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**Majority of committee pushes to end Ontario articling alternative*****Convocation to vote on future of training initiative called 'second tier pathway' to licensing***

By Cristin Schmitz

October 07 2016 issue

A proposal to end the pedagogically "excellent" but not "sustainable" Law Practice Program (LPP) that offers law graduates an alternative to articling in Ontario is sparking a vigorous debate among benchers of the Law Society of Upper Canada.

Convocation will vote Nov. 9 on a raft of recommendations made Sept. 22 by its 14-member professional development and competence committee about the 'Pathways' pilot project on articling and the LPP.

The program of experiential training was launched in 2014 with the aim of providing a route to licensing for hundreds of law graduates annually — including many who are racialized, or who graduate from U.K., Australian or other foreign-based law schools — who can't get paid articles in the province.

The committee's most contentious recommendation is the proposal by nine members to end the LPP pilot program in 2017, at the conclusion of its three-year mandate, with only three members advocating that it is too soon to abandon the innovative initiative as a failure. The program could have been extended for two more years had the committee found there was not enough evidence yet to evaluate it.

But the committee's majority concluded that despite the "excellent program design and delivery" by LPP providers Ryerson University (English) and the University of Ottawa (French)," the four months of "experiential training" plus a four-month work placement "does not appear to be providing an alternative to articling that has gained acceptance by candidates and the profession and that is sustainable in the longer term."

University of Ottawa law professor Joanne St. Lewis, a vice-chair of the committee and one of two members who abstained on the issue, said she would welcome suggestions before convocation votes as to how to revamp the program — which each licensee candidate subsidizes in his or her licensing fee to the tune of \$1,900 per year, and the profession (through the law society) pays in addition \$1 million per year.

"How do we construct something that is going to be not an endless sinkhole of money in this direction, but still meets the critical equity needs [of law graduates who can't find articling jobs], including the needs of linguistic minorities?" she asked. "That's really, really important to me. I'm not trying to figure out how to save a few pennies — I'm trying to figure out: How do we do this in a way that's sustainable?"

Imposing a levy on all Ontario lawyers to keep the program going is among the suggestions from LPP proponents. That idea deserves consideration, said Toronto litigator and bencher Julian Falconer, who spoke in favour of the LPP at the Sept. 22 convocation. "Nothing, as far as I'm concerned, is off the table in these discussions," he told *The Lawyers Weekly*. "Convocation is going to have to have a



University of Ottawa law professor Joanne St. Lewis, one of two law society professional development committee members to abstain from voting on a raft of recommendations that would include ending an alternative to articling program, says she welcomes ideas on how to revamp the initiative. [Roy Grogan for *The Lawyers Weekly*]

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substantive debate about these issues, so in my view, the sky is the limit in terms of options that we have to consider.”

Committee member Joseph Groia said he believes a levy “is a bad idea because what it really does is it simply says: ‘We’re going to have all lawyers pay for a program that needs to come to an end.’ ”

In Groia’s view, after many hours of studying the issue, “The evidence is clear and overwhelming that the LPP has created a second-tier pathway [to licensing]. The candidates have told that to the experts who have interviewed them; the profession tells us that by the way they look at those candidates. And I don’t believe — and I think it’s been demonstrated for the last 50 years — that you can have ‘separate but equal’ educational pathways,” he said. “I would say to the people who want us to continue: How many more disadvantaged, second-tier lawyers do you want to have called to the bar...and what do you propose to do to help them overcome the stigma that they now are really having to deal with as they try to become fully contributing members of the profession?”

Groia, of Toronto’s Groia & Company, favours scrapping articling and adopting a graduating licensing scheme. He said Ontario’s approximately 2,350 licensing applications annually are only expected to climb, as more law schools open in Canada and more Canadians flock abroad to foreign schools that provide training in Canadian law.

“The question that I think we really need to talk about is: Are we going to create opportunities so that no matter how many people apply to become a lawyer, we have to find a way to bring them into the profession?” Groia asked. “I don’t think we start this discussion about LPP by just accepting the fact that there is a crisis in the profession because there aren’t enough articling jobs for all of the candidates. I think we back up a step...by asking the question: How many candidates can the profession accommodate and should it accommodate? And to look at that question, of course, you have to look at how many legal jobs are being created for candidates after they get called to the bar; how do we improve access to justice; [and] how do we improve the competency of the profession? It becomes a very wide-ranging discussion...So I come to the LPP program by no means convinced that we need to create a second pathway in order to bring in more lawyers, because I don’t think anybody’s asked the question that is really a critical part of this debate.”

Toronto litigator and benchner Malcolm Mercer of McCarthy Tétrault told *The Lawyers Weekly* “to me the difficult issue continues to be that there are insufficient articling positions for the number of candidates who wish to be licensed,” and the professional development and competence committee “has concluded that the LPP provides good quality, but is perceived to be a second-class pathway by its own participants.

“The difficulty to me seems to be that ending the LPP, without having worked through what the alternative is, is to leave those who would otherwise be in the LPP, not in a second tier, but without a pathway at all.

“And that raises, I think, the clear question of whether or not [benchers] are required, as a regulatory matter, to provide a pathway when the market doesn’t provide sufficient articling positions — and I think that’s an issue deserving of close thought and if there are alternatives I’d like to understand what they are as part of that discussion.”

Falconer, of Toronto’s Falconers LLP, told convocation he supported the LPP’s creation in 2012 as a way to ensure that people would be licensed who would not otherwise get that opportunity. “I assumed that the program would struggle in its early days because there is not a single fledgling program that does not. I assumed we’d hit bumps in the road — that didn’t tell me that I’d want to throw out the baby with the bathwater.”

Falconer queried what benchers expected when they created the LPP. “I worry that at the end of the day, as we discard this program, I’m faced with the same problem all over again, which is people not getting licensed that should be licensed.”

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Falconer: Don't 'throw out the baby with the bathwater'

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News

Committee benchers question fairness, expense of LPP

CRISTIN SCHMITZ

Law Society of Upper Canada benchers Peter Wardle told convocation Sept. 22 his committee was unanimous that both articling and the Law Practice Program (LPP) provide effective skills training to law graduates.

“The tougher questions really revolved around fairness and sustainability” and a majority of benchers on the committee — who recommended terminating the LPP pilot project — felt those concerns “are not likely to diminish if we give the LPP another two years to run,” explained the chair of the regulator’s professional development and competence committee.

Wardle, of Toronto’s Wardle Daley Bernstein Bieber LLP, said the LPP has partly addressed the shortage of articling jobs, by providing an alternative path to licensing for about 230 graduates per year.

Yet there is concern the LPP unfairly stigmatizes candidates as second class, he said. “In the



Wardle

view of the committee there is convincing evidence that the alternative pathway of the LPP is perceived as a second-tier process, primarily by the candidates themselves. I emphasize the word ‘perception’ because there is no evidence to suggest that the LPP...is in fact second tier, or merits that perception.”

Wardle noted a declining percentage of LPP students — 27 per cent in year two versus 38 per cent in year one — report that the LPP was their first choice for

experiential training. The law society had estimated 400 licensing candidates per year would enter the LPP — the actual number is closer to 230. Moreover, there are more than 200 licensing candidates without articling placements who chose not to take the LPP. LPP licensing candidates are also hired, or hired back, at a lower rate than articling students, he said. And more appear to be going into sole practice. “Finally, many candidates have complained about financial affordability of the LPP in comparison to articling because the students are unpaid during their course component, and because some work placements remain unpaid,” Wardle said. “We have to determine: Are we creating a fair and defensible alternative for these candidates, or are we simply creating a second-tier process which has the potential to unfairly stigmatize, or to put it a little more simply, do we want to entrench a licensing system where one pathway is not accepted by candidates as equivalent to the other?”

As for financial sustainability, Wardle pointed out “effectively the entire licensing cohort is subsidizing...approximately 10 per cent through a licensing fee increase of \$1,900. It would be difficult to justify continuing this subsidy if the LPP becomes permanent. It simply wouldn’t be fair to those taking articling who have financial burdens of their own. However given our current numbers, if the subsidy were removed, the unsubsidized cost per candidate of the LPP overall could be as high as \$17,000, and the cost for the Ottawa [French] PPD would be significantly higher.” That problem wouldn’t exist if more candidates opted for the LPP, he noted.

The committee’s third concern, he informed convocation, is that LPP candidates perform comparatively poorly in the law society’s licensing examinations. The failure rate for the first attempt at the barrister and solicitor exams is 43 per cent for LPP candidates com-

pared to 16 per cent for articling candidates. Moreover about 20 per cent of LPP candidates from year one (45 people) have still not completed the licensing exams. “So these are candidates that are being subsidized by their cohort, and by the profession, for the cost of the licensing process who are simply not making it through the process,” Wardle said.

He noted about half of LPP candidates are internationally trained — made up of both returning Canadians and non-Canadians — and 47 per cent of the foreign-trained candidates are failing in their first attempt at the licensing exams.

That failure rate does not reflect on the quality of the LPP itself, Wardle stressed. “However it does raise questions about whether we are devoting a significant effort in terms of intellectual capital and funding to a relatively small percentage of candidates in the pool, some of whom are simply not ready, for one reason or another, to be licensed.”

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