are unable to enter the profession due to not being able to secure a traditional articling position, and that is not fair to those individuals. We question whether the practising bar is taking its responsibility to educate the next generation of lawyers sufficiently seriously. It is also a matter of concern to us that a hasty cancelling of the Project at this time will serve to further stigmatize those students who have already utilized it to enter the profession, in terms of their future employment prospects.

Perhaps even more importantly, consideration should be given to the quality of the lawyers admitted by the Law Society to the practice of law. That is, are the lawyers entering the profession through the alternative pathways providing good legal services to the community, and are their skills and abilities enhanced and improved both because of the unique background that they bring to the practice of law as well as the knowledge that they have gained through the Law Practice Program ("LPP")? The Association feels that we need more time to allow the LPP and Pathway Pilot Project to fully mature and to adequately determine the effectiveness of these initiatives.

Despite its concerns with the state of the current Articling Program, the Association believes that this program and any alternative experiential training initiative to prepare future members for the practice of law are important elements that must be maintained in licencing lawyers to practice in the Province of Ontario. The Association would be greatly concerned with any move towards an American style model of simply writing a Bar Admission Examination following the completion of Law School without the opportunity for future practitioners in the Province to learn from existing members.

We must maintain a form of study supervised by the Law Society to adequately prepare potential new members for the practice of law. The goal of the Law Society must not simply be to deal with the number of people that are graduating from law schools in Canada to provide them with a job but rather to improve the quality of the profession and assist members and future members of the profession to become better lawyers, to serve the needs of local communities and the broader public in Ontario.

The Association also notes that the Report is recommending changes to the current licencing examination framework. There is insufficient detail in the Report to make meaningful comments on this issue. We therefore request that further details about the proposed changes be provided to the Association so it may meaningfully review and critique any such proposed changes.

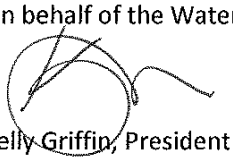
Lastly, the Association recommends that a thorough financial analysis be conducted prior to any decision being made to prematurely abolish the Project. We are concerned that a substantial amount of money is being squandered, due in part to the significant resources and infrastructure that have been developed for the delivery of the alternative Pathways Program (ie. the LPP). While the Report briefly discusses the possibility of employing some of these resources in another way, if the decision is made to terminate the Project, it is rather vague and non-committal in doing so.

Given the short time frame in which the project has been evaluated, and the Report's lack of precision and concrete suggestions, the potential for scrapping such resources seems more likely than not. This should be more fully developed, before proceeding to terminate the Project without guarantee of any upside or benefit. That does not appear to be in the best interest of the profession or the public, and the Association believes that this does not represent a proper management of the resources that have been dedicated to the Project.

A better return on investment may involve making amendments to the Project and adjusting its delivery and development to make it more effective, rather than simply discarding it all together. We also note the potentially disruptive nature of making too many changes to the Articling Program and alternative programs in a short period of time. The long-term stability of the Articling system and the confidence which the public has in our ability to regulate the legal profession, including the training and introduction of new practitioners, may in fact be undermined as a result of the proposed changes.

The Association thanks you for the opportunity to provide these brief comments on the program and looks forward to future opportunities to provide meaningful input on this important topic.

On behalf of the Waterloo Region Law Association,



Kelly Griffin, President

Windsor Law
University of Windsor

Dean of Law
401 Sunset Avenue, Windsor
Ontario, Canada N9B 3P4
T 519 253 3000 (2930) F 519 973 7064
lawdean@uwindsor.ca
www.uwindsor.ca/law

October 19th, 2016

Professional Development & Competence Committee
c/o Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON, M5H 2N6

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing report

Dear Members of the Professional Development & Competence Committee,

Thank you for inviting feedback on your report of 22 September 2016. While this letter does not purport to represent all views at Windsor Law, I believe it broadly reflects a consensus reached at our Faculty Council held earlier today.

We are of the view that a comprehensive review of the licencing process –one which engages with all stakeholders- is in order. While that comprehensive review is taking place, the LPP should be continued. The LPP provides strong training and several of our graduates –including racialised candidates- have had positive experiences with the program. In the absence of an alternative to articling being put in place, ending the LPP now would deny access to the profession for a significant number of graduates. This raises important concerns with respect to fairness and equity for licensee candidates, and the access to justice needs of the public.

Of course, continuing the LPP in its current form indefinitely is not a panacea. We remain concerned with the expense of the program being placed largely on candidates, many of whom are from vulnerable communities, and urge the Law Society to consider a more equitable sharing of the costs between the profession and the candidates. Finally, we urge that any comprehensive review of the licencing scheme be closely linked with a probing analysis of why racialized licensees are disproportionately enrolled in the program. With respect to the latter

point, it will be important to link the study with the findings and recommendations of the Racialized Licensees Working Group.

The Windsor Law community would be pleased to engage with the Committee on a comprehensive review of the licensing process, including with respect to other issues the report touched on, and which may have an impact on law schools' curricula and autonomy.

Yours truly,

Christopher Waters, DCL
Dean and Professor of Law