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## FOLA'S RESPONSE TO THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE – DIALOGUE ON LICENSING

Submitted to: Professional Development & Competence Committee  
Dialogue on Licensing  
The Law Society of Ontario  
130 Queen Street West  
Toronto, Ontario  
[www.lsdialogue.ca](http://www.lsdialogue.ca)

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Thank you for the opportunity to provide written submissions on the future of licensing for the practicing bar of Ontario. The question of how lawyers are trained and evaluated to ensure competence and the provision of excellence in service to the public is one of central importance to the practicing bar of Ontario.

#### Who we are

The Federation of Ontario Law Associations (FOLA) is an organization representing the associations and members of the forty-six local law associations across Ontario. Together with the Toronto Lawyer’s Association, our members represent approximately 12,000 lawyers. The vast majority of these lawyers provide front-line services as the face of the legal profession to the general public. They are the primary providers of on-the-job training and the eventual employer of freshly licensed lawyers. As a result, their perspective on how lawyers are licensed should not be ignored.

In addition to the submissions we provide today, on behalf of these forty-six law associations, many of our members have also provided their own submissions.

#### Our mandate

The Law Society of Ontario has asked for input on four options for lawyer licensing. It is our understanding that these options have emerged from a committee of benchers following a consultation process. We note that this is taking place while two of the alternate pathways; the Law Practice Program offered at Ryerson University and Université d’Ottawa, and the Integrated Practice Curriculum, offered at Lakehead University, are still in testing phases and subject to review. As such, FOLA is concerned that there is an absence of evidence-based results from these alternatives to properly evaluate their effectiveness.

#### Methodology

In preparing for these submissions, our organization undertook a multi-dimensional approach to solicit input including:

- a) assembling a committee of lawyers from across the province representing diversity in background, regional representation and size of law firm;
- b) conducting an online survey, circulated throughout our membership, which garnered 753 responses, the results of which are attached at Schedule A; and
- c) coordinating two province-wide conference calls.



### Considerations

In seeking input, it is our understanding that the LSO wished to focus on five evaluative principles:

- Transitional training
- Competence
- Fairness
- Consistency
- Cost

### Any option that eliminates on-the-job training is not tenable

With two of the four options proposing the elimination of any on-the-job training, FOLA does not believe that either addresses the issue of transitional training. In our survey of practicing lawyers, an overwhelming 93.7% agreed that on-the-job training should be mandatory prior to granting of a license to practice law in Ontario. Many of these responses come from the lawyers who have mentored and/or hired new licensees. They represent the best focus group to evaluate the level of competency in the first years of practice.

### **Option 1**

This option contemplates retaining the current articling process as well as the two current transitional training pathways subject to any adjustments to accommodate new developments.

It is our view that the current model achieves the evaluative principles of ensuring that the candidate meets the goals established for transitional training as well as competence. It is suggested that there have been some marginal placements, which is a matter of concern; however, the approval of articling principals and the training that they provide falls under the regulation of the Law Society and should be addressed within that framework.

Our licensing system must be subject to periodic review and testing, to confirm that it continues to appropriately license those candidates who are prepared for entry-level competency in the provision of legal services to the public. This type of review includes the reporting requirements of articling principals, both in terms of the experiential training that they can provide to a candidate and the successful completion of those training measures will ensure a consistent level of training and exposure for all candidates.

The measure of fairness is difficult to measure or quantify. The notion of providing an opportunity for every candidate to complete the licensing requirements may not be realistic in light of the significant and continuing growth in the number of candidates. It is noted that the number of licensing candidates has increased by 70 percent in the last decade and with the introduction of more law schools within this country, the expansion of existing law schools and the access to foreign law schools will only increase this problem over time. Ultimately market forces may respond, as it has in other professions where there have been far more candidates than positions available.

In previous submissions, FOLA has advocated for enhancements to the bar exams, additional supports for lawyers providing transitional training, and reforms to the NCA process. Given our



changing demographics and the changing nature of our practice, the status quo cannot continue as a viable option.

## ***Option 2***

### *Transitional training and Competence*

A significant 86.97% of our survey respondents stated that their articling experience was either very (63.3%) or somewhat (23.67%) helpful in preparing them for the practice of law. Experiential training through work placements is used in a variety of professions as an effective and valuable educational tool. The completion of internships and work placements is mandatory in college programs such as social work, nursing, law clerks, and for admission to professions such as architects, accountants and medicine. We also require apprenticeship hours before granting licenses to plumbers, electricians and carpenters. It is not unreasonable to require prospective lawyers who intend to represent the public to have apprenticed directly under a licensee. The practice of law is challenging, and the skills required are broad. There has not been any evidence adduced to suggest that practical hours of training have produced less competent licensees. The only issue is availability of the training positions. As a result, in FOLA’s view, the Law Society needs to re-evaluate its role in the obtaining of on-the-job training.

It also cannot be overlooked that on-the-job training provides more than just experiential training required in order to be a competent lawyer. It provides mentorship and a network that can assist a licensing candidate throughout their career. In FOLA’s survey to the profession, 36.81% of the respondents reported that their first job as an associate was in the same firm as their articles.

### *Fairness - There are more placements*

One of the undeniable outcomes of the LPP/PPD and IPC programs is that there are more placements available. While there are several differences between these work placements and articling (i.e. the IPC program and many Ryerson placements are unpaid), 80.43% of our respondents said that they would be more likely to hire an articling, IPC or LPP student, or hire additional students, if there was funding to assist with the students’ salary.

FOLA notes that the LSO is concerned about unpaid articling positions and has considered mandating a minimum wage for placements. That same regulatory mandate can provide the LSO with the ability to cap wages for articling placements. One would hope that law firms which have been historically forced to compete with higher wages and benefits to attract the “best and the brightest” would welcome a cap on articling salaries that would allow more placements. In addition, the LSO could easily provide support to small firms in hiring articling students, particularly in family and criminal law, where there is the greatest need to promote legal representation. This should not be limited to financial support. Articling principals should receive support in orientation, teaching and assistive tools as not every lawyer is equipped with the skills to teach what they do. Such support could be provided by way of webinars or other on line learning, for which articling principals should be entitled to claim CPD credits.



In addition, financial support should not be limited to subsidizing salaries. The LSO could provide financial support on a more creative level such as negotiating for bulk purchasing discounts for computer and software and reduce the LSO fees for principals and students. The LSO could also disseminate information about salary assistance programs and grants that already exist, such as the Northern Ontario Heritage Fund Corporation, or tax credits that are available for individuals required to move for a work placement.

Secondly, the Law Society can assist in better coordinating articling placements. For the LLP/PPD and IPC students, practical training placements are administered by the respective institutions (Ryerson University, the University of Ottawa and Lakehead University). While the students from those institutions are encouraged to find their own placements, each of those institutions is actively involved in recruiting and soliciting work placements, pre-screening candidates and offering job interview coaching. In contrast, as far as we are aware, the Law Society does not provide this type of service. While the Law Society does maintain an Articling Registry for articling students and principals, that Registry is not easily accessible or well marketed. There are many prospective articling students and principals who are not aware that the Articling Registry exists. FOLA would suggest that every licensing candidate and every licensed lawyer should have access to the Registry as part of their Portal and efforts should be made to ensure that every candidate and principal is aware of the existence of the Registry and how it can be accessed.

As referenced in the Consultation Paper, only 10% of Ontario law firms currently provide articling placements. FOLA believes that with some support and creative thinking, that percentage could well be increased as there is far more potential within the profession to hire articling students than is currently being realized.

#### *Consistency*

There has been much emphasis placed on the lack of consistency in articling positions. To expect every articling student to have a similar experience is to ignore the scope of the practice of law. Students receive placements with practicing lawyers ranging from sole criminal defence lawyers to rotations at international law firms. They may work in-house at a hospital or a university, or at a legal aid clinic. Each of these opportunities will provide a very different experience and level of exposure to clients and the business of the practice of law. Each of these opportunities can also teach a student core skills. Articling principals need to be well briefed on the expectations of the training they will provide and the core skills they will be expected to purvey. Licensing candidates need to be better prepared for the realities of what working as a lawyer entails and the valuable skills they are garnering even if they did not obtain their ideal placement. Experiential training through work placements will remain as varied as the provision of legal services itself, and cannot and should not be expected to be otherwise. Consistency can be provided in other ways, which will be explored below.



*Closer look at the “enhancements”*

The “Options for Lawyer Licensing” Consultation Paper proposes several enhancements without fully exploring the impact these enhancements will have on the current system. The requirement for students to complete their bar exams prior to pursuing their transitional training could have a significant impact on the recruitment and reliability of work placements. The paper mentions that those students who do not successfully complete their examinations would be required to defer transitional training, without any analysis of this impact. Small businesses who have made room in their budgets for a student for a specific time may be both relying on that student to contribute to their businesses’ workload, or may not be financially able to provide that placement at a later date. Further analysis is required.

There is a discussion of introducing a new skills examination, without a comprehensive overview of what this would entail. What is described in the paper does not include any testing of the skills required in the practice of law, such as proper file maintenance, or operating of a trust account. Further analysis is required.

Different enhancements should be explored. For example, in the past, a bar admissions course has been a part of the licensing system, and remains so in other jurisdictions. The Law Society has advised that one of the reasons that the bar admission course was cancelled in Ontario was the difficulty many candidates had in relocating to Toronto, Ottawa or London to take the in-person course. However, with advances in technology, internet access and pedagogical techniques, we are no longer limited by in-person education methods. What the LPP/PPD programs have demonstrated is that legal education can successfully be provided online. We need to harness this incredibly powerful tool and consider re-introducing a bar admissions course. This will address consistency, as all students will receive the same training, fairness, as all students will be able to take the course in their own hometown, balancing child care, work and other obligations, and will enhance competency, as skills could be taught and tested within the program.

Once the committee sets aside any option that eliminates on-the-job training, and analyzes the results of its consultation process, an in-depth and valuable analysis can be conducted of the appropriate enhancements.

***Option 3***

In submissions made to the Law Society of Ontario on a myriad of topics, the consistent message has been: the LSO has rules and regulations in place, but is not adequately enforcing them. This is the case with advertising, title insurance, and many other issues faced by the LSO in its mandate to protect the public. To shift something as essential as the determination of competence of a licensing candidate to post call to the bar is far too big a risk to the public for the Law Society to make without a substantial increase to its budget for the creation of an entire department of auditors and evaluators so as to meet its obligations under the Law Society Act relative to standards of learning, competence and conduct.



Solo and small practitioners provide an integral function in rural and marginalized communities. They are on the front lines, providing legal services where the larger firms do not find profit. To add additional burdens, such as the cost of a new practice essentials course and additional audits (beyond the already existing audit completed within the first eight years of practice) is to deter these lawyers from serving these communities, and to declare by regulation, that they are somehow not as competent as those lawyers practicing in larger firms.

#### ***Option 4***

While there is much that can be said to support the great work being done by the Ryerson and Université d’Ottawa LPP/PPD programs, FOLA cannot support any option that eliminates on-the-job training. In addition, the costs of extending the existing program to make it mandatory for all licensing candidates, estimated at \$10-12,000 per candidate would be an incredible financial burden for licensing candidates to bear. This would potentially form a financial barrier to licensing (which based on the demographics of our province, would likely limit the access of racialized licensing candidates, rather than increasing access, as the LSO intends).

That being said, there are important and valuable lessons to be drawn from the LPP/PPD program. First of all, the much discussed “stigma” may not be particularly relevant, as 90% of Year 3 candidates are working in law-related roles, one year post-LPP. There are many students that are now choosing this pathway because of the training it provides, or because of its online delivery, making it possible to juggle family obligations or work commitments. Secondly, it has demonstrated that online delivery of legal education can be done successfully, which is discussed further in our comments on Option 2.

#### **Conclusion**

FOLA understands the huge undertaking that the Law Society has made and its inherent challenges. We commend the Law Society on its comprehensive consultation process. We maintain that standards for admission to the bar must remain high, and must include on-the-job training prior to licensing. We applaud all efforts to remove any barriers that might prevent or disadvantage certain segments of the population, but these efforts cannot diminish the high standards demanded of access to the profession. Standards of competence and integrity must remain the impetus behind the design and implementation of the Licensing System, as it is only well educated, well trained and well-prepared lawyers that serve the interest of the public.