



September 15, 2017

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

**RE: TORONTO LAWYERS' ASSOCIATION SUBMISSIONS RELATING TO THE DIALOGUE ON LICENSING – DISCUSSING THE REALITIES, CHALLENGES AND OPPORTUNITIES OF LAWYER LICENSING IN ONTARIO.**

The Toronto Lawyers' Association (“**TLA**”) is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide comment to the Law Society of Upper Canada (“**LSUC**”) in regard to the Dialogue on Licensing (the “**Dialogue**”), with a view to maintaining an appropriate and sustainable licensing system for lawyers.

The TLA is grateful to have attended and participated in the three facilitated in-person sessions, as well as the one webcast discussion relating to the Dialogue. The TLA has also carefully reviewed the reference materials that were provided by the LSUC for each session.

The TLA commends the LSUC for embarking on the Dialogue. As a self regulated industry, it is important that our profession to periodically review its licensing regime, with a view to considering ways for constant improvement.

We note that the LSUC is not the only law society taking on a review of its licensing regime. Indeed, the Law Society of England and Wales is currently responding to a proposal to introduce a Solicitors Qualifying Examination to replace the existing routes to becoming a solicitor in England and Wales.<sup>1</sup> This assists to illustrate that all licensing regimes should seek ways to improve.

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<sup>1</sup> <http://www.lawsociety.org.uk/news/press-releases/reviced-process-for-qualifying-as-a-solicitor-must-be-fair-and-realistic/>

## **Context**

It is worth being reminded of the following facts:

- The number of annual applicants to the licensing process in Ontario has increased by over 21% from 2010/2011 to 2015/2016, to approximately 2,400 annual applicants.<sup>2</sup> This growth is expected to continue.
- In contrast, the number of Articling placements in 2016 was 1,945<sup>3</sup>, which has been a relatively steady number. At present, the gap between the number of applicants and the number of Articling jobs is approximately 450 (and growing).

This increasing delta between the number of applicants and the number of available Articling placements is an important lens from which to consider the issues raised within the Dialogue. Indeed, it may be a key reason why the Dialogue is occurring. However, while this delta is an important issue, it should be kept in balance with other important elements within our existing licensing regime, such as whether Articling is an effective tool to train future lawyers. As is discussed further below, Articling is an effective educational tool in our existing licensing regime, and this view must not get forgotten in the rush to respond to the growing number of applicants seeking to be licensed to practice law in Ontario.

## **Preliminary Comments**

The TLA is concerned with the continued rising trend in the number of applicants to be licensed to practice law in Ontario. While this trend is most apparent within the NCA pool of candidates (62.2% increase between 2010/2011 and 2015/2016)<sup>4</sup>, there has also been a material increase in the number of candidates from Ontario Law Schools (12.9% increase between 2010/2011 and 2015/2016).<sup>5</sup> Moreover, the growth of graduates from Ontario law programs rose by a surprising 60% between 2007 and 2012.<sup>6</sup>

Having regard to the increasing disparity between the growing supply of lawyers when compared to the demand for lawyers, we recommend the LSUC take steps to discourage any future growth in the size of Ontario law schools, and also discourage any increase in the number of law schools in Ontario. As was stated in the reference materials, "*Law schools in the US are laying off faculty and decreasing enrolment by as much as half as new lawyers struggle to find jobs*".<sup>7</sup> While the US and Ontario are very different jurisdictions, our profession should be mindful of the issues associated with an oversupply of both lawyers and law students.

We also recommend that the LSUC take steps to communicate to the public the growing disparity between the supply and demand for lawyers in Ontario. As was stated in the reference materials, the "*excess availability of lawyers will most likely result in rising*

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<sup>2</sup> Topic 1: The Need For Change; pg. 18

<sup>3</sup> Topic 4: Transitional Training; pg. 18

<sup>4</sup> Topic 1: The Need For Change; pg. 18

<sup>5</sup> Topic 1: The Need For Change; pg. 18

<sup>6</sup> Topic 2: Market Dynamics and the Lawyer Profession; pg. 23

<sup>7</sup> Labour Market Trends and Outlook for Regulated Professions in Ontario, pg. 51

*number of law school graduates not practising law.*"<sup>8</sup> The TLA agrees. This is a message that needs to be communicated to the public, including to those attending post secondary institutions.

Below we discuss the TLA's views relating to:

1. Articling;
2. The NCA Process; and
3. Licensing Examinations.

### **Continued Support for Articling**

The TLA recognizes the long and important history of our Articling regime, and in our view, it should be maintained.

Articling continues to be the most common pathway to obtaining the required experiential training in order to be licensed to practice law in Ontario. There is good reason for this. The practical and real life experiences that candidates gain during their ten months of work is invaluable. Furthermore, Articling also allows candidates to develop working relationship within the profession, which assists Articling students in their career advancement. Moreover, Articling allows candidates to gain real life experience in order to assist them to determine whether they want to continue with the practice of law.

The fact that Articling cannot be offered to each applicant who wishes to be licensed to practice law in Ontario is not, in and of itself, a reason to consider cancelling the Articling regime. Rather, we encourage the LSUC to evaluate the Articling regime with a view to determining whether it is doing a good job of training applicants, while protecting the public interest and promoting access to justice. In our view, Articling achieves these objectives.

As the TLA stated in its comments to the LSUC in regard to the Pathways Report of September 22, 2016, the TLA also continues to support the Law Practice Program ("LPP") for a further pilot period. However, the TLA does not support the LPP replacing our current Articling regime.

Ultimately, it is important for applicants seeking to be licensed to practice law in Ontario to obtain practical and real life experience. Not surprisingly, this was a recurring theme raised by participants during the Dialogue sessions hosted by the LSUC. In our view, Articling provides the best opportunity to obtain the necessary real life experiential training. Our profession should be preserving and enhancing the Articling model, not seeking to abolish or curtail it.

### **NCA Process is in Need of Reform**

There are two categories of candidates entering Ontario's licensing process: (1) individuals educated in a Canadian law school (J.D./LL.B); and (2) individuals educated abroad or with civil law training in Canada who have obtained a Certificate of Qualification from the

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<sup>8</sup> Labour Market Trends and Outlook for Regulated Professions in Ontario, pg. 51

National Committee of Accreditation (“NCA”).<sup>9</sup>

Candidates from the above two categories have notably different failure rates on their first attempt at writing the LSUC’s licensing examinations:

- 13% of candidates with Canadian law school J.D./LL.B failed; and
- 47.1% of candidates with NCA Certificate of Qualification failed.<sup>10</sup>

The significantly higher failure rate for candidates with an NCA Certificate of Qualification suggests that non-Canadian common law degrees provide a lesser level of preparedness for licensing in Ontario.

We urge the LSUC to address this apparent gap in entry-level competence and readiness of NCA candidates by bringing the issue to the fore with the Federation of Law Societies of Canada. We further urge the LSUC to advocate for more stringent standards and robust NCA examinations that individuals with common law qualifications obtained outside of Canada or with civil law training in Canada have to pass in order to receive a Certificate of Qualification. This will help ensure that NCA candidates and Canadian-educated candidates are at comparable levels of readiness when they apply to LSUC’s licensing process.

The TLA further urges the LSUC to continue to collect and make publicly available data related to NCA candidates’ performance throughout the licensing process, including performance on the licensing examinations, and success in obtaining Articling placements or completing the LPP. This would allow the TLA and other stakeholders to monitor progress.

### **Licensing Examination: Increasing the threshold for what constitutes entry level competence**

With respect to the licensing examinations, the TLA recognizes that the current regime seeks to measure an objective standard of entry level competence. The TLA supports the assessment of the three levels of cognitive abilities that occur during the examination process, being (1) Knowledge and Comprehension; (2) Application; and (3) Critical Thinking – being application of knowledge in complex applied situations.

However, the TLA supports the view that the objective standard for these examinations ought to become more difficult and robust with a view to further enhancing the knowledge and skills of newly licensed lawyers and protecting the public. This in turn may have some impact on the number of new calls being licensed to practice law in Ontario each year – particularly if this is coupled with a public awareness campaign highlighting the disparity between the supply and demand for lawyers in Ontario.

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<sup>9</sup> The National Committee on Accreditation of the Federation of Law Societies of Canada assesses legal education credentials obtained outside of Canada, or in a civil law degree program in Canada, for individuals applying to a law society in a Canadian common law jurisdiction ([www.flsc.ca/en/nca](http://www.flsc.ca/en/nca)).

<sup>10</sup> Based on examination results of candidates who wrote the licensing examinations for the first time between March 2014 and March 2016, as reported in the Professional Development & Competence Committee’s Report to Convocation, September 22, 2016, p. 34. Available online: <http://www.lsuc.on.ca/uploadedFiles/PDC-Pathways-Pilot-Project-Evaluation-and-Enhancements-to-Licensing-Report-Sept-2016.pdf>

Of the 34,000 actively practising licensed lawyers in Ontario<sup>11</sup>, approximately 24,000 of these lawyers are in private practice.<sup>12</sup> In 2015/2016 the total number of applicants to be licensed was 2,376<sup>13</sup>, with approximately 2,200 new lawyers being called to the bar annually<sup>14</sup>. This annual number of newly licensed lawyers reflects approximately 9% of the total number of lawyers in private practice. This is a significant (and unsustainable) number of lawyers to try to absorb into the profession each year.

In contrast, the number of new physicians who enter the medical profession annually in Canada is approximately 3.5% of the total number of practicing physicians.<sup>15</sup> While the medical industry is publicly funded and very different from our legal profession, the comparison between the two professions is nonetheless informative.

Moreover, the Labour Market Report estimates that between 2015 and 2025, there will be 1.6 new licensed lawyers for every new practising position.<sup>16</sup> The impact of this statistic is that many newly licensed lawyers may be (1) heavily indebted; and (2) unable to find employment within the traditional practice of law. This should be of concern to the LSUC.

### **Recommendations**

- Maintain Articling as the core method used by candidates to obtain the required experiential training to be licensed to practice law in Ontario.
  - Incentivise firms to hire a greater number of Articling students, so that our Articling regime can grow with the upward trend in the number of candidates.
  - Some potential views regarding incentivising include offering a reduction in the annual dues owed to the LSUC for those lawyers who act as a mentor/principal to an articling student, and/or the LSUC more robustly encouraging firms of a particular size (i.e. in excess of 5-10 lawyers), to participate in the Articling process.
- Reform the NCA Process so that NCA candidates and Canadian educated candidates are at comparable levels of readiness when they apply to LSUC's licensing process.
  - This may require more robust and stringent NCA examinations in order for a candidate to receive a Certificate of Qualification.
- Increase the threshold for what constitutes entry level competence with regards to the Licensing Examinations.
  - This will result in better qualified lawyers and further protect the public.

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<sup>11</sup> Topic 1: The Need For Change; PowerPoint Slide 17

<sup>12</sup> Topic 1: The Need For Change; PowerPoint Slide 17

<sup>13</sup> Topic 1: The Need For Change; pg 18

<sup>14</sup> Topic 1: The Need For Change; PowerPoint Slide 17

<sup>15</sup> Topic 1: The Need For Change; PowerPoint Slide 18

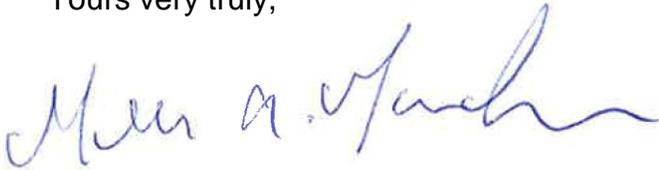
<sup>16</sup> Topic 2: Market Dynamics and the Lawyer Profession; pg. 24; Labour Market Trends and Outlook for Regulated Professions in Ontario; pg. 40

In summary, the TLA urges the LSUC to recognize the disparity between the supply and demand of qualified lawyers in its role as guardian of the public interest and licensor for those who can practice law in Ontario. Given that we have the privilege of being a self regulated industry, the LSUC carries a burden of protecting the public from the consequences associated with an over-supply of newly licensed lawyers. Some of these consequences may include inexperienced lawyers who lack mentorship and guidance, which in turn could impact the protection of the public.

The TLA appreciates the opportunity to comment on pressing and important issues raised by the Dialogue. The TLA looks forward to a continuing discussion with the LSUC as it responds to the challenges of regulating a profession with a growing supply of both applicants and lawyers.

Sincerely and on behalf of the Toronto Lawyers Association,

Yours very truly,



Melanie A. Manchee  
President  
Toronto Lawyers Association