October 25, 2018

Malcolm M. Mercer
Treasurer
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer:

RE: Response to "Options for Lawyer Licensing: A Consultation Paper"

As you know, The Advocates' Society, established in 1963, is a not-for-profit association of nearly 6,000 members throughout Canada. The mandate of The Advocates' Society includes, among other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

For the past several years, The Advocates' Society has taken a keen interest in the discussions surrounding changes to the lawyer licensing process in Ontario. The Advocates' Society has made submissions to the Law Society of Ontario ("LSO") on multiple occasions and participated in last year's Dialogue on Licensing facilitated discussion sessions across the province. We have also reviewed the LSO's paper entitled "Options for Lawyer Licensing: A Consultation Paper" ("LSO Consultation Paper"). It is with this backdrop that we make the present submissions.

The Advocates' Society applauds the LSO for undertaking a consultation process which has sought input from a range of stakeholders. We appreciate the engagement efforts that have been made to canvass many different perspectives on what are very challenging issues to grapple with.

As you will recall, in previous submissions, The Advocates' Society has taken the following position regarding licensing in Ontario:

- the Law Practice Program should be maintained pending the implementation of a single, unified licensing system;
- the unified system should afford appropriate experiential training;
- the unified system should be available to all qualified licensing candidates without market-driven or discriminatory barriers to entry; and
- the lack of available law firm positions should not be a barrier to licensing.

Having reviewed the options outlined in the LSO Consultation Paper, The Advocates' Society proposes that Option 1 be pursued. The Advocates' Society reaches this conclusion only as a default option. We feel there is insufficient data to evaluate any of the other options proposed in the LSO Consultation Paper, and as such we are unable to heartily endorse any of the options presented.

The Advocates' Society remains of the view that the ideal lawyer licensing system is a single, unified system and remains concerned that the perception of the current lawyer licensing system is that it is a two-tier system, where the Law Practice Program is perceived by many stakeholders as an inferior pathway to articling. The Advocates' Society remains concerned that the current two-tier licensing system may pose certain disadvantages to members of equity-seeking communities. While the LSO Consultation Report provides different options for a single-stream licensing system (i.e. Options 3 and 4), for the reasons set out below, The Advocates' Society is not comfortable recommending that either of these alternatives be pursued at this time.

The Advocates' Society's main challenge in evaluating the potential impacts of Options 3 and 4 is that we have not seen sufficient data with regard to either the LPP (or a comparable simulated, experiential learning environment with a short placement component) or an examination-only licensing system, even in other jurisdictions. In particular with respect to Option 3, TAS notes that no data has been provided which would allow one to assess whether jurisdictions that have such a system have more or fewer issues with competence than those, like Ontario, that include a significant experiential component. Further, the LPP is still relatively new, and its graduates have only recently entered the legal market as young lawyers. It is also possible that law firms will become more supportive of the program and the perceived stigma will lessen.

The potential effectiveness of these proposed options can only be properly evaluated with data on whether licensing candidates who complete these programs go into, and stay in, legal practice; where these candidates practice (e.g. how many practice as sole practitioners, or in small firms); and the number of claims against these candidates and how this compares to the number of claims against candidates who complete the traditional articling stream. By way of illustration, we know that the failure rate of the New York bar examination, which is an exam-only licensing system, is relatively high. However, we do not know whether this high examination standard generates candidates who are as competent to practice law as candidates who have completed both an examination and experiential training.

The Advocates' Society strongly urges the LSO to collect and consider data on the issues outlined above before pursuing either of these options.

Options 3 and 4 would represent fundamental changes to the licensing system in Ontario and their potential negative impacts must be effectively mitigated. In the absence of the data referred to above, The Advocates' Society believes that the undesirable elements in Options 3 and 4 outweigh the potential benefits of a single, unified system:

- Option 3 poses concerns with respect to the experiential training that licensing candidates will have when they begin to practice. While, as we noted in our letter of September 29, 2017, a unified licensing system could mandate further specific, supervised experiential training immediately following the licensing period, we reiterate our point above that there is insufficient data to show whether a licensing system which does not require experiential training generates more or fewer issues with respect to lawyer competence.

- Option 4 would provide a level of consistency of training across all licensees which would be closely monitored and regulated by the LSO. However, The Advocates' Society believes that the significant licensing fee this option would impose on candidates (estimated at $13,500 to $15,500 (plus HST) in the LSO Consultation Paper) would create an additional barrier to entry to the

profession which would be insurmountable for many potential licensees. The additional costs would essentially be equivalent to one-half to a full year of law school tuition.

The Advocates' Society also considered whether to recommend that the current licensing system be enhanced, i.e. Option 2. The Advocates' Society had the following concerns with Option 2:

- This option eliminates a candidate's ability to take the written examinations in a flexible manner. Some students decide to take the exams in different sittings to reduce the stress and time commitment required for studying with the examinations. Multiple sittings within the same year also allows a student who fails an examination to write the test a second time and still complete their transitional training with their graduating class. Students who fail an examination will now have to wait until another sitting of the examinations in order to commence their transitional training and their placement may no longer be available to them.

- The requirement that all articling and internship positions be paid is one that may have a significant impact on the legal market, including by eliminating training opportunities at some smaller firms or not for profit organizations that provide untraditional training opportunities to students.

- The increased costs associated with Option 2 could pose a barrier to entry.

- The requirement for passing the barrister and solicitor examinations as a prerequisite to transitional training poses some logistical challenges, including a licensing candidate missing the examinations due to a personal emergency (thus delaying the start of the experiential training process), the timing of articling recruitment which is prior to the licensing examinations and the requirement for firms that have hired articling students to make an offer conditional on the student passing the examinations.

Thank you for providing The Advocates' Society with the opportunity to make these submissions. As the LSO continues to examine different options for lawyer licensing, The Advocates' Society hopes to remain in conversation with the LSO with regard to these important issues.

Yours truly,

Brian Gover
President

C: Margaret Drent, Strategic Policy Counsel, Law Society of Ontario

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