



October 19, 2016

Paul Schabas, Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON, M5H 2N6

Dear Treasurer Schabas,

RE: Toronto Lawyers Association Comments on the Pathways Pilot Project Evaluation and Enhancements to Licensing Report of September 22, 2016

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 Pathways Report of September 22, 2016 (the "Report").

Similar to the diverse views expressed amongst the Benchers who authored the Report, the TLA Board members have differing views on the merits of terminating the Law Practice Program ("LPP") after only two years of operation.

Overall, the TLA believes that it is premature to cancel the LPP at this time. The main reasons for this are the significant efforts and resources expended to create this program, the recognition that the program is "*of very high quality*", and the fact that the LSUC does not appear to have any alternative plan in place to address the gap in the path to licensing that the LPP presently fills, particularly for many racialized candidates. After only two years, the LPP has not been in place for a sufficient length of time to conclusively determine that it is not serving its intended purpose, or that it is creating two tiers of graduated licensees. Instead, the TLA submits that the LSUC should continue the LPP program for a further pilot period of two years in order to allow for a greater volume of data to be obtained (i.e. more than 2 years). The TLA recommends that the LSUC obtain and review data over a minimum of a 4-year period prior to making any firm conclusions. Doing so will, in our view, lead to a better informed decision to either continue or end the program.

The TLA is also concerned that one of the reasons identified in the Report for cancelling the LPP is due to the perception of it being "*Second-Tier*". Given the long and important history of our articling regime, it is not surprising that some initial stigma may attach to the LPP. However, we are optimistic that any such stigma will likely erode over time, particularly as the profession becomes more generally aware of the "*high quality*" aspects of the program, as noted in the Report.

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The TLA is mindful of the concerns raised in the Report relating to the financial sustainability of the LPP. These concerns are significant and need to be addressed. Indeed, in order for the LPP to be sustainable in the long-term, a greater number of licensing candidates will need to commit to the program, and/or the overall costs of the LPP will need to be reduced. Again, during the next two years, efforts could be made to determine whether the overall per-candidate cost of the program can be reduced. During this time, we recommend that the LSUC continue to explore ways of driving down the costs of the program, and also consider potential additional funding sources.

During any further pilot period, the TLA also believes that the LSUC should attempt to analyze and explain the underlying reasons for the discrepancies between LPP candidates' results and Articling candidates' results relating to (1) the pass rate for first attempts at the licensing exams; and (2) first year employment opportunities. We also recommend the LSUC further examine the discrepancy between Canadian Law School educated candidates and Non-Canadian Law School educated candidates. Given the short timeframe for data in the Report, it is not clear whether this discrepancy is due to the LPP itself or other factors.

Ultimately, there is simply an insufficient body of empirical data available to justify cancelling a program that the committee found delivers an "*excellent program design and delivery by both providers*" and may "*excel*" over articling in some aspects. Moreover, extending the time for the pilot in order to gather more data is preferable to ending the LPP program based on a Report that only had full data from one year of the program (2015-2016 attendees only just having been called in June). If the program is continued, there would be a growing database of results in LPP candidates' licensing exam achievement and/or first year employment. Obviously, if the data collected over a longer period of time continues to show gaps in licensing examination achievement and first year employment success between LPP candidates and those who article, there may be sufficient justification to terminate the LPP program. However, the short-term data that is currently available does not warrant such a decision.

For the reasons outlined above, the TLA recommends that the LSUC continue the LPP pilot for a further two years.

Finally, the TLA wishes to address the much broader issue that arises out of the Report, which is a larger issue than the LPP itself – being unemployment or underemployment of lawyers in Ontario. The exponential growth of licensed members has produced an over-supply of lawyers in many areas of the province (and the GTA in particular). Our profession is in crisis. The TLA believes that this is the fundamental issue that the LSUC, in partnership with provincial education funding authorities, must urgently address. Too many lawyers can lead to clients being poorly served by lawyers unable to charge reasonable fees for necessary and valuable work. This problem is compounded by the increasing debt load of new lawyer licensees, who often carry education costs as a significant component of practice overhead.

The TLA proposes that the LSUC direct some resources to study the numbers of lawyers in relation to population size in other common law jurisdictions (i.e. the U.K., Australia, New Zealand, etc.), in order to determine the appropriate number of new licensees to be admitted annually. If, as is anecdotally anticipated, the population of Ontario can optimally support fewer

numbers than are currently entering the profession annually, then the government of Ontario must be persuaded to limit funding to control law school populations. This should include declining funding for new (or expanding) law schools in areas of the province that are already over served with lawyers, such as the Toronto area. The LSUC must also take a hard look at the number of licenses granted each year and consider whether admission to the profession should be limited to the number of licensees that can realistically be sustained by Ontario's population. The answers to this apparent over supply of licensees may impact whether there will be a long-term need for the LPP, in light of the existing articling positions available in the province of Ontario.

Finally, the TLA urges the LSUC to immediately communicate to law school applicants, before they commit to a path towards admission to the bar, the hard realities of the cost of a legal education and the employment prospects for new calls.

The TLA appreciates the opportunity to comment on pressing and important issues for the profession and looks forward to a continuing dialogue with the LSUC as it addresses the challenges of regulating the practice of law in the twenty-first century.

Yours very truly,

A handwritten signature in black ink, appearing to read "S. Mullings". The signature is written in a cursive, flowing style.

Stephen Mullings
President
Toronto Lawyers Association