

OVERVIEW

The County of Carleton Law Association (CCLA) respectfully submits its recommendations to the Law Society of Ontario (LSO) in response to the 2018 *Options for Lawyer Licensing*.

The CCLA has carefully reviewed the Consultation Paper dated May 24, 2018, prepared by the LSO's Professional Development & Competence Committee ("PD&CC") and the four licensing options that have been presented for consideration and commends the LSO for inviting feedback from the profession and other stakeholders on the four options proposed.

With the greatest respect to the members of the LSO's PD&CC, the CCLA does not support any of the four options that have been presented for consideration. The CCLA does not support a licensing model that eliminates practical training and placements (options #3 and #4). Nor does it support the continuation (or creation) of a two-tiered licensing model (options #1, #2, #3). With the exception of those students enrolled in the IPC at Lakehead University or those who are registered in the PPD at the University of Ottawa, the CCLA supports the development and implementation of a uniform licensing system for graduates of Ontario law schools that includes meaningful skills-based training, placements for all candidates and the successful completion of licensing examinations that test for core competencies.

The CCLA continues to support the solution it proposed in its submission to the LSO dated October 19, 2016, which was prepared in the context of the Dialogue on Licensing, with some modifications. A copy of the CCLA's July 20, 2017 submission, is **attached** as Appendix A to this submission.

1. CCLA'S Recommendations

The CCLA is strongly opposed to the elimination of articling or placements created by the LPP and PPD programs which are providing licensing candidates with important connections to the legal community and which are contributing to the creation of employment opportunities for newly licensed lawyers. However, the CCLA does not support the preservation (or creation) of a two-tiered licensing system which does not ensure an acceptable level of consistency in the training and education of licensing candidates and fails to adequately address the unfairness inherent in our current system.

The CCLA remains of the view that Ontario's licensing system should require all licensing candidates who graduate from an Ontario law school to successfully complete the following four components:

1. Law Practice Program (LPP) OR a comparable on-line, skills-based training program:

All students graduating from an Ontario law school (*with the exception of those students who are registered in the PPD or the IPC*) should be required to participate in the on-line,

County of Carleton Law Association Submission to the LSO's Options for Lawyer Licensing

skills-based training portion of the LPP or a comparable, more affordable, on-line skills-based training program that includes experiential training.

2. **Mandatory Six-Month Practicum:**

Participation a practical placement of a duration to be determined by the employer but which is not shorter than 6 months.

3. **Successful Completion of the Barrister and Solicitor Examination:**

While the CCLA believes that the successful completion of examinations designed to test core competencies should remain a component of the licensing system, it remains skeptical whether the current examinations achieve that goal. Further, the CCLA remains concerned that many Francophone licensing candidates are electing to write their licensing examinations in English due to imprecise translations in the French examinations coupled with insufficient time to complete the French examinations.

4. **Call to the Ontario Bar as a barrister and solicitor.**

The CCLA's proposal addresses concerns that have been expressed about the inconsistencies in our current licensing model while at the same time preserving the benefits associated with the LPP, PPD and articling programs which present licensing candidates with crucial and much-needed opportunities to interact and learn from practising members of the Ontario bar.

The implementation of a robust, uniform licensing system for all licensing candidates graduating from an Ontario law school will also eliminate the stigma associated with our current two-tier licensing system that has resulted in the perception by some that those students who choose an alternative path to licensing are less competent or valuable than others.

The roll-out of the on-line, skills-based portion of the LPP (or perhaps a shorter, comparable on-line, skills-based program) to all licensing candidates may well encourage students who are not genuinely interested in pursuing a traditional articling position to pursue a work placement through the LPP that could offer the student practical experience that is more relevant and aligned with the student's passions and areas of interest. This is beginning to happen already.

Finally, if prospective employers are offered some flexibility in determining the duration of their articling programs, it is conceivable that additional articling positions could be created by prospective employers who cannot afford to employ an articling student for 10 months or by current and prospective employers who would prefer to take on more than one articling student for shorter periods of time during one calendar year.

In short, the CCLA's solution meets the important goals of transitional training while addressing legitimate concerns raised about uneven education currently being delivered to licensing candidates, and the stigma associated with the LPP and PPD programs about which the profession needs to be better educated.

2. **Cost Considerations**

During a recent focus group session organized by the LSO in Ottawa, participants learned that the LSO anticipates that the cost associated with Option #4 (the roll-out of the LPP, without

County of Carleton Law Association Submission to the LSO's Options for Lawyer Licensing

placements) is approximately \$14,000 per candidate. A break-down of this figure has not been provided. The CCLA has difficulty comprehending and accepting this cost estimate.

The licensing model proposed by the CCLA is very closely aligned with the licensing model adopted in British Columbia where all licensing candidates are required to successfully complete a ten-week, full-time, in-class Professional Legal Training Course (PLTC) which, like the LPP and PPD, emphasizes practical skills-based training and is designed to help bridge the gap between law school education and practice. Students are also required to secure and successfully complete 12 months of articling.

The CCLA has learned from the Director of Education for the Law Society of British Columbia that the 2019 budget for the PLTC administered in British Columbia includes a tuition fee of \$2,600 per student together with an application fee of \$540 per student. Practising members of the B.C. bar contribute \$43 each while the B.C. Law Foundation contributes \$100,000 toward the PLTC. These budgetary estimates appear reasonable and appropriately include the noted contributions from the profession and the Law Foundation. In contrast, the LSO's \$14,000-per-candidate cost estimate is more than four times the average tuition fee that an Ontario college student would expect to pay annually for a full-time, in-class college program in which students participate over the course of eight months! This is an unacceptable cost estimate for the delivery of on-line education especially over such an abbreviated period of time.

In addition to considering innovative ways to reduce the costs associated with the delivery of the LPP (or a shorter, comparable on-line, skills-based program) to all licensing candidates, the CCLA strongly encourages the LSO to consider the direct and indirect costs to the profession of adopting an inferior licensing system that allows the admission of unqualified lawyers to the bar and/or that prevents qualified and capable candidates from being called to the bar. These include:

1. Increasing Claims against Lawyers' Professional Insurance (Law Pro):

The 2017 claim figures reflect a concerning ongoing trend – elevated claims counts and costs. (2017 LawPro Annual Report, p. 11)

2. Increasing Claims against the LSO Compensation Fund:

The LSUC 2017 Annual Financial Statements reported that the Lawyer Compensation Fund experienced an adverse claims experience, resulting in a deficit of \$9.5 million compared to the 2016 - \$2.1 million deficit. (p. 1)

3. A decrease in public respect and confidence in the legal profession and its regulator in failing to develop a licensing model that cures the inequities inherent in the current model.

4. A change or end to the self-regulation privilege of Ontario lawyers.

While the CCLA is mindful of the need to carefully consider the cost consequences associated with the implementation of a more robust licensing model, the CCLA is opposed to favoring an inferior licensing model (i.e. Options #1, #3 and #4). It is also opposed to adding further costs to

County of Carleton Law Association Submission to the LSO's Options for Lawyer Licensing

the current licensing model by implementing “enhancements” that cannot be justified (i.e. Option #2) and will not serve to cure the inequities in our current system.

3. Additional Observations

The CCLA offers the following additional observations with respect to the “enhancements” to the current model that have been proposed by the LSO’s PD&CC Committee:

- The CCLA is concerned about prohibiting unpaid placements. While paid placements are desirable, unpaid placements can and do provide many students with valuable mentoring from lawyers who are not in a position to pay a student for a placement. Those placements can and do lead to employment opportunities. While the CCLA does not support unpaid placements that result in a corresponding financial benefit to a lawyer or law firm, it respects the right of students to seek out appropriate, unpaid placements should they wish to do so.
- The CCLA is concerned about imposing additional monitoring and audits on employers and articling principals during the articling term. This could deter prospective employers from offering students articling/placement opportunities. Mentoring students properly already requires a significant investment in volunteer hours for lawyers.
- The CCLA is concerned about requiring students to pass licensing examinations before commencing placements or articles. Depriving students of the ability to commence a hard-earned placement due to a failed examination is unduly harsh and would cause significant disruption for employers.
- The CCLA is opposed to incorporating a skills-based examination into the current system. This would be entirely redundant for students participating in the LPP and PPD programs. Further, articling principals are already required to ensure students participate in skills-based tasks to ensure the required level of competency in certain key areas. The implementation of an on-line, skills-based training program for all licensing candidates is a far superior solution to ensure skills-based competencies.

Should the LSO elect to incorporate “enhancements” into the current licensing model, the CCLA urges the LSO to consider implementing meaningful change that truly represents an “enhancement” to our current licensing model and aims to address the uneven delivery of education to licensing candidates and cure the inequities in our current system.

4. Conclusion

The CCLA appreciates the opportunity to share with the LSO its own solution to the challenges posed by our current licensing model. The CCLA’s solution emerged following comprehensive consultation with our membership in the context of the Dialogue on Licensing.

The CCLA’s more recent consultations have included discussions with lawyers who volunteer their time to other key organizations and educational institutions representing the profession and law students. These additional consultations resulted in some adjustments to the CCLA’s original proposal and served as a reminder of the need to work collaboratively with all key

County of Carleton Law Association Submission to the LSO's Options for Lawyer Licensing

stakeholders to develop and implement a licensing model that is fair, sustainable and affordable for all licensing candidates and one in which the profession can be proud.

It is respectfully submitted that those few members of the profession who support the elimination of the LPP, PPD or articling programs have not fully considered the adverse impact this will have on racialized students. Depriving those students of the mentorship opportunities offered by these programs will further isolate and marginalize racialized students who typically lack connections within the legal community and have difficulty securing articles or placements. Advocating for a licensing model that eliminates practical placements (or the LPP and PPD) which very often lead to employment opportunities is not an acceptable solution. The LSO and the profession have an obligation to promote diversity and foster connections within the legal community for these students and for the benefit of the public we serve. Adopting a uniform system for all licensing candidates, that includes meaningful placements and mentoring opportunities, will serve to level the playing field.

The CCLA supports the continuation of the PPD that is currently offered at the University of Ottawa as a stand-alone alternative path to licensing. The PPD is a unique program intended to preserve French language training for Francophone candidates so that they can serve their French-speaking clients competently. The PPD program has been an enormous success which assists in improving access to and delivery of legal services in the French language.

There is room for flexibility within the CCLA's proposal. Through collaboration and creativity, the CCLA is optimistic that the LSO can create a robust and affordable licensing system that includes skills-based training, examinations and practical placements. The LSO and the profession must strive to adopt a licensing model that makes us proud and in which the public can have confidence. It is respectfully submitted that this can only be achieved by the creation of a uniform licensing system that injects some consistency into our current system and builds upon the tremendous value inherent in the interactive and experiential learning offered through LPP's on-line, skills-based training program. These proposed modifications to our current licensing system will assist the LSO in ensuring that Ontarians are served by lawyers who meet high standards of learning, competence and professional conduct.

The CCLA appreciates the opportunity to provide input once again on the very important subject of lawyer licensing in our province. We welcome the opportunity to collaborate further.

Yours Sincerely,

Karen Anne Reid,

President, County of Carleton Law Association

CCLA Licensing Committee Members: Jill Alexander, Hugh Connelly, Rosalind Conway (Chair), Karine Dion, Natasha Jaczek, Laurie Joe, Matthew Mayo, Karen Ann Reid, Jonathan Richardson and Asfrah Syed-Emond

October 26, 2018

00254424-1 - 1023-019