The Voice of the Legal Profession

Consultation - Modernizing the Law Society of Ontario's Lawyer Licensing Candidate Assessment Process

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ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

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Introduction

The Ontario Bar Association ("**OBA**") appreciates the opportunity to respond to the recommendations in the Law Society of Ontario's Consultation document - *Modernizing the Law Society of Ontario's Lawyer Licensing Candidate Assessment Process*. We seek to provide solutions that address the issues identified in the Consultation Document while maintaining the public's confidence in lawyer licensing.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with more than 17,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public, and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA's Bar Exam Consultation Working Group ("**OBA Working Group**"). This was a purpose-built group comprising practitioners and law students from across Ontario, from rural communities to large cities in the Greater Toronto Area and far North. The Group represented a wide range of practice areas, firm sizes, years of call and levels of expertise.

Moreover, the OBA Working Group reflected a diversity of lived experiences and licensing pathways. Some members had completed the previously mandated LSO bar admission course, whereas others wrote or are preparing to write the current solicitor and barrister exams. Importantly, the Group also included internationally trained graduates who have navigated the National Committee on Accreditation ("**NCA**") process. Participants also had varied exposure to entry-level practical training, including the: Integrated Practice

Curriculum Program (IPC); Articling Program; Law Practice Program (LPP) and Programme de pratique du droit (PPD).

Comments & Recommendations

The LSO Should Not Eliminate Objective Final Assessments

In principle, the OBA Working Group agrees that the lawyer licensing process requires *some* form of modernization. The current system could be enhanced to better support internationally trained licensing candidates and to ensure that all licensees enter the legal profession with the foundational skills necessary to provide proficient legal services. Care must be taken not to discard valuable elements of the existing framework while addressing legitimate concerns.

Reform must prioritize the LSO's public-interest-protection mandate. The LSO regulates Ontario's lawyers in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct. The licensing process serves as a critical safeguarding function that enables the LSO to achieve such assurances. Reform efforts must strengthen, not weaken, the LSO's ability to fulfil this central public-protection mandate.

Objective final assessments are integral tools for assuring the public that candidates have been rigorously evaluated and meet the required level of competence. Thus, while the OBA agrees that updates and enhancements are required, it does not consider the online modules proposed by the Committee in the Consultation Document to be the most effective means of addressing the current system's inadequacies.

Respectfully, the proposal in its current form lacks the necessary Canadian research, broad-based stakeholder consultation, and data to support a reform of this significance, and to demonstrate whether the proposed model, if implemented, would effectively assess whether candidates meet the required entry level of competence.

Some specific concerns with the proposal are below.

Need to Tailor the Solution to the Issues to be Addressed

The OBA understands the need to address systemic and other issues that lead to lower passing rates for internationally trained candidates. There are, however, a number of options for tailored solutions that do not also run the risk of undermining public protection and public confidence, the way that the elimination of an objective examination does. The LSO should consider providing resources and supports targeted at overcoming unfairness. For example, if useful study guides and summaries are considered to be more readily available to those with extensive connections in Ontario and less available to those who may be new to the Province, the LSO could create study guides, summaries and similar material that would be available to all licensing candidates and could assist candidates in accessing peer communities in Ontario. We strongly encourage the Committee to undertake broad consultation with ITLs to more precisely identify the challenges they face and how to best support their needs. Any reform in this area should be grounded in the lived experiences of those it is intended to assist.

Lack of Data Demonstrating the Effectiveness of the Proposed Reform

The Consultation Paper heavily relies on research conducted by the Institute for the Advancement of American Legal System to support their claim that standardized tests poorly assess knowledge of black letter material. This institution is a think tank housed at the University of Denver, and it would be prudent to review further research studies, ideally Canadian, to determine the effectiveness or lack thereof of standardized tests such as the current solicitor and barrister examinations.

Moreover, the Consultation Paper notes similar reform has been implemented in other provinces. However, there is no data provided on the effectiveness of such reforms. For instance, it is unclear whether the number of professional conduct complaints in these provinces has decreased following the modernization. In addition, there is no qualitative

evidence regarding candidates' experience with the program, including whether they believe it adequately assessed their competency, and equipped them with the foundational skills necessary to enter the legal profession and provide competent legal skills. Notably, data regarding candidates who are taking their examinations in English and those taking them in French should be clearly distinguished to ensure accurate analysis and reporting.

Lack of Clarity Concerning the Cost Implications of the Proposed Reform

The Consultation Document notes that if a skills-based course is introduced, participants would pay a fee "that offsets the ongoing operational costs." However, it remains unclear what candidates would ultimately be required to pay.

Beyond the impact on participants, there is also concern about the unclear costs the LSO itself would undertake in creating and maintaining the program. Moreover, this consultation is limited to a single component rather than the entire licensing process, making it impossible to gain a clear understanding of the overall cost. Ongoing costs related to development, administration, updates, and technical assistance should be carefully considered to ensure the program's cost is worth its potential benefits.

Self-Directed Modules Carry Potential Academic Integrity Issues

The Consultation Document notes the security risks associated with the current examination process and its "constant presence of security threats, including fraud, high tech devices, and organized cheating rings." Respectfully, we urge the LSO to consider the similar risks associated with the proposed online modules. Specifically, the independent study aspect of the skills-based course arguably creates more opportunities for candidates to cheat. For instance, assessments may be completed by way of artificial intelligence (AI) or assistance from other candidates. Again, we urge the LSO to address concerns head-on and not through indirect means which raise similar and additional concerns.

Accessibility Considerations

The proposed reform would be delivered through "self-directed modules, workshops, and virtual law firms." Generally, such an approach would be a convenient way to access the course. However, there is concern over the equity issues that could arise from the assessment's dependency on the internet, as internet access is not evenly distributed or reliable across the province. Underserved areas, including Indigenous, rural and remote communities, may not have reliable access to the internet, which would render the course inaccessible for some candidates. Particularly given the concerns regarding the lack of legal services available in northern and remote communities, this could effectively exclude candidates who live or moved to these communities post-law school. Consequently, the LSO must ensure the licensing process is accessible to all candidates across the province.

In addition, the Consultation Document noted an increase in accommodation requests in the licensing examinations. Similar requests would likely be made for the skills-based course, and the LSO would need to ensure that the technological components are equally accessible to all participants and offer the necessary resources to support candidates.

Weakened Public Perception

The LSO regulates Ontario's lawyers and paralegals in the public interest by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct. In doing so, the LSO has an essential role in supporting the public's perception of the legal profession, enabling Ontarians to have trust in the lawyers who represent them.

The public, generally, has high expectations for lawyers, and a large part of their trust is likely tied to an understanding or presumption that Ontario lawyers have passed a rigorous objective assessment of their competency prior to being licensed. Accordingly, there is concern that transitioning from a standardized written assessment to a self-directed online course will negatively impact the public's perception on the credibility of the lawyer

licensing processes, thereby degrading public confidence in the profession. Much like justice, it must equally be done and seen to be done, and the public's perceptions of the profession are critical in upholding the LSO's regulatory mandate.

Transparency and Fairness Issues

Moreover, the LSO should consider the fairness issues associated with subjective assessments. Unlike the current process which relies on standardized and objective grading, the skills-based course would require human grading, introducing error and fairness issues associated with the subjective nature of the marker which could result in different grades to similar qualities of work. Even with publicly available rubrics and flawlessly impartial graders, an impossible ideal, the shift from objective testing to human-scored assessments injects subjectivity that inevitably erodes confidence in the process. The mere perception of bias is enough to undermine both candidates' sense of fairness and the public's trust in the profession.

French Language Considerations

For candidates who would choose to complete the proposed course in French, it would be essential to consult with the francophone community and address any issues of inequality in resources and support. We strongly encourage that the LSO considers the specific needs of francophone candidates and ensures its policies and resources are sufficiently accessible, going beyond simple translation.

Consideration of Licensing Reforms that Retain Objective Final Assessments

The LSO should consider reform options that enhance candidates' practical skills and reduce the disparities faced by internationally trained candidates, whilst maintaining an objective final assessment to confirm entry-level competence. Updates and enhancements[1] to the current licensing examinations should be considered and consulted on in detail. However, the general framework should remain as it enables a rigorous and objective evaluation of entry-level competencies wherein candidates are tested on substantive knowledge and professional responsibility. The Committee could consider the following reform options.

(1) Voluntary Online or In-Person Preparatory Course

To reduce disparities in bar exam outcomes between internationally and domestically educated candidates, the LSO should consider the benefits of a voluntary online or in-person formal preparatory course designed to support candidates in preparing for the solicitor and barrister exams (e.g., where to find and use indices, time management skills, etc.) and teach participants exam subject matter.

This course would precede the licensing exams and focus on the core competencies tested in the final assessments. The course should focus on, or offer, additional specific training, targeted at main issues faced by internationally trained licensing candidates to better support their success. If the Committee were to proceed with this reform, it should consider working with the OBA and subsidizing their participation in its development and delivery.

Notably, under this approach, enhancements would also be made to the licensing exams themselves, with a particular focus on improving transparency. The proposed preparatory

[1] For instance, query whether changes should be made to the current examination time limits, transparency measures and exam formatting.

course could ensure candidates have clearer information on what to expect on exams and the availability of necessary resources. In addition, changes would need to be made to ensure greater transparency post-assessment, particularly for unsuccessful candidates, ensuring they can fully understand their results and better prepare for future attempts.

Nonetheless, to address the Committee's concern that the current solicitor and barrister examination fails to enable "foundational practical skills", the LSO should consider the role that articling/LPP/PPD/IPC programs play in fostering such skills. In order to enhance this practical experience, the LSO could require principals to flag outstanding skills that the candidate was unable to acquire during their training. For each outstanding competency, the LSO, with support of the OBA, could provide targeted online learning modules (e.g., "how to compose a client interview"), filling any gaps in their practical training.

(2) The LSO Reintroduces the Bar Admission Course

An additional option is the reinstatement of the former bar admission courses, wherein candidates undergo a series of practitioner-led courses focused at developing core competencies and real-world practical skills. Importantly, each course would require candidates to pass an objective final assessment.

In doing so, all candidates would have comparable experiences in their exam preparation, likely narrowing the current pass rate disparity between internationally and domestically educated candidates. To further reduce such disparity, the LSO could consider providing official resources (i.e., indices or study guides) that better support the accessibility of exam preparation materials. This would ensure that candidates without established networks in Ontario can still access proper study materials.

Moreover, given one of the several objectives of the subject reform is to address "challenges currently faced by internationally trained law graduates and [to] better support their successful entry into the profession," the LSO may want to consider offering additional

courses, within the program, that address the specific needs of internationally trained candidates to better support their success in the assessment process.

Lastly, in considering the cost implications associated with this proposal, the LSO should ensure that all fees are outlined via a transparent fee schedule made available to candidates to sufficiently prepare them for the required costs.

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The OBA would be pleased to discuss this further and answer any questions that you may have.