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August 11, 2017

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

Sent via Email: dialogue@lsuc.on.ca; policy@lsuc.on.ca

To Whom It May Concern:

Re: Submission to the Dialogue on Licensing

Please accept this letter as a submission for the consideration of Convocation as part of the Law Society of Upper Canada ("**LSUC**") *Dialogue on Licensing* (the "***Dialogue***") consultation process. The outcome of this process has crucial implications for the future of our profession and the face of legal services in Ontario. I hope that you will find these reflections helpful in your deliberations.

1. Context of this Submission

I write to you as a new lawyer, called in 2016, with personal and recent experience navigating some of the challenges and shortcomings of the current lawyer licensing regime. I did not do so in a vacuum – I have been engaged on policy matters in the profession since the early days of my legal education. I currently practice in rural Northwestern Ontario, I am a former Bay Street associate, and I am a licensee who identifies as a member of an equity-seeking group. At present, I run a restorative justice program for a First Nation and work as a per diem Crown Attorney.

I served as the first President of the Law Students' Society of Ontario (the "**LSSO**"), and have been actively engaged on licensing issues through the Ontario Bar Association. I am currently a member of the LSUC Equity Advisory Group ("**EAG**") and I am its representative on the Treasurer's Early Careers' Roundtable. I was the primary author of the LSSO's 2014 survey on law students' tuition, debt, and financial aid experiences, which has been cited regularly on issues concerning the affordability and accessibility of legal education and our profession.[1]

2. The Impact on Aspiring Lawyers Must be Central to LSUC's Decisions on Licensing

At the outset, I note that the *Dialogue* – while thoughtfully designed and administered – has been largely confined to voices within the *current* legal profession. However, the group most directly impacted by the outcome of this process will be those who aspire to become lawyers *in the future*.

[1] *Just or Bust? Results of the 2014 Survey of Ontario Law Students' Tuition, Debt, and Financial Aid Experiences* (September 2014), Law Students' Society of Ontario ("**LSSO**"), available at http://lsso.ca/wp-content/uploads/2014/09/LSSO-Report-2014.pdf.

For this reason, I encourage Benchers to give considerable weight to the comments of law students, licensing candidates, and new calls.[2]

By the same token, Benchers should scrutinize those who defend the status quo – particularly those called to the bar over 10 years ago. The landscape of legal education, legal practice, and the legal industry have changed dramatically in a very short period of time, and through no fault of their own, many senior members of the bar are simply out of touch with the present employment limitations, working conditions, and financial constraints facing their most junior counterparts. Some senior lawyers are also resistant to the quickening pace of technological development and other disruption occurring in their industry. These are factors that the licensing process must be responsive to from a competency and practice management perspective.

It goes without saying that any reforms to licensing must be designed so as to adequately assess a candidate's preparedness to practice. However, Convocation must also consider the accessibility impacts of their reforms: both within the licensing process itself and in terms of how their reforms might address longstanding systemic barriers in the student-to-lawyer pathway. None of these considerations is subordinate – each has a nexus with LSUC's statutory mandates to ensure competency and provide access to justice for Ontarians.[3]

3. The Most Important Issues in the Licensing Program are Equity Issues

From my own junior station in the profession, I have had an opportunity to contribute to EAG's written submissions to the *Dialogue*. I firmly believe that their comments are timely and instructive, and that they reflect the needs of newer calls and aspiring lawyers, and the wide range of circumstances from which they come (or ought to come).

In particular, I wish to underscore and emphasize the following propositions from the EAG submission:

1. The bar exam, training, and preparatory materials provided in the licensing process should be updated to be more accessible, inclusive, and culturally appropriate. (In addition, the format and length of the bar exams themselves have caused them to devolve into exercises in speed-reading and test-taking dexterity – not actual measures of lawyering competency or mastery of content.)

2. Optionality or 'streams' in the licensing process is helpful, and responsive to the needs of differently-situated candidates for admission to the bar, provided the options are not actually 'tiers' of ranked desirability. The ability to choose from relatively equal streams recognizes the fact that in 2017, not every would-be lawyer is a straight 'JK-to-JD' candidate, and many candidates have unique circumstances that may incline them to take a different route to legal practice.

3. Unpaid or underpaid articling or Law Practice Program ("**LPP**") work placement 'opportunities' should be banned or limited. These positions take advantage of the economic duress of an unemployed (and likely indebted) law graduate. (Given the exclusion of licensing candidates from some legislated employment protections, these positions also render candidates vulnerable to unfair work expectations.)

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[2] I note that Law Practice Program ("**LPP**") candidates and alumni appear to have been active participants in this process, though perhaps at the behest of Ryerson University, one of the contracted service providers of the LPP.

[3] See *Law Society Act*, R.S.O. 1990, c. L.8 at ss. 4.1-4.2.

4. Financial accessibility is relevant to equity, representativeness, and access to justice, and should be a factor in setting licensing policies and programs and accrediting pathways to the bar.

5. Educational content in the licensing program and licensing fee structures should be coordinated and harmonized with Ontario law schools.

The core of these propositions is well-articulated in the EAG submission. These should be crucial components of an enhanced or re-designed lawyer licensing process and its related regulations. The most urgent concerns identified above are reflected in items 4 and 5, and I will expand on them below.

4. Financial Accessibility is a Determinant of Equity in the Legal Profession

It is incumbent on LSUC to acknowledge that the financial accessibility of the profession is a determinant of its equity, diversity, and representativeness, if LSUC is truly concerned about improving the composition of the profession and addressing these issues.

(a) Financial Accessibility is Central to Equity and Representativeness

At its most basic level, the accessibility and representativeness of the bar helps the profession to do its job for Ontarians. Lawyers generally work to be advocates for members of the public and to craft arguments couched in the public interest. A profession that does not look like the public and cannot relate to the full range of its lived experiences is poorly suited to these tasks, and is a poor instrument for supporting access to justice. The more elite our craft becomes, the further LSUC drifts from its mandate under the *Law Society Act*. Fostering an accessible legal profession that is reflective of the society it aims to serve is a component of providing access to justice.[4]

Law's financial accessibility is central to the broader accessibility discussion. It is not just a peripheral concern to equity and representativeness. The relationship between these concepts is widely acknowledged in the rest of the education and training sector. For example, it is common for universities to develop bursaries and scholarships that respond to equity-based criteria, or for government student financial aid programs to institute special grants or resources for those from under-represented demographics or those who experience heightened barriers to accessing and persisting in higher education. As EAG and others rightly acknowledge, individuals from equity-seeking groups are more likely to be of more limited socioeconomic means or to encounter financial barriers to legal education or joining the bar. These groups, in general, are typically the same groups that experience the greatest difficulty navigating justice issues and securing legal assistance.

Sadly, affordability continues to be downplayed or dismissed in the legal profession, and even by some participants in the *Dialogue*. Through its own policies and debates, LSUC has continued to animate two myths of equity. The first is that addressing equity concerns somehow lowers evaluative standards or undermines our ability to assess the proficiency of a licensing candidate. The EAG submission correctly asserts that promoting equity and accessibility is not incompatible with our measurement of competency. Equity-seeking candidates are not looking for a pedestal – just for the opportunity to stand on equal footing with their peers for their skills and knowledge to be assessed.

[4] Aside from access to the bar itself, it should not be forgotten that law is unique among the professions in that it is a pathway to a number of institutions, offices of state, and branches of government – such as the judiciary. In a free and democratic society, none of which should be reserved for those who are able to pay.

The second myth is related, and equally pervasive in legal education and licensing. This is the myth of merit – that all qualified and suitable candidates for licensure will meet the challenges of the system, and that each test in the path to becoming a lawyer somehow sorts the proverbial wheat from the chaff. This is simply not plausible where proven, systemic barriers are holding back otherwise-qualified candidates or pricing them out of any opportunity to pursue their aspirations.

Arbitrary exclusions are evident from the first wrung on the ladder to the bar. For instance, it is well-documented that there are more qualified students applying to law schools than there are spaces available to take them.[5] Obviously, students of greater means also enjoy more availability to focus on academics, thus securing greater professional opportunities. As costs continue to rise, the gap between 'haves' and 'have-nots' yields professional consequences that have less and less to do with merit. As such, in 2017, any sincerely-held belief that exclusionary factors do not exist or are negligible at later steps in the process is rooted in either deliberate myopia or ignorance.

(b) An Affordable Licensing Process Supports the Accessibility of the Profession

Of course, concerns about financial accessibility most directly engage the cost of the licensing program itself, and the fairness of its cost structure. The most recent reincarnation of the fee structure came about with the creation of the LPP. As I have pointed out to LSUC in my letters dated January 12, 2015[6] and October 19, 2016 (attached for your reference), the funding model for the LPP has been flawed, unfair, and unsustainable since the start.[7] As I explained in the 2016 letter:

> The cost of the licensing program went up by over $2,000 (with virtually no notice to students) when the LPP was launched [in 2014]. This has pushed the cost of the licensing program to over $5,000, which is a substantial burden for a law student to bear on the heels of that year's $20,000 to $35,000 tuition bill. Moreover, for articling students, this is an absurd price to pay for a binder of bar materials, two exam sitting dates, and a training program which is largely delivered by their employer.
>
> The result of the fee increase is that each LPP candidate is the beneficiary of approximately $16,000 in cost offsets which are funded by articling candidates. While it would be unfair to expect an LPP candidate to shoulder the unabated cost of their program, it is also clear that the burdens and benefits which have been shifted are completely disproportionate and unfair to articling students. All qualified candidates should have access to the profession at a reasonable cost.
>
> As such, if the LPP's costs cannot be reduced, the source of its funding must be altered. By all accounts, if the cost of administering the LPP were distributed among lawyers, their annual fee increase would be a fraction of the burden placed on students. Licensed lawyers are much better positioned to cover this cost, particularly as the LPP ages and more lawyers have benefitted from a licensing program subsidized by the profession at large.
>
> I realize that lawyers may be resistant to this proposal. However, early Convocation records from the time the LPP was created suggest that the profession was supposed to cover the cost. Instead, the cost has been downloaded to students. In effect, the LSUC has funded its trial licensing program directly out of the lines of credit of law students. Sadly, some lawyers I have spoken to wish to keep the LPP as a means of promoting accessibility to the profession and

[5] The Law Society of Upper Canada ("**LSUC**") itself cited statistics to this effect in its facta in the Trinity Western University dispute. See footnote 12, *infra*.

[6] Letter from Douglas Judson, President, LSSO, to Janet Minor, Treasurer, LSUC, dated January 12, 2015, available at http://lsso.ca/wp-content/uploads/2015/01/2015-01-12-Letter-to-LSUC-Re-LPP_merged.pdf.

[7] That is, despite the virtues of the LPP's curriculum, which has been lauded by participants and practitioners alike.

> understand that the cost to students is a barrier, but refuse to entertain the possibility of a small increase to their own bar fees.[8]

These issues are nothing new. They have been raised with LSUC on numerous occasions since the launch of the LPP, and yet they remain unresolved. In declining to take action, LSUC has often pointed to the *Pathways to the Profession* ("***Pathways***") pilot evaluation process as the appropriate juncture to examine whether and how to address these issues. Having now extended the *Pathways* pilot, the *Dialogue* process provides a long-overdue opportunity for LSUC to hear these concerns and address these problems.

(c) Financial Accessibility Considerations are Not Limited to Licensing Program Costs

At the same time, affordability of licensing cannot be determined in isolation from the costs that must be incurred in order to qualify to enter the licensing program to begin with. This is because, for aspiring lawyers, they are one and the same. It is their *combined* impact which acts to exclude otherwise worthy advocates from entering the profession, and reduces the prospects of others once they join the bar. In reality, the licensing process begins with the candidate's admission to law school, not their law school graduation. Legal education and lawyer licensing are subsequent, intertwined steps in a single road to the call to the bar.

The situation described in my 2016 letter has only gotten worse as law school tuitions continue to skyrocket. Tuition at Osgoode Hall Law School will surpass $28,000 per year for this September's entering class. In 2011, when I enrolled, it was just over $19,000 (which is still unreasonable, but slightly more manageable). Tuition at the University of Toronto's Faculty of Law is almost $40,000 per year, with the other Ontario schools following closely behind Osgoode. Despite limited initiatives by the law schools themselves to ease the financial burden for some, there is no indication that these annual fee hikes are going to end anytime soon, or that the expected salaries of junior lawyers are likely to rise (particularly with ongoing pressure on lawyers' fees, the practice of law becoming more streamlined, and new technologies disrupting service delivery).

LSUC's hesitancy (or refusal) to seriously engage this issue seriously impairs the impact of its other equity projects and initiatives. In my view, there is very little point in ensuring that the tools of the licensing process are culturally sensitive, that legal workplaces understand how to foster inclusion, or that data is captured on the ratio of visible minorities in the profession if there is no thought given to how the overall pathway to the profession excludes or imposes barriers to equity-seeking individuals before they are even qualified to sit the bar exam or practice law. So long as the profession is hesitant to confront its own systemic accessibility problems, its other equity strategies will be no more effective at improving the face of the Ontario legal profession than Earth Hour is at winding back the clock on climate change.

(d) LSUC's Approach to Equity and Jurisdiction in Legal Education has been Inconsistent

The usual retort from LSUC has been that it has no jurisdiction over universities or law schools. LSUC claims that for this reason, it cannot do anything about tuition levels or universities' policies, meaning they cannot do anything to control financial accessibility before an individual applies to join the profession after completing their law degree. But this is plainly inconsistent with LSUC's own recent approach to equity concerns within law schools and exerting of jurisdiction over university policies.

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[8] Letter from Douglas Judson to Policy Secretariat, LSUC, in Response to the *Pathways* Pilot Evaluation and Enhancements to Licensing Report, dated October 19, 2016, pp. 2-3 [see attached].

A strong example of this contradiction has dominated the legal news cycle for the past three years. Since 2014, LSUC has been the forefront of a legal battle with Trinity Western University ("**TWU**"), in its bid to open a law school which is accredited as a prerequisite for admission to the licensing program of the bar in each province and territory. At the centre of this litigation is TWU's 'Community Covenant Agreement', which effectively bans LGBTQ-identifying[9] individuals from enrolling at the school. LSUC concluded that it could not accredit a pathway to the profession – like TWU's law program – which is not equally available to all qualified applicants. LSUC has successfully defended its decision at the Divisional Court[10] and the Court of Appeal[11], and will be appearing before the Supreme Court of Canada later this year.

On this issue, LSUC's own factum at the Court of Appeal outlines the historical basis for its jurisdiction over universities and law schools and its authority to require that all pathways to the profession are available on an equal basis. LSUC maintains, throughout, that it has never ceded this jurisdiction. As explained in the Facts section of their argument:

> 13. In 1877, the Law Society was given the express statutory authority to improve legal education, including making rules with respect to the admission of students-at-law and conditions of study and admission to the practice of law. In 1912, it was given the authority to establish and maintain a law school, including the control over admissions to the law school. Consistent with these powers, the Law Society continued to control the admission of students-at-law into the licensing process.
>
> 14. In 1957, following discussions between the Law Society and universities, the Law Society agreed to allow Ontario universities to develop an LLB program (with a pre-requisite of two undergraduate years). For the first time, the Law Society recognized degrees from law schools other than its own as satisfying a core licensing requirement. Until that point, the Law Society had maintained a monopoly on legal studies that led to being admitted to the Bar.
>
> 15. The inclusion of university-based law schools as providers of requisite legal education did not diminish or otherwise impact the Law Society's control over admission to the components of legal education necessary to obtain a law license in Ontario. The Law Society maintained its role as gatekeeper to the profession. Pursuant to the Law Society's relevant regulations, applicants for admission as students-at-law were required to have graduated from a law school approved by the Law Society. The Law Society set out clear requirements to be met by a law school in order to be "approved", including admission criteria.
>
> 16. Since then, the Law Society has continuously retained statutory authority over admission to the profession, including exclusive authority to establish the requisite classes of licence to practice law. It further has jurisdiction to prescribe the qualifications and requirements to obtain such a licence, including the terms, conditions, limitations or restrictions imposed on each class of licence" and "the qualifications and other requirements for the various classes of licence and governing applications for a licence". Furthermore, the Law Society has the authority to make by-laws "governing degrees in law" and "respecting legal education, including programs of pre-licensing education or training".
>
> 17. Pursuant to its by-law making powers, the Law Society introduced accreditation of law schools as part of its licensing process. By-Law 4 prescribes that one of the requirement for an L1 licence is, *inter alia*, a degree from "an accredited law school" An "accredited law school" is defined as a "law school in Canada that is accredited by the Law Society".

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[9] "LGBTQ" stands for lesbian, gay, bisexual, trans, and queer.

[10] *Trinity Western University v. Law Society of Upper Canada*, 2015 ONSC 4250, available at http://canlii.ca/t/gjxpw.

[11] *Trinity Western University v. Law Society of Upper Canada*, 2016 ONCA 518, available at http://canlii.ca/t/gs9d5.

18. Currently, the *Law Society Act* also codifies the Law Society's obligation to do what it has always done in determining access to the legal profession[;] namely, act in the public interest. Section 4.2 of the *Law Society Act* defines the Law Society's public interest mandate, and provides, *inter alia*:

> 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law
>
> 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
>
> 3. The Society has a duty to protect the public interest …

19. The Law Society has determined that it is in the public interest not only to have equal access to the profession, but also to have a profession that is diverse and reflective of the population of Ontario. Hence, the Law Society has adopted policies that promote equity and diversity and combat discrimination on any basis, including religion, marital or family status, and sexual orientation. …

21. Ensuring that access to legal education is based upon merit alone is especially important given that there is far greater demand for a legal education than there are law school spaces available. In 2013, there were approximately 9,000 law school applicants in Canada and only 2,782 places. In Ontario, the number of applicants was 4,758 for 1,502 positions. It is a reality that many qualified students aspiring to become lawyers are denied admissions. Consequently, as found by the Divisional Court, it is clear that, in this case, being eliminated from TWU as a place to attend law school means, for many persons, that their likelihood of gaining acceptance to any law school is decreased. In contrast, individuals who are willing to sign the Community Covenant, and attend TWU, will have greater access to the legal profession.[12]

LSUC went on to argue its case on this basis, as follows:

45. [A]s the Divisional Court found, the Law Society has at all times had the exclusive statutory authority in determining access to the Ontario Bar, including the legal education that is required therefor. As the Divisional Court further found, the Law Society has carried out its statutory mandate in respect of admission to legal education by acting to remove obstacles based on considerations other than merit.

46. As demonstrated by its policies for over 200 years, the Law Society has determined that a competent Bar can be best achieved by ensuring that admission to the necessary legal education is based on merit alone. In this way, equal access is an essential component of the Law Society's competence function. As the Divisional Court stated, "if the legal profession is open to everyone then, perforce, it is open to the 'the best and the brightest'".

47. … Competence of the profession is necessarily enhanced where the population of prospective candidates to the Bar is composed of persons selected strictly on merit, rather than artificially limited on discriminatory grounds.

48. The Law Society's mandate cannot be limited to mere assessments of competence of a cohort that results from discrimination. Personal characteristics cannot "be used inappropriately to permit the exclusion of people from activities for which, in terms of personal merit, they were qualified."

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[12] Factum of the Respondent, LSUC, dated February 1, 2016, Ontario Court of Appeal (Court File No. C61116) at paras. 13-21, available at https://www.startproud.org/wp-content/uploads/2016/03/Factum-of-the-Respondent-LSUC.pdf [emphasis added, citations omitted].

> 49. The Law Society is required to consider the public interest in carrying out its functions. As it relates to the profession's competence and the Law Society's role in accrediting law schools, the Law Society has reasonably determined that equal access to legal education is in the public interest. Indeed, the strength, integrity and culture of the profession begin at law school. Former Chief Justice Brian Dickson wrote:
>
> > I want to say a few words about the gatekeepers to legal education, namely those involved in the admission process. Those who fulfill this role are, in a real sense, the gatekeepers of the legal profession... the ethos of the profession is determined by the selection process at the law schools. In order to ensure that our legal system continues to fulfil its important role in Canadian society, it is necessary that the best candidates be chosen for admission to law schools... it is incumbent upon those involved in the admission process to ensure equality of admissions.
>
> That is why, in carrying out its functions in the public interest, the Law Society cannot be precluded from considering policies directly related to the admission of its prospective licensees. The Law Society cannot legitimately maintain its commitment to equality and diversity at the same time as it denies equal access to the profession. …
>
> 62. The legal profession's integrity depends upon the trust it can command in society. The Law Society's determination that adopting TWU's discriminatory admissions policy into the process to obtain an Ontario law license would be contrary to its statutory mandate and irreconcilable with its public interest mandate is, accordingly, reasonable.[13]

What these passages show is that LSUC has been unequivocal that its mandate cannot be limited to mere assessments of competence of a licensing cohort that is the result of an exclusionary process or a process that is not reasonably available to all qualified candidates.

So why are the profession's gatekeepers cherry-picking barriers to the bar? At least two ironies become apparent in LSUC's approach on TWU versus its wider inaction on law school accessibility:

- First, given the proposed size of the TWU law faculty, the pool of would-be lawyers that could find themselves subject to discriminatory treatment at TWU is likely smaller than the growing number of individuals who continue to be priced out or excluded by socioeconomic factors. LSUC has showed no motivation to address the latter.

- Second, because financial accessibility is relevant to equity, it appears that LSUC is willing to go to bat for equity on *some* law school policies that engage equity concerns but not others. The distinction appears to amount to the profession's politics and optics, and not any consistent policy. While it is 'easy' and somewhat in fashion to stand up against policies which advance blatant discrimination against an easily-identified group like LGBTQ people, often it is policies that exclude indirectly, or by their effect, that are more pernicious and difficult to identify. Yet, the distinction between the purpose and effect of policies should not be lost on lawyers, and victims of the latter should not be deemed less deserving of our regulator's attention.

The upshot of all of this is that the economics of legal education and training represent:

(i) a financial model that creates an unsustainable and worsening barrier to the profession,

(ii) that takes its greatest toll on otherwise qualified, equity-seeking candidates or those from groups that experience the greatest difficulty accessing justice, and

[13] *Ibid*. at paras. 45-49 and 62 [emphasis added, citations omitted].

(iii) is of the very type that LSUC itself has cited to withhold accreditation from a law program,

(iv) the effects of which undermine access to justice and the profession's ability to serve and reflect the public.

Despite exhaustive discussions of the licensing process over the past number of years, LSUC has declined to address this issue, and appears only willing to act to enforce the accessibility of law schools in select contexts.

(e) LSUC Needs to Coordinate Training and Cost Matters with Law Schools, and Use Law School Accreditation to Control Financial Accessibility

What emerges from the above reasoning is the need for LSUC to use its existing policy tools to improve the financial accessibility of the profession. Two measures come to mind:

- First, LSUC should coordinate the fee structure of the licensing program with Ontario's law schools. There is already some semblance of this taking place in Ontario, through the Lakehead University Integrated Practice Curriculum ("**IPC**") program, where applicants fulfill their practical training requirements during law school and pay one bill to do so. This would ease the burden on new calls instead of hitting them with a large one-time bill at the end of a costly degree program. Those whose employers pay their licensing programs could still strike arrangements to recover that cost directly from the employer once they are hired.

- Second, as in the TWU matter, LSUC should make the financial accessibility of law school programs a requirement for their accreditation, and this requirement should be reassessed on an annual basis.[14] In my view, <u>none</u> of Ontario's current law schools should be accredited if this was a factor LSUC was seriously enforcing. LSUC has very stridently advanced the position in the TWU litigation that it cannot rubber-stamp an exclusionary pathway to the profession. If it is acknowledged that financial accessibility is a component of equity and that financial inaccessibility has a disproportionate impact on equity-seeking groups – then LSUC should be prepared to defend an accreditation policy which targets exorbitant law school tuition.

At a basic level, even if the costs of legal education are not reduced from present levels, these measures could assist would-be lawyers in their financial planning at the outset of the lawyer education and training process.

5. <u>Licensing Policy Should Incentivize Practicing in Under-Served Regions or Areas of Law</u>

On a related note, I would encourage Benchers to consider ways to financially incentivize licensing candidates or new calls to pursue work in under-serviced regions of the province or in areas of practice with unmet need. The policies underlying the licensing process ought to be multi-dimensional and suited to address a variety of objectives, including these economic ones.

As a northern practitioner, I know that there are opportunities for fulfilling practices outside of major cities – often in communities where the local bar is greying with few successors in place. At the same time, there may be financial constraints that prevent a junior practitioner from accepting an (initially) lower salary in a smaller community or small practice. Incentivizes to relocate to

[14] I would suggest that the tuition schedule of a program be accredited by enrollment year (i.e., for all 3 years of the class of 2020, class of 2021, etc.) so as not to prejudice students who are currently in study who find themselves in a law program that has lost accreditation.

underserved communities are common in other professional fields, and offering them through the licensing process (or following the call to the bar or a given period of practice) would be aligned with LSUC's statutory duty to facilitate access to justice for the people of Ontario.

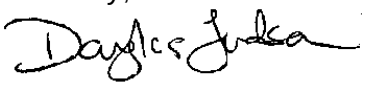
6. Conclusion

In closing, I encourage Benchers to be bold, decisive, and grounded in today's financial realities of access to their profession. Too often on matters of consequence or actual change for its industry, LSUC has appeared to appease the fears and indecision of its members over the public-interest mandate of its enabling statute.

Benchers' primary accountability is not to lawyer-constituents, but the public at large, and the public's best interests. Convocation's response to the *Dialogue* is an opportunity to shed optics which have sometimes suggested otherwise. Significant resources have been mobilized by the profession to reach conclusions on the question of licensing. It would be disappointing to see LSUC 'kick the can' on yet another determinative policy area or hew too close to the status quo when the future of the profession requires action on these urgent needs.

Thank you for reviewing my submission. Please feel free to contact me at the above coordinates should you have any questions.

Sincerely,



Douglas W. Judson

Encl. Letter from Douglas Judson to Policy Secretariat, LSUC, in Response to the Pathways Pilot Evaluation and Enhancements to Licensing Report, dated October 19, 2016

C. Equity Advisory Group, Law Society of Upper Canada
Canadian Council of Law Deans
Law Students' Society of Ontario
Roundtable of Diversity Associations
Ontario Bar Association

Enclosure

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October 19, 2016

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[via email: policy@lsuc.on.ca]

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing Report

To Whom It May Concern:

Please accept this submission in response to the *Pathways Pilot Project Evaluation and Enhancements to Licensing Report* (the "**Report**") that was issued for consultation on September 22, 2016.

1. Background

As President of the Law Students' Society of Ontario (the "**LSSO**") in 2014/15, I had the opportunity to engage the Law Society of Upper Canada (the "**LSUC**") on the issue of the Law Practice Program (the "**LPP**") and licensing process on several occasions. Former Treasurer Janet Minor welcomed student feedback, and took steps to include the LSSO in the Treasurer's Liaison Group and Early Careers' Roundtable. Today, the LSSO also participates in the LSUC Equity Advisory Group ("**EAG**").

I have attached the record of my prior correspondence with the LSUC about the LPP so that these documents may form part of the record under review in this consultation. These records disclose a number of student concerns about the administration of the program, and in particular, the LPP work placement arrangements. Some of these issues have been resolved over the course of the pilot period (at least insofar as disclosures have been made by Ryerson University, which delivers the English LPP).

2. The General Context of this Review

I encourage the LSUC to give substantial weight to the concerns of younger lawyers and law students that take part in this consultation process. The effect that changes to the lawyer licensing process have on students and other imminent members of the profession are of growing significance, yet continue to be under-appreciated by many senior lawyers. Even calls from the mid-2000s can fail to fully comprehend the limitations that a decade of skyrocketing tuition and increased licensing program costs have placed on the career prospects and possibilities available to new calls. The new economic reality of legal education and lawyer licensing has also exacerbated equity, accessibility, and health issues within the legal profession. These challenges will not be remedied by licensing policies that fail to account for issues that take shape at prior stages of the lawyer training pipeline.

As you will read in the submissions of others, the LPP has emerged as a means of joining the profession for those who have experienced barriers securing an articling placement. Too often these are racialized individuals or those from equity-seeking groups. I serve on EAG and the Ontario Bar Association (the "**OBA**") Pathways Report Working Group, and have contributed to their submissions in response to the Report. I am also familiar with the submission of the Roundtable of Diversity Associations ("**RODA**"). I adopt and underscore these submissions on the issue of accessibility for equity-seeking groups.

In my view, the LSUC must balance its obligation to provide fair opportunities for all who qualify to join the profession, while preventing individuals from groups who experience barriers securing articling employment from routinely getting shunted into an alternative stream.

3. Specific Issues with the LPP

I agree with the OBA, RODA, EAG, and others that the LPP should continue to be offered, at least for an extended trial period. I part ways with their submissions on a number of practical considerations.

More specifically, there are a number of basic fairness, financial, and structural problems with the LPP which I have yet to see articulated in any submissions I have reviewed. LSUC should use this review juncture to address these problems. I have highlighted three such issues in the following subsections.

a. Architecture of the LPP

First, the Report goes on at some length to discuss the perception that the LPP is "second tier". It is difficult to say (i) that the LPP is *not* second tier when the LSUC itself purports to end it on that basis, or (ii) how its graduates will ever shake that stigma if the program is ended on those terms.

This perception issue is not a reason to end the LPP. It is a reason to look for root causes and address them. In my view, the LPP is only perceived to be *second tier* because it has been positioned as a *second choice* for licensing candidates. There are two reasons this has happened:

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

2. The LPP work placements are not determined at the front end of the program – meaning that participants do not know if they will be paid (and if so, how much) for their placement when they enter into the program.

Under the present structure, to expect students to view the LPP as a reasonable alternative, on-par with articling, is to expect them to eschew rational economic decision-making. This could be remedied by fairly straightforward adjustments to the point of entry into the LPP and the transparency and timing of the work placements.

Overall, it would be a shame for the LSUC to discard an innovative curriculum and new approach to lawyer training in response to what is essentially a marketing problem.

b. Financial Fairness of the LPP

Second, the Report alludes to the financial fairness and sustainability of the LPP. As you know, the cost of the LPP is shared by all licensing program candidates (except those enrolled in Lakehead University's Integrated Practice Curriculum).

The cost of the licensing program went up by over $2,000 (with virtually no notice to students) when the LPP was launched. This has pushed the cost of the licensing program to over $5,000, which is a substantial burden for a law student to bear on the heels of that year's $20,000 to $35,000 tuition bill. Moreover, for articling students, this is an absurd price to pay for a binder of bar materials, two exam sitting dates, and a training program which is largely delivered by their employer.

The result of the fee increase is that each LPP candidate is the beneficiary of approximately $16,000 in cost offsets which are funded by articling candidates. While it would be unfair to expect an LPP candidate to shoulder the unabated cost of their program, it is also clear that the burdens and benefits which have been shifted are completely disproportionate and unfair to articling students. All qualified candidates should have access to the profession at a reasonable cost.

As such, if the LPP's costs cannot be reduced, the source of its funding must be altered. By all accounts, if the cost of administering the LPP were distributed among lawyers, their annual fee increase would be a fraction of the burden placed on students. Licensed lawyers are much better positioned to cover this cost, particularly as the LPP ages and more lawyers have benefitted from a licensing program subsidized by the profession at large.

I realize that lawyers may be resistant to this proposal. However, early Convocation records from the time the LPP was created suggest that the profession was supposed to cover the cost. Instead, the cost has been downloaded to students. In effect, the LSUC has funded its trial licensing program directly out of the lines of credit of law students. Sadly, some lawyers I have spoken to wish to keep the LPP as a means of promoting accessibility to the profession and understand that the cost to students is a barrier, but refuse to entertain the possibility of a small increase to their own bar fees.

c. Alternatives to the LPP

Finally, I note that it would be unfair to discontinue the LPP on short notice. As indicated above, law students determine the first stages of their careers during their time in law school. It is likely that many students are already expecting to enroll in the LPP to secure their license to practice.

It would be unfair to suspend the program on such a short time horizon when the LSUC has no turnkey alternative to replace the LPP or stem the articling crisis. Recent years have already seen a rise in unpaid articling "opportunities", and the LSUC should not adopt a course of action that risks normalizing this troubling phenomenon.

4. Enhancements to Articling

I have no substantive comments on the Report's recommendations regarding the articling program.

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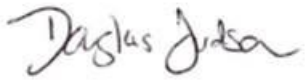
Thank you for the opportunity to participate in this consultation. Please feel free to contact me if you have any questions about this submission.

Sincerely,



Douglas W. Judson

Encl. Correspondence with the LSUC on the LPP

c. LSUC Equity Advisory Group
OBA Pathways Report Working Group
OBA Young Lawyers' Division
Roundtable of Diversity Associations
Law Students' Society of Ontario