



Law Society of Ontario
Consultation on Options for Lawyer Licensing

Submission by the Association of Community Legal Clinics of Ontario

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Introduction

The Association of Community Legal Clinics of Ontario (ACLCO)¹ welcomes the opportunity to provide comments on the Law Society's Consultation Paper on Options for Lawyer Licensing. These comments are informed by conversations that we have had with clinic lawyers and executive directors as well as with law students who are currently, or have recently, articulated or participated in an LPP program in a clinic.

The ACLCO has considered the four options outlined in the Consultation Paper. Our conclusion is that none of the options addresses completely the barriers to securing articling positions and the high cost of licensing. Option 2 - *Current Model with Enhancements* – does capture many of the concerns raised with us and maintains the value of practical experience which is most important to clinics. The Option provides for paid articles at minimum remuneration and allows students to begin earning and begin reducing their debt, or at least not adding to it.

This would be a positive step forward towards affordability of the licensing process and reducing inequities in the process. However Option 2, like the other options, contemplates increased costs. Many students, including students in clinic placements, have to pay examination fees out of pocket, adding to a financial burden for students and an attraction to the better paying private bar.

We have recommended in this submission several elements that we see as essential to mitigate the inequities and to address the affordability of licensing.

Our comments also outline the needs of community legal clinics to ensure that lawyers acquire practical experience during their transitional training to equip them to practice in poverty law areas and to acquire awareness and understanding of access to justice issues for disadvantaged communities.

The ACLCO urges the Law Society to consider the voices of clinic lawyers and licensing candidates in this important consultation.

Importance of Lawyer Licensing to Clinics

Articling programs in clinics have provided important training ground for future clinic lawyers and for lawyers in general to gain practical experience and knowledge in the area of poverty law. Licensing candidates in clinics gain exposure to and education in the legal issues facing disadvantaged individuals and communities as well as training in the variety of legal tools deployed in community lawyering.

¹ Appendix A to this Submission provides background information about Community Legal Clinics and the Association of Community Legal Clinics of Ontario.

Clinic clients by definition have low-incomes and come from marginalized communities. The nature of clinic practice is such that practical experience is invaluable for students to learn and for ensuring they have the competencies to practice clinic law.

Articling and LPP/PPD students have often extended their clinic's capacity to serve their communities. Hands-on experience is essential for the competence of licensing students to fill important roles in clinics.

Barriers to Equal Access to the Licensing Processes

As acknowledged in the LSO Consultation Paper, racialized students, students with disabilities, students from minority communities and members of other equality seeking groups have had significant difficulty finding articling positions. Barriers to gainful employment create substantial financial hardship for these licensing candidates.

Many students unable to secure articling positions have turned to the LPP/LPD. Some clinics have participated in the LPP program and have shared with the ACLCO that they have been impressed with the high calibre of candidates who have been placed in clinics for the experiential training portion of the program. Clinics remain, however, concerned with the inequity of the LPP students receiving no or very little remuneration as compared to articling programs. Clinics have been persuaded to take on LPP students, despite this concern, because the program benefits the LPP students by providing an avenue to licensing, especially for those students interested in clinic law. Clinics have also benefited from the diverse and expansive backgrounds that LPP students have brought.

However, our conversations with law students currently, or very recently, working in clinics, have led to the conclusion that the LPP/LPD is not a satisfactory alternative to articling for many students.

High Cost of licensing

Affordability of the licensing process is vital to ensure fairness in the licensing process. If the process favours those of mainstream backgrounds with substantial means, it cannot meet the Evaluative Principle of Fairness.

Similarly if one form of transitional training pathways provides minimum compensation and the other does not – the fairness principle is violated.

All of the Options in the LSO's consultation paper would result in higher Licensing Costs. Option 4 would triple the current cost which for many students is already onerous. The costs for Option 4 are estimated at an average of \$10,000 to \$12,000. This could be prohibitive for some students especially if transitional training is not paid.

Students already carry very high debt. Many students have to pay licensing fees out of pocket, adding to their financial burden. Students have told the ACLCO that the affordability of these fees is critical for a large number of licensing candidates.

The high cost of legal education resulting in high levels of debt can often force new lawyers to practice in legal workplaces where they can make more than in clinics. Clinics, who are funded by Legal Aid Ontario, cannot compete.

The ACLCO urges the LSO not to add to the financial burden already shouldered by licensing candidates. In addition to the fairness implications referred to above, high student debt serves as a substantial disincentive for newly licensed lawyers to work in clinics or other public interest positions where the compensation is lower than traditional private practice.

Recommendations for more equitable licensing

Paid articles are seen as the best option going forward as the program provides for critical practical experience and allows students to begin earning and reducing their debt or at least not adding to it.

The ACLCO supports a requirement that all articling positions pay minimum wage. This will help with affordability of the licensing process. Paid articles will also help support a model that encourages those licensees with an interest in poverty law to seek positions in clinics.

The ACLCO agrees with maintaining the articling program; however several enhancements or supports are required to address the barriers identified by clinics.

Supports in finding placements

If articling is maintained, the LSO must examine and analyze the structures and practices that have resulted in racialized students, students with disabilities and students from other marginalized groups having the most difficulty finding paid work.

Students, especially those from historically disadvantaged groups, require assistance to find placement jobs. LSO programs that assist candidates in their search for an articling position are useful but should be more robust and made widely available. LSO programs should focus more on hiring processes; affordability of the licensing process; and, should explore implementing affirmative action policies.

The LSO Recommendations regarding the Challenges faced by Racialized Licensees should be applied to the licensing process. Particularly helpful are:

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

Supports for licensing in clinic law or public interest settings

The ACLCO supports LSO programs that could result in more opportunities for articling in legal aid settings.

The profession also has an obligation to assist in ensuring candidates receive adequate and meaningful transitional training. Firms over a certain size should hire a mandatory number of students or contribute to a fund that ensures that there are sufficient positions in smaller legal workplaces and assists non-profit organizations to hire candidates. This approach would provide a concrete, practical and supportive avenue for the long standing obligation of the legal profession to facilitate access to justice.

Licensing Examinations

Successful passing of licensing exams as a pre-requisite to beginning articles is a potential barrier for students without substantial means. It is financially onerous for many students to pay the licensing fees, potentially totaling \$7,000., before they begin earning. This requirement would remove the option to work while studying.

The ACLCO recommends that licensing examinations should remain as they are currently scheduled: with exams taken during articling.

Any new Skills Examination that is introduced during licensing must cover issues related to access to justice and poverty/legal aid practice as well as client service skills and practice management in general.

Proposed Audits

Option 3 contemplates audits in the first few years of practice of licensees who practice in a firm of fewer than six lawyers. This requirement would be of particular concern for clinics that are mostly small legal workplaces, the vast majority employing fewer than 6 lawyers. The Consultation Paper attributes the need for this requirement to LSO data that demonstrates that sole practitioners continue to receive a significantly higher number and proportion of complaints, while licensees practicing in larger firms receive significantly fewer. This data, and thus the rationale for an added level of oversight, cannot be extrapolated to apply to community legal clinics for the following reasons:

- Clinics are subject to oversight regarding the quality of the legal services they provide by Legal Aid Ontario pursuant to the Legal Aid Services Act. All clinics are governed by Boards of Directors who are accountable to LAO and the communities served. All clinics must have complaints processes in place that provide for an escalation of the complaint to LAO if the complainant is not satisfied with the resolution at the clinic level.
- Potential students will view this as a higher burden and may therefore not choose to work in clinics.
- The clinic system has a robust learning and training program administered by the ACLCO with myriad of training opportunities covering substantive clinic law, as well as ethics and professionalism.
- Clinics through their Association, Legal Aid Ontario, collaborative programs and, learning and training programs have access to colleagues and practice supports even though they may operate in settings of fewer than 6 lawyers.
- The Practice Essentials Course that would be required for smaller workplaces perpetuates a heavier financial burden for clinic articling candidates; further exacerbating the differential in salaries that clinics can pay compared to larger legal workplaces.

Conclusion

The ACLCO welcomes the opportunity to provide these comments to the LSO as it considers options for lawyer licensing and urges the LSO to ensure that the licensing process:

- provides for critical practical experience;
- allows students to begin earning and reducing legal education debt;
- addresses the challenges faced by students from historically disadvantaged groups in finding remunerative articles;
- is mindful of and prepares students for practice in clinic, legal aid and public interest law settings;
- mitigates against disincentives to practice in publically funded offices that pay lower salaries than private practice;
- does not add to the substantial financial burden that students already carry.

APPENDIX

Background:

Community Legal Clinics & the Association of Community Legal Clinics of Ontario

The Association of Community Legal Clinics of Ontario (ACLCO) serves as the representative body of community legal clinics in Ontario. Community legal clinics are independent, non-profit agencies governed by boards of directors who are elected by and from the community. Clinics are funded pursuant to the *Legal Aid Services Act*, which names them as the foundation of clinic law, and receive most of their funding from Legal Aid Ontario.

Ontario's community legal clinics are instrumental in providing access to justice for low-income and disadvantaged persons throughout the province. Clinics deliver legal services that enable people to meet basic and fundamental needs: a source of income, housing and shelter, equality and human rights, access to health care, education, workers' rights and more.

There are 74 clinics active across the province that together employ hundreds of lawyers, licensed paralegals and community legal workers. The clinic system also includes a provincial association (ACLCO), and inter-clinic working groups occupied with substantive areas of clinic law. Clinics share a commitment to deliver equitable and accessible poverty law services across Ontario. Clinics work individually and collectively in the interests of their client communities and, in close partnership with other community and justice sector organizations.

Clinic lawyers practice in a setting which is unlike more traditional law practices. Legal services are provided other than on a fee-for-service basis, in a community setting, and, by definition, for disadvantaged and indigent clients. Clinic lawyers and legal workers provide an array of services including casework and representation, legal advice and referrals, community development, public legal education and law reform and policy advocacy for systemic solutions.

The ACLCO has served as the representative body of community legal clinics in Ontario since 1997. Since that date, the Association has developed expertise in the delivery of poverty law services through the community legal clinic model; continues to act in a leadership role to advocate for sustainable legal aid services in Ontario and; is recognized throughout Canada and internationally as a champion of community based legal aid services. The ACLCO communicates and collaborates regularly with government, funders, community and justice sector organizations regarding legal aid and community legal clinics. The ACLCO also provides membership services for its clinic members, including policy counsel, knowledge sharing, learning and training in clinic law areas and, is an LSO accredited provider of professionalism content.