



***County of Carleton Law Association  
Submission to the  
Law Society of Upper Canada's  
Dialogue on Licensing***

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## ***Executive Summary***

### **Introduction**

The County of Carleton Law Association (CCLA) respectfully submits our recommendations to the Law Society of Upper Canada (LSUC) for its 2017 Dialogue on Licensing (DOL).

The CCLA's consultation was inclusive and comprehensive: we struck a large working group comprised of a diverse group of lawyers from many practice areas and also included a student and professors. Members of our working group participated in all three Dialogue sessions in Ottawa on April 27, May 25, and June 22, 2017, and we watched the webcast on June 5, 2017. We met several times prior to preparing this submission. We also invited feedback from our members through our website. The rationale for our six recommendations is set out below using the topic headings from the Dialogue on Licensing.

The CCLA believes that the entry to the legal profession should continue to include the three following components as modified by our recommendations:

1. **Licensing Examinations:**

The barrister and solicitor licensing examinations should be retained provided that they are assessed by an independent professional evaluator every seven years to ensure that they continue to be valid instruments to measure entry-level competency.

2. **Law Practice Program (LPP)/French LPP, Programme de pratique du droit (PPD):**

Every licensing candidate should successfully complete the four-month LPP/PPD (either before or after a six-month articling/work placement program).

3. **Practicum:**

Every licensing candidate should successfully complete a six-month articling or work placement program to be called a "practicum" (either before or after taking the four-month LPP/PPD).

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### **CCLA Recommendations**

**1. *Easier Access to Information on the LSUC Web Page for Licensing Candidates and their Principals/Employers (DOL – Topic 1):***

Licensing candidates and their principals/employers should have easy and quick access to relevant information about the licensing process on the LSUC web page.

**2. *Inform Future Law School Candidates about the Projected Oversupply of Lawyers (DOL – Topic 2):***

The LSUC should send information about the projected oversupply of lawyers to Canadian high school guidance departments and to Canadian university career placement offices so that prospective law school candidates will know what the market for newly licensed lawyers will be in the near future. The LSUC should publicize the above information in a prominent area of its web site on the "Become a Lawyer" page in both graphic and text format.

**3. *Periodic Assessment of Licensing Examinations by an Independent Professional Evaluator (DOL – Topic 3):***

The licensing examinations should be evaluated every seven years by an independent professional evaluator to ensure that they are valid and defensible instruments for measuring entry-level competency. This evaluation should include a review of the French version of both examinations to ensure they are deemed equivalent to the English versions.

**4. *Provide Annual Licensing Materials to the Profession (Question during DOL – Topic 3):***

The LSUC should make available to the profession, free of charge, the current year's licensing materials in electronic format and should advise the profession by email of the relevant URL to download the materials.

**5. *Mandatory Law Practice Program/Programme de pratique du droit for all Licensing Candidates (DOL – Topic 4):***

Every licensing candidate should successfully complete the four-month LPP/PPD either before or after a six-month practicum as follows:

- a) LPP/PPD (September to December) followed by a six-month practicum in the following year (January to June) or
- b) LPP/PPD (January to April) preceded by a six-month practicum in the prior year (July to December).

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### **6. *Mandatory Six-Month Practicum Program for all Licensing Candidates (DOL – Topic 4):***

Every licensing candidate should successfully complete six months of a practicum either before or after taking the four-month LPP/PPD as follows:

- a) Practicum from January to June preceded by a four-month LPP/PPD in the prior year (September to December); or
- b) Practicum from July to December followed by a four-month LPP/PPD in the following year (January to April).

## **1. *The Need for Change:***

### **Recommendation # 1: *Easier Access to Information on the LSUC Web Page for Licensing Candidates and their Principals/Employers (DOL – Topic 1):***

Licensing candidates and their principals/employers should have easy access to relevant organized information about the licensing process on the LSUC web page.

#### **Rationale**

Lawyers and today's society access their information digitally via internet web pages. The LSUC information on the existing licensing process is difficult to find and could be better organized.

## **2. *Market Dynamics and the Law Profession:***

### **Recommendation # 2: *Inform Future Law School Candidates about the Projected Oversupply of Lawyers (DOL – Topic 2):***

The LSUC should send the information about the projected oversupply of lawyers to Canadian high school guidance departments and to Canadian university career placement offices so that prospective law school candidates know what the market for newly licensed lawyers will be in the near future. The LSUC should publicize the above information in a prominent area of its website on its "Become a Lawyer" page in both graphic and text format.

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### **Rationale**

It is projected that there will be a serious oversupply of lawyers for the anticipated practising positions over the next ten years: *over the next 10 years, there will be 1.6 new licensed lawyers for every new practising position.* (Dialogue on Licensing, Topic 2, p. 22) Providing the above information to students already in law schools is too late in the process. Students looking to pursue a legal career need to know much sooner what their job prospects are likely to be.

### **3. Licensing Examinations – Assessment of Entry-Level Competency:**

#### **Recommendation # 3: Periodic Assessment of Licensing Examinations by an Independent Professional Evaluator (DOL – Topic 3):**

The Barrister and Solicitor Licensing Examinations should be evaluated every seven years by an independent professional evaluator to ensure that they are valid and defensible instruments for measuring entry-level competency. This evaluation should include a review of the French version of both examinations to ensure they are deemed equivalent to the English versions.

### **Rationale**

The DOL did not provide the profession with a professional independent evaluation of the current licensing examinations. This contrasts with the June 30, 2016, *Pathways Evaluation Interim Results: Years One and Two*, which was an evaluation of the Enhanced Articling Program and the LPP/PPD by Dr. A. Sidiq Ali, PhD CE, an independent professional program evaluator.

The Convocation Reports on the LSUC web page appear to indicate that there has been no such independent professional evaluation of the licensing examinations since 2011. Lawyers, who are not professional evaluators, have no way of determining whether the current licensing examinations have the:

*... ability to measure the degree to which a candidate possesses competence for entry-level job performance, as well as the ability of the examination[s] to distinguish candidates who do not.*

(Dialogue on Licensing, Topic 3, p. 17)

General consensus emerged at the Ottawa dialogue sessions that the current licensing examinations measure the ability to use an index quickly. However, after the June 5, 2017, webcast on the Licensing Examinations, we concluded that the Law Society would not reconfigure or replace the current Barrister

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and Solicitor Licensing Examinations because of their heavy investment in them. Concerns were expressed by Francophones, who said candidates were writing the examinations in English, because of the disparity between the French and English versions. Older lawyers reminisced about the benefits of the old Bar Admission Course, with classes in each area of law followed by individual examinations. We believe that the former didactic method, in which students kept their materials, fostered competency, which leads into our next recommendation.

### **Recommendation # 4: Provide the Annual Licensing Materials to the Profession (Question during DOL – Topic 3):**

The LSUC should make available to the profession, free of charge, the current year's licensing materials in an electronic format and should advise the profession by email of the relevant URL to download the materials.

#### **Rationale**

Until 2005 the LSUC made available to the profession the current year's licensing materials free of charge. During the June 5, 2017, Dialogue on Licensing webcast Diana Miles was asked why licensing materials had ceased to be available to the licensed members of the profession after 2005. Ms. Miles' response was that there was little interest in these materials by the profession because only a small number of lawyers had downloaded the licensing materials from the LSUC web page. However, it was not widely known within the profession that these materials were available and where on the LSUC web pages a lawyer could access them. Also, many law firms would download one copy for the entire firm to use as a reference, whereas others who had downloaded the material would then provide copies to others in the profession, thereby eliminating the need for all to download directly from the LSUC web page. As such, there is no correlation between the number of times the licensing materials were downloaded from the LSUC web page and the number of lawyers who actually viewed and utilized those materials.

Providing licensing materials to the profession should ensure that the profession, particularly sole practitioners and lawyers in small firms, are up to date on basic legal knowledge and processes in accordance with the LSUC's mandate to protect the public. In addition, the provision of these materials would be congruent with a recommendation of the LSUC's March 25, 2005, *Final Report of the Sole Practitioner and Small Firm Task Force*, to provide ... *more tools and resources for the benefit and use of sole and small firm practitioners ...* (p. 8)

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#### **4. *Transitional Training***

**Recommendation # 5: Make the Law Practice Program/Programme de pratique du droit  
Mandatory for all Licensing Candidates (DOL – Topic 4):**

Every licensing candidate should successfully complete the four-month LPP/PPD either before or after their practicum program as follows:

- a) LPP/PPD (September to December) followed by a practicum in the following year (January to June) or
- b) LPP/PPD (January to April) preceded by a six-month practicum in the prior year (July to December).

**Recommendation # 6: Make a Six-Month Practicum Mandatory for all Licensing Candidates (DOL – Topic 4):**

Every licensing candidate should successfully complete six months of a practicum either before or after taking the four-month LPP/PPD as follows:

- a) Practicum from January to June preceded by a four-month LPP/PPD in the prior year (September to December); or
- b) Practicum from July to December followed by a four-month LPP/PPD in the following year (January to April).

#### **Rationale**

Licensing examinations, the LPP/PPD, and the practicum are all essential components of the licensing process, because

- the licensing examinations assess content knowledge;
- the LPP/PPD evaluate the application of content knowledge in simulated practice; and
- the practicum provides an opportunity to assess both the scope of the candidate's knowledge and his or her ability to apply that knowledge to resolve real life legal problems and issues.

The June 30, 2016, *Pathways Evaluation Interim Results: Years One and Two* was an evaluation of both the enhanced Articling Program and the LPP/PPD commissioned by the LSUC. Dr. A. Sidiq Ali, the Senior Evaluation Consultant, concluded:

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*It is clear from the data at-hand that performance measurement has occurred in the LPP training course and in the articling placements with the new tools. Data from these performance measures show that all the candidates in the LPP and the vast majority of the candidates in the Articling Program met or exceeded the expectations for their competency development.... (p. 140)*

There is strong support for keeping the LPP/PPD, as was shown by the profession's response to the September 22, 2016, Report of the LSUC Professional Development & Competence Committee, which had recommended ending the LPP following the end of Year Three (2016-17).

By October 19, 2016, the LSUC had received submissions from 93 members of the legal community and 32 legal organizations demonstrating support for retaining the LPP/PPD. A member of our Licensing Committee reviewed the Pathways Evaluation Submissions, contained in the October 26, 2016, document, and created the tables below:

**TABLE A: Percentages Retain / Cancel LPP / PPD from Individual Submissions**

<b>SUBMISSIONS FROM</b>	<b>RETAIN LPP/PPD % (No.)</b>	<b>CANCEL LPP/PPD % (No.)</b>
LPP/PPD Candidates / Graduates	37.6% (35)	1.1% (1)
LPP/PPD Mentors / Employers	31.2% (29)	0.0% (0)
Other	25.8% (24)	4.3% (4)
<b>TOTAL</b>	<b>94.6% (88)</b>	<b>5.4% (5)</b>

**TABLE B: Percentages Retain / Cancel LPP / PPD from Legal Organization  
Submissions**

<b>SUBMISSIONS FROM</b>	<b>RETAIN LPP/PPD</b>	<b>CANCEL LPP/PPD</b>	<b>NO LPP/PPD OPINION</b>
Legal Organizations	78.1% (25)	9.4 (3)%	12.5% (4)

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Finally, creating a six-month practicum, and reducing the existing 10-month articling term to six months will help alleviate the existing articling crisis by creating twice as many positions within the same working environment, while still offering continued support within that environment throughout the 10-month period.

### **5. Conclusion**

In conclusion, the County of Carleton Law Association (CCLA) respectfully endorses a mandatory combination of ***four months of the Law Practice Programme/Programme pratique de droit*** and a ***six-month practicum***, in addition to the ***two current licensing examinations***, in order to be called to the Bar. Achieving all three of these milestones would create a fair, sustainable and valid experience for the students and ensure entry-level competence. Regardless of when the LPP/PPD would occur in relation to the practicum, the licensing process would take 10 months (excluding examinations). This proposal is realistic and could be implemented readily. The CCLA recommendations would foster the values of equity and equality. Finally, providing electronic access to the licensing materials to the profession would be both in the public interest and in the interest of the entire profession.

Thank you for considering our submission.

Yours sincerely,

Jill Alexander, President, County of Carleton Law Association

Rosalind Conway, Chair, Licensing Committee

Licensing Committee Members: Hugh Connelly, Karine Dion, Jason Gilbert, Brenda Hollingsworth, Natasha Jaczek, Laurie Joe, Matthew Mayo, Karen Anne Reid, Jonathan Richardson, Jeff Saikaley and Asfrah Syed-Emond

July 20, 2017

Ottawa, Ontario

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***Appendix A: Members of the County of Carleton Law Association  
Licensing Committee***

**Biographies of Committee Members**

**Rosalind Conway** is the Chair of the CCLA Licensing Committee, and a Certified Specialist in Criminal Law. She was called in 1985, after attending the University of Toronto Law School and articling for McCarthy Tetrault. She has been the principal for six articling students and two LPP students.

**Hugh Connelly**, B.A. (University of Toronto), LL.B. (Queen's University); Called in 1977, Practice Areas: Human Resources, Labour Relations, Education Law; Law Practice Program: Mentor 2014-16 and projected for 2017; Sole Practitioner with an expertise in training and development who has designed and presented case study programs for lawyers, human resources personnel and educational administrators; Provider of Professional Learning Programs for the Ontario College of Teachers 2002-04.

**Karine Dion**, was called to the Bar in 2013, she received her J.D from the University of Ottawa in 2012, and practises in the areas of Employment and Labour Law. She is actively involved in all things articling at Nelligan O'Brien Payne LLP, including recruiting, interviewing and hiring articling students for her firm, and was an LPP tutor this past year.

**Jason Gilbert** practises criminal law in Ottawa.

**Brenda Hollingsworth** practises personal injury litigation.

**Natasha Jaczek** is going into her third year of the Common Law program at the University of Ottawa. She is interested in criminal defence and constitutional law.

**Laurie Joe** was called to the Bar in 1986. A part-time sessional professor at the University of Ottawa Civil Law and Common Law programs at various times since 2001, she has also taught in the Bar Admission Course from 1994-2006, and in the Programme pratique du Droit from 2014-15. Laurie Joe is a member of the PPD Advisory Committee. Practice areas are mainly Disability, Immigration and Refugee Law.

**Matthew Mayo** graduated from the University of Ottawa Law School, and articulated in 2012-13. He is an associate with McLeans Lawyers where his area of practice is real estate law.

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***Karen Ann Reid***, Vice-President, CCLA, practises Criminal Law, Called in 1984, Graduate of the University of Ottawa, Articled for Daniel H. McGuire, has had two articling students in the past five years.

***Jonathan Richardson***, Called in 2007, Practice Areas: Family & Civil Litigation, LL.B. from University of New Brunswick, 2006, has run the articling program Augustine Binks Bater LLP for 4 years.

***Jeff Saikaley*** was called to the Bar in 2002, after taking the French Common Law program at the University of Ottawa, and articling at Soloway Wright. He practises litigation.

***Asfrah Syed-Emond***, Called to the Bar 2000, Area of Practice: Civil Litigation (Plaintiffs), graduate of the University of Ottawa Law School, articled at Emond & Associates, Chair of CCLA Diversity Committee, Professor at Algonquin College: Paralegals and Law Clerks.