Meeting of the Alternatives to the Exam Task Force
Oregon State Board of Bar Examiners
May 21, 2021
Zoom Meeting – Invites are sent via Outlook Calendar
Open Session Agenda

Friday, May 21, 2021, 1:30 p.m.

1. Call to Order/Finalization of Agenda

A. Roll of Attendees

2. Consent Agenda

A. Approve Minutes from February 19, 2021 **Exhibit 1**

3. Subcommittee Reports

A. Review SPA Subcommittee Report **Exhibit 2**
B. Review APA Subcommittee Report **Exhibit 3**
C. Review CAS Subcommittee Report **Exhibit 4**

4. Discuss Possible Oregon Model

A. Does a Majority of Members prefer any of the reported models? Vote
    1. If yes, will there be a minority report? Inform/Action
B. Could Oregon combine one or more models into one alternative? Vote
C. Does a Majority of Members prefer multiple alternatives? Vote
    1. If yes, which alternatives? Inform/Action
    2. Will there be a minority report? Inform/Action
D. If no majority, should all three reports be submitted to the Court? Vote

5. Drafting Committee

A. Majority Recommendation
B. Minority Report(s)

6. Next Steps

A. Deadline for final Report(s) is June 19, 2021 so BBX can review and comment
B. Schedule Meeting via Doodle for final review (Week of June 19, 2021)

7. Adjourn

Minutes of the Meeting of the Alternatives to the Exam Task Force
Oregon State Board of Bar Examiners
February 19, 2021
Zoom Meeting – Invites are sent via Outlook Calendar

1. Call to Order/Finalization of Agenda

- Meeting called to order at 10:05 AM

A. Roll of Attendees (captured by Mr. Wood)

B. Report by the Chair Ms. Perini-Abbott.

Ms. Perini-Abbott welcomed everyone to the meeting and for their interest in this important task force. Ms. Perini-Abbott spoke about the BBX's experiences in 2020, including the Court's offering of Diploma Privilege to 2020 graduates. The Court has tasked us with this important undertaking.

We invited members of the Court, department of justice, bar leaders, law students, deans and other members of the public to join this task force so we can gain a broad perspective if we are going to introduce an alternative pathway to licensure in Oregon. This meeting is meant to be a starting point for the sub groups.

C. Review Website for Agendas, Exhibits and Study Materials

The website for this task force includes many links for general perspectives on the bar exam and changes to the bar. Links have been included to learn more about alternative licensure models currently being implemented. Ms. Perini-Abbott stated that the BYU videos are great to watch, panels about alternatives to the bar exam is very helpful and was a good leading point for this task force. Please read, review, and watch videos to learn more as you have time.

2. Charge of the Chief Justice

A. Review letter from Chief Justice Walters

The charge of this task force from the court – is to access alternative paths to admission and determine what changes in rules would be needed to support them. If Oregon is going to adopt alternatives what would that look like? The court requests that the task force(s) and BBX complete their work and provide recommendations to the court by June 30, 2021.

3. Subcommittees

A. Review current US Alternatives to the Bar Exam

There are presently three alternatives in the US: Diploma privilege (Wisconsin), Portfolio Review program (New Hampshire), and Supervised Practice with a provisional license (DC and Utah).

B. Identify Subcommittees to Study Current Alternatives

We have identified three groups of what is happening and has been happening around the country. We will use the three alternative licensure models to identify subcommittees to study current alternatives.

Wisconsin: Curriculum-based; school run

1. Wisconsin Model – This model is limited to the two law schools in Wisconsin. This model is school run and a school approved program. The school is the entity that certifies for licensure. The BBX only handles C&F review and investigations.

New Hampshire: Skills based; school/BBX partnership

2. New Hampshire Model – Collaboration between the BBX and the law school. The program provides a list of courses for 2L and 3L students. Students must create a portfolio that is then submitted to the BBX. The portfolio is submitted to an assigned BBX member for review in place of a bar exam. This program is limited to one law school and a small class size. New Hampshire produces approximately 27 new lawyers a year through this licensure method.

Supervised Practice/International Models:

3. Canada provides supervised practice path to licensure that includes additional schooling. The DC Model provides a three-year supervised practice model that involves no additional schooling. Students work under a licensed attorney who then certifies that they are compentent to practice law. This model can create equity issues if the student does not have connections. Utah provides a three-month supervised practice model, but is limited to only schools who have an 85% pass-rate on last year's bar exam according to ABA statistics.

C. Discuss Subcommittee Assignments

We want the subcommittees to dig deeper into the three alternative licensure models we have identified. We want to find out what is working with these models and what is not. We want to vet the pros and cons of each model to create an Oregon model. The subcommittees will need to produce a written report to the task force.

4. Introductions of Participants and Selection of Subcommittees

A. Participant introductions

- *Each participate introduced themselves and the entity they are representing.*

B. Selection of Subcommittees

The court requests a report with recommendations by June 30, 2021. Moving forward from this meeting we want to break into subcommittees. We would like the work and research of the subcommittees to be completed by the start of May, so for the larger group can meet in mid-May.

- Everyone picked a subcommittee and doddle pools will go out to create and assign meeting days for the group. We would like to see the first meeting of the subcommittees to take place the first week in March. Each subcommittee will need to appoint a chair and note taker. Ms. Perini-Abbott will try to attend all meetings as the Chair of the Alternatives to the Exam Task Force, generally.

5. Schedule Recurring Meetings and Set Timetable for Process

A. Discuss Objectives – Next Steps

Each subcommittee is to become experts in their model, they will provide the larger task force with a summary of their research and exploration. They will narrate to the larger task force what the model entails. We would like to hear the pros and cons of the model researched. We want to know what the model requires. We would like to see the subcommittees connect with others in that jurisdiction to learn about the model from the experts. We want to know what the people on the ground see as pros and cons living through the models. Conclusions of research done should be documented and some recommendations for the task force to consider.

Message from Mr. Wood regarding the nest steps of each subcommittee-

You will notice the materials which apply to your group from the links send out with this meeting. You can do research to find people in each subcommittee to connect with. Author's names are listed in each article to dive further. In each subcommittee you can assign individuals to reach out to authors and those who have researched the model you are assigned to. Models are ever evolving, reaching out to the experts of these models will help us with our research and vetting. The law school connections on each subcommittee can help us connect with other law schools. The OSB admissions team is also a liaison to send agendas and help assist with these subcommittees. Each subcommittee will have an admissions staff member you can contact for assistance.

B. Review schedule for meeting objections

- A doddle will be sent out to schedule the first subcommittee meeting in early March.
- We would like to meet as a larger task force in mid-May to share research.
- Recommendations to the court by June 30, 2021. (BBX Meeting = June 25, 2021)

This task force is a public body holding and will have public meetings. Each meeting will have public notice requirements and no executive sessions. Minutes need to be taken. Additionally, all public meetings must be recorded and kept for 30-days or until minutes are drafted. Agendas and minutes will be saved on the Oregon State Bar website.

C. Set recurring schedule or establish scheduling process

- A doddle will be sent out to schedule the first subcommittee meeting in early March.
- Future meeting times will be discussed in the first subcommittee meeting.

Closing 11:15 AM: Ms. Perini-Abbott closed the meeting by expressing gratitude to the court for tasking us with this mission and to everyone participating today in this exciting work.

To: Bar Alternatives Committee Members
From: SPA Subcommittee Members
Date: May 14, 2021
RE: Recommendation to Implement New Hampshire Model

MEMORANDUM

I. Introduction

The current iteration of the bar exam does not adequately test skills that relate directly to the practice of law. That said, retaining a capstone experience for examinees that is designed to test minimum competency remains a worthy and important exercise. Replacing the current iteration of the bar exam with an experientially focused capstone project more strongly correlates to the actual practice of law. That project, which for purposes of this memorandum is referred to as the Oregon Experiential Pathway ("OEP"), should focus on assessing competency in legal research and writing, issue spotting, legal analysis, argument development, understanding of the law, attention to detail, written and oral advocacy, and teamwork — among other skills.

This memorandum seeks to begin answering the key and more detailed questions about how to build the infrastructure of what the OEP to licensure would actually look like.

II. Program Model Description

At a high level, SPA strongly recommends adoption of a two-year OEP program that includes a handful of key attributes: (1) incorporation of formative feedback from professors throughout, (2) intensive self-reflection by participants, and (3) summative feedback and assessment provided by a dedicated bar examiner at the end of each semester throughout the program.

At the core of the OEP is its recognition of the importance of experiential learning. That focus sends a strong message to the Oregon law schools about the need for curricular reform, reform that has already begun at each of the schools as inspired in part by the ABA. More specifically, law schools across the country are in a period of transformation—moving from traditional legal education to progressive, innovative, and experiential legal education. Although this trend toward experiential learning in law schools has been happening for quite some time, in 2015, the ABA turned this trend into a requirement with Standards 303 and 304, which mandate that every law student must complete at least six credit hours of experiential learning.

Historically, students satisfy the experiential learning requirement through law clinics and externships. However, in 2015, Standards 303 and 304 also introduced simulation courses as a third and new way to satisfy this experiential learning requirement. These still relatively new ABA standards around experiential learning have fostered innovation in the experiential learning space in law clinics, externships, and simulation courses at law schools across the country. Establishment of the OEP not only leans into that model but affirms its importance.

To do so, the OEP would focus on having students complete certain practice-based benchmarks, including for instance the creation of documents (transactional and litigation-focused), simulated client interviews, depositions, and trial practice. Further illustrations might include students negotiating

and/or representing actual clients in court proceedings. Those experiences could be supplemented by student exploration of ethical issues in the context of simulated exercises in addition to engaging legal reasoning and analysis, issue spotting, and problem-solving skills. Ideally, the OEP would also cultivate students' practice management skills, including how to address time constraints and appropriately manage deadlines. The OEP might do so by relying on exercises built around the use of fee agreements, engagement letters, as well as time tracking and billing.

Collectively, the OEP model would strive to adequately prepare students to be admitted to practice under Oregon's current rules. Accordingly, and upon successful completion of the program, students would be admitted to practice following graduation and clearance of a character and fitness investigation.

III. **Benefits of the OEP Model**

We believe there are an inordinate number of benefits to the OEP. To begin with, and perhaps most importantly, adoption of the OEP would instantly transform both legal education and bar admission while providing an alternative and durable pathway to licensure that directly addresses the gap between legal education and law practice. At a more local level, this experiential pathway would provide more lawyers to help address Oregon's well-documented access-to-justice gap.

Moreover, rather than measuring minimum competency, the OEP measures a candidate's ability to perform entry-level legal work. Graduates of the program would truly be practice-ready, having demonstrated the competencies needed to provide effective and responsible legal services. OEP graduates will have received robust formative and summative feedback, thereby giving them the confidence and experience necessary to effectively issue spot, interact professionally and competently with clients, gather relevant information, craft a compelling written product, and advance a client's position through oral argument and negotiation.

We also believe that the OEP can serve as a durable recruiting strategy for Oregon law schools and the bar more generally. This program could be another way to attract diverse students to study, stay, and a practice in the state. From an equity perspective, offering an experience-focused pathway for practice allows law schools to consider a more holistic and inclusive approach to admissions with less focus on LSAT/UGPA. And as discussed above, adoption of an experiential pathway to licensure will incentivize law schools to innovate in the curriculum rather than simply push bar courses.

We need not guess about the benefits of adopting an experiential model. Indeed, in New Hampshire, the law school runs the Daniel Webster Scholar Honors Program ("DWS") where students hone their skills in both simulated and real settings - counseling clients, working with practicing lawyers, taking depositions, appearing before judges, negotiating, mediating, drafting business documents - while creating portfolios of written and oral work for bar examiners to assess every semester. Through completion of an experiential capstone project, successful DWS participants pass a variant of the New Hampshire Bar exam during their last two years of law school and are sworn into the New Hampshire bar the day before graduation.

Focus groups of stakeholders report that DWS graduates are "a step ahead of new law school graduates." They also report that the feedback DWS participants receive, coupled with personal reflection, encouraged continual improvement and proved invaluable with respect to fundamental skill development. DWS graduates gain practical skills, confidence, and a cohort community.

The DWS approach also successfully meets students' expectations for practice readiness. From the student perspective, DWS students benefit from regular feedback gleaned from a career practitioner which provides a different perspective from that offered by a professor. This structure also provides additional support for students as they evaluate career options. Students engage in interviews with confidence knowing that they have firsthand experience with the language, projects, and expectations of practice.

We should also point out that DWS graduates are immediately employable because they are admitted to the bar following graduation and clearance of character and fitness. Employers appreciate that predictability and report not needing to invest as much in training and mentoring. They also know that these candidates are dedicated to practicing in the state, and they can hire with the confidence of knowing graduates have a portfolio of experience from which to draw when working with real clients.

The DWS program is summarized in the first four pages of the attached article which goes on to provide additional details.

IV. **Drawbacks of the OEP Model**

We discern few, if any, meaningful drawbacks of the OEP model but we mention in passing what we identified as the two core drawbacks. First, depending on its construction and implementation, maintenance of the OEP could prove to be resource intensive. Investments would need to be made by the bar, law schools, and broader legal community to make the program a success. Second, a defined OEP curriculum may necessarily limit a student's choices, which may discourage some students from participating.

V. **Recommendations for implementation**

Simply stated, we recommend implementation of the OEP. To take the first steps toward doing so, we specifically recommend the following:

1. *Expressly adopt the OEP as a pathway to practice*: Following adoption, the Supreme Court and OSB should set broad standards for the program and give the law schools the flexibility to implement the OEP based on their respective curricular capacity. Certain baseline classes might be required (e.g., Evidence, Criminal Procedure, Business Transactions, etc.), but schools should have the flexibility to design a program that otherwise meets the standards. We recommend that law schools adopt programs that include a curricula more diverse than just litigation and business transactions; doing so via requirements like Indian law, family law, and/or civil rights law may help to attract a diverse group of students.

2. *Assemble an Implementation Task Force*: Assuming the accomplishment of #1, we recommend forming an implementation task force that would be charged with (a) determining the required curriculum, and (b) creating the rubrics for student evaluation in order to maintain reliability and validity. We recommend the task force include a diverse range of stakeholders.

3. *Encourage law schools to follow holistic admission practices*: Admitting law students on more than an evaluation of LSAT/GPA will ensure the enrollment of well-rounded and diverse classes. Law schools will inherently be encouraged to do so if they have the confidence that all first-year

students can apply for the OEP program. Accordingly, we recommend making clear that application to the OEP will be open to all students in the spring of 1L year (as opposed to, for instance, having all available spots occupied by students who received pre-matriculation offers).

VI. **Looking ahead**

As we look ahead to the various options available to the Committee for recommendation, our Subcommittee respectfully offers the following recommendations.

First, if the Committee is inclined to recommend that the court adopt a diploma privilege model, we strongly recommend that such a model include robust requirements related to skills-based, experiential education. Such a model could include elements from the OEP program.

Second, if the Committee is inclined to recommend that the court adopt a diploma privilege model that includes a year of supervised practice, the subcommittee recommends the OEP program also be recommended as an additional, stand-alone alternative.

New Hampshire's Performance-Based Variant of the Bar Examination:
The Daniel Webster Scholar Honors Program Moves Beyond the Pilot Phase

by John Burwell Garvey

In 2005, after years of committee work and consideration, New Hampshire launched a pilot program intended to be a "variant of the New Hampshire bar examination"[1] known as the Daniel Webster Scholar Honors Program, named after one of New Hampshire's most distinguished lawyers. The program completed its three-year pilot phase in 2009. Upon thorough review, the New Hampshire Supreme Court unanimously approved the continuation of the program in May 2009. In May 2010, the third class of Webster Scholars was admitted to the New Hampshire Bar through this alternative licensing program. This article briefly reviews the history of the program, discusses the program requirements and evolution of the program's assessment tools, and describes the information that is being collected on Webster Scholar graduates.

What Is the Purpose of the Daniel Webster Scholar Honors Program?

The stated mission of the Daniel Webster Scholar Honors (DWS) Program is "Making Law Students Client-Ready." Although the program does not presume to graduate new lawyers who are ready to take on all levels of complexity, and recognizes that legal education is a continuing process, it does seek to provide a practice-based, client-oriented education that prepares law students for the tremendous responsibility of representing others.[2]

A stated goal of the program is to "significantly increase practical experience, supplementing learning in law school to reflect the reality of today's practice."[3] Upon completion of the program, Webster Scholars are expected to know how to advise clients and use existing resources; they are to be well versed in the substantive law and to have insights and judgment that usually develop after being in practice for some years.[4] The program was designed to add value to education and bridge the gap between education and practice by focusing on the 10 fundamental skills and 4 fundamental values described in the 1992 American Bar Association report *Legal Education and Professional Development: An Educational Continuum*, known as the MacCrate Report.[5] (See the sidebar on the following page for a summary of the MacCrate skills and values.)

How Was the Program Created?

The Daniel Webster Scholar Honors Program was conceived and championed by Senior Associate Justice Linda S. Dalianis of the New Hampshire Supreme Court. She believed, after serving as a trial judge for more than 20 years and as a state Supreme Court justice for several additional years, that "there must be a better way to prepare students to practice

Portions of this article are excerpted and slightly modified from John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 Duke Forum for Law and Social Change 101 (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477391.

THE 10 MACCRATE SKILLS AND 4 MACCRATE VALUES

Fundamental Lawyering Skills

1. Problem solving
2. Legal analysis and reasoning
3. Legal research
4. Factual investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and alternative dispute resolution
9. Organization and management of legal work
10. Recognition and resolution of ethical dilemmas

Fundamental Values of the Profession

1. Providing competent representation
2. Striving to promote justice, fairness, and morality
3. Striving to improve the profession
4. Engaging in professional self-development

Source: American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992).

law."[6] Justice Dalianis led an effort to improve legal education coordinated between the New Hampshire Supreme Court (which is the state's only appellate court), the New Hampshire Board of Bar Examiners, and the dean and other faculty from the state's only law school, Franklin Pierce Law Center.[7] Justice Dalianis created the Webster Scholar Committee to consider an alternative bar licensing program. The committee spent two years researching and brainstorming ways to implement such a program.[8] In addition to seeking to create an alternative to the bar exam that would actually improve the quality of new lawyers, the committee was dedicated to "incorporat[ing] the MacCrate factors at every step along the way."[9]

When deciding how to make the program a reality, the committee began by examining what courses Franklin Pierce Law Center offered at that time, what courses it did not yet offer, and what courses might be necessary to qualify a student to pass the bar.[10] Ultimately, the committee determined that it could accomplish its goals "by requiring certain courses that are already offered but have not previously been required, and by adding practice courses such as Advanced Civil Procedure/Civil Litigation Practice; Contracts and Commercial Transactions Practice (Articles 3 and 9); Criminal Law Practice; Family Law Practice; Real Estate Practice; and Wills, Trusts, and Estate Practice."[11] Additionally, the committee decided that these practice courses should be small, emphasize the MacCrate skills and values, and be taught in the context of real life.[12]

Because the program was intended to be an alternative to the bar exam, methods of assessment were a primary consideration. The committee determined that each Webster Scholar would "maintain a 'portfolio' that would contain all of the practice exercises as well as other materials, such as a video of the Scholar doing an opening statement, [leading] direct and cross examinations, conducting a mediation, or interviewing a client."[13] The portfolio would be reviewed by members of the Board of Bar Examiners.

The committee decided to implement the program initially as a three-year pilot program.[14] In May 2005, I was named the program's first director.[15] As recommended by the MacCrate Report, the program is a collaborative effort, which involves the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and Franklin Pierce Law Center. The program opened to students in January 2006 and graduated its first class of 13 students in May 2008.[16]

WHAT ARE THE PROGRAM REQUIREMENTS?

Webster Scholars participate in the DWS Program during their last two years of law school; they must meet all of the law school's requirements for

graduation in addition to requirements that are specific to the DWS Program (see the Requirements and Sequencing sidebar on this page). During each semester, in addition to electives, Webster Scholars must take specifically designed DWS courses, which generally involve substantial simulation, including Pretrial Advocacy, Trial Advocacy, Negotiations, and Business Transactions. They also take a miniseries that exposes them to Client Counseling, Commercial Paper (Articles 3 and 9), Conflict of Laws, and Family Law (including eight hours of training to be qualified as pro bono domestic violence attorneys who then volunteer[17] in New Hampshire's DOVE Project).[18]

The last semester of the program includes Advanced Problem Solving and Client Counseling, a capstone course that integrates and builds upon the skills students have already learned through the program and takes them to the next level, particularly emphasizing fact gathering (including witness interviewing), legal analysis, problem solving, and client counseling. The capstone course also introduces students to the practical aspects of law office management.

In addition to the six DWS courses, each student must take four additional courses that ordinarily would be elective: Business Associations; Evidence; Wills, Trusts, and Estates; and Personal Income Tax. Moreover, each student must have at least six credit hours of clinical and/or externship experience, including related course work.

Students must obtain at least a 2.67 (B–) in all DWS courses and at least a 3.0 (B) cumulative overall grade point average on a 4.0 scale. Students create cumulative portfolios of their work, including performance videos; the portfolios are reviewed each semester by assigned bar examiners, and the students also meet with assigned bar examiners once a

DANIEL WEBSTER SCHOLAR
HONORS PROGRAM
"Making Law Students Client-Ready"

REQUIREMENTS AND SEQUENCING
(As of July 2010)

GPA: Must *graduate* with a cumulative GPA of at least a B (3.0)

DWS Courses: No grade below a B- (2.67) in any DWS designated course

First-Year Credit Requirements (required for ***all*** FPLC students): 30

Upper-Level Courses (required for ***all*** FPLC students):
Administrative Process (3)
Criminal Procedure (3)
Professional Responsibility (3)
Writing Requirement (3)
Subtotal: 12

Additional Upper-Level Courses (required for Webster Scholars)**:**
Evidence (3)
Personal Income Tax (3)
Business Associations (3)
Wills, Trusts, and Estates (3)
Clinic/Externship (6)
Subtotal: 18

DWS Required Courses:
DWS Pretrial Advocacy (also satisfies 3-credit upper-level writing requirement) (4)
DWS Miniseries (2)
DWS Negotiations (2)
DWS Trial Advocacy (3)
DWS Business Transactions (3)
DWS Capstone–Advanced Problem Solving and Client Counseling (3)
Subtotal: 17

Total Required Credits: 77
Minimum Additional Elective Credits to Graduate: 8

Required Sequencing:*

2nd Year, *Fall:* DWS Pretrial Advocacy (4); Personal Income Tax (3)
2nd Year, *Spring:* DWS Trial Advocacy (3); DWS Miniseries (2); DWS Negotiations (2)
By the End of 2nd Year (*Either* Semester): Business Associations (3); Wills, Trusts, and Estates (3); Evidence (3)

3rd Year, *Fall:* DWS Business Transactions (3)
3rd Year, *Spring:* DWS Advanced Problem Solving and Client Counseling (Capstone) (3 credits)
By the End of 3rd Year: Clinic/Externship at least 6 hours total (including course work) (plus any prerequisites)

* DWS courses must be taken at time indicated; timing of non-DWS courses may be subject to modification by individual Webster Scholar request, primarily based upon scheduling conflicts.

year, in the spring semester, to go over the portfolios and answer any questions from the bar examiners. As discussed later, each Webster Scholar must also successfully complete a standardized client interview with a trained standardized client.

Finally, Webster Scholars must also pass the Multistate Professional Responsibility Exam (MPRE) and the character and fitness check. Students who successfully complete the two-year program are then certified by the Board of Bar Examiners as having passed the New Hampshire bar exam and are admitted to the New Hampshire Bar upon graduation.[19]

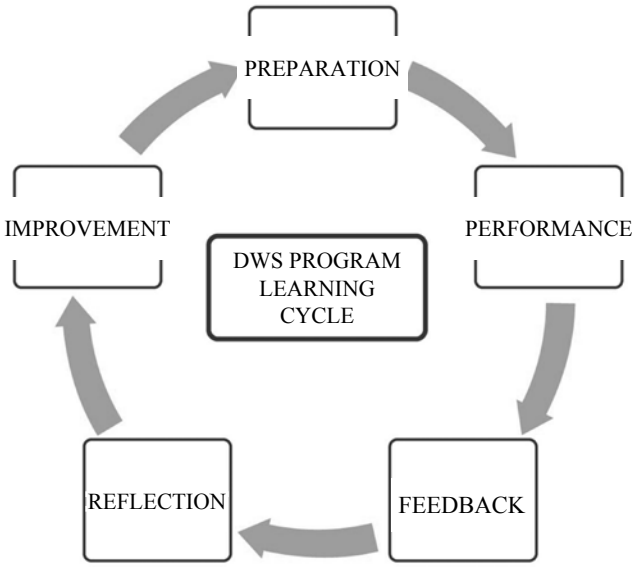
How Are Students Selected for the Program?

To keep the program sufficiently small and flexible during the developmental phase, it was initially limited to 15 students per graduating class. Based upon its early success, it was expanded to 20 students per class commencing with the class of 2011. The goal is to offer the program to all qualified applicants as soon as possible, but competition is currently steep.[20]

Students apply to the program in March of their first year of law school and are selected in June following their first year by a committee composed of professors and graduated Webster Scholars. Selection is based upon a personal interview and holistic assessment of each applicant, which includes evaluation of academic, professional, and interpersonal skills and overall ability to succeed in the program. Because enrollment is limited, the committee identifies a balanced and diverse group from the pool of qualified applicants.[21]

How Were Methods of Assessment Developed?

When the first class of Webster Scholars began the program in the fall of 2006, it was a first-time experience for everyone. From the beginning, the learning cycle for all participants has been preparation, performance, feedback, reflection, and improvement. This has been true not only for the Webster Scholars, but also for those involved in program design, implementation, and oversight. The assessment methods recommended by the Webster Scholar Committee were implemented, but all persons involved in program oversight realized that the assessment methods would need to evolve and be refined.



The program has a Supreme Court Oversight Committee, which includes Justice Linda Dalianis, Justice James Duggan, Franklin Pierce Law Center Dean John Hutson, Associate Dean Susan Richey, Board of Bar Examiners Chair Frederick Coolbroth, and the eight bar examiners who are assigned to Webster Scholars—which include two former New Hampshire Bar presidents, Justice Dalianis's permanent law clerk Anne Zinkin, and myself. The committee has met regularly since the program's inception and has made improvements and adjustments based upon the experience of each cycle. As a result, assessment methods have been subject to some evolution, and this is expected to continue as a

natural and healthy part of the program's development. The following section describes the program as it currently exists for the entering class of 2012.

What Assessment Methods Are Used in the Program?

Since its inception, assessment has been an integral part of the DWS Program, both as a critical aspect of the learning environment and as a means of measuring outcomes. Since the program has the dual purpose of educating students to be client-ready *and* testing their competency for actual bar admission, there is substantial formative, reflective, and summative assessment (see the sidebar on this page for an explanation of these different types of assessments). Unlike most legal education experiences and other bar examinations, the DWS Program immerses students in a loop of nearly continuous feedback. They study the basic law and then practice the skill. They receive feedback from numerous sources and reflect upon their own performance. They internalize the feedback and then perform the skill again, receiving additional feedback. The DWS courses are sequenced to be increasingly complex and to incorporate and build upon skills from the previous courses.

Assessment Types

Formative Assessment
Feedback during the course or the program, which the student can process in time to apply to another attempt at the particular task. For example, in the Pretrial Advocacy simulation, the "junior associate" receives feedback from the "senior partner" on the initial evaluative memo and rewrites the memo incorporating the feedback.

Reflective Assessment
Students reflect upon their formative feedback from others and evaluate their own performance, identifying areas of strength and areas in need of improvement. Students provide a plan for overcoming the areas in need of improvement. For example, at the end of each course (and before a summative evaluation), students write a reflective paper in which they identify what they learned from the course about themselves and about their performance, including a "plan of action" for addressing perceived weaknesses.

Summative Assessment
Final evaluation of the end product of any piece of the student's work by a professor or bar examiner.

Portfolios

Much of each student's performance is documented in writing and/or by video, becomes part of the student's portfolio, and is provided to the bar examiners for review each semester. (By the end of this year, the portfolios will be electronic. Students will upload their papers and videos, and bar examiners will be able to view them from their own computers on a secure website at any time.) In addition to the semester portfolio review, assigned bar examiners meet yearly with each student to review and discuss the portfolio and to evaluate the student's progress. Currently, each of the eight bar examiners is assigned to no more than five Webster Scholars (there are currently 40 students in the program).

Implicated MacCrate Skills

Webster Scholars are introduced to the concept of assessment from the very beginning. As soon as they are admitted to the program, they are required to read the MacCrate Report and to become familiar with the skills and values they will need to demonstrate by the end of the program. Beginning with an all-day orientation workshop, new Webster Scholars are informed of the goals for assessment, and the various assessment methods are explained. Since Pretrial Advocacy is the first DWS course, students are provided at orientation with a form entitled Pretrial Advocacy: Implicated MacCrate Skills, the first page of which is shown at the top of page 19.

The Implicated MacCrate Skills form shows the new students the various tasks they will be performing in the course, how those tasks relate to the MacCrate skills, and examples of performances indicating that the student is client-ready. In addition to the MacCrate skills, the form also uses information from a study conducted by University of California at Berkeley Professors Marjorie M. Shultz and Sheldon Zedeck in which they identify 26 factors related to effective lawyering and the behaviors associated with each factor.[22] Along with an Implicated MacCrate Skills form for each course, there is also a summary for the overall program that identifies the MacCrate skills and values each course is intended to teach.

MacCrate Benchmarks

In addition to the Implicated MacCrate Skills form, Webster Scholars at the orientation are also given the Pretrial Advocacy Benchmarks (Ability-Based Outcomes) form, a portion of which is shown at the bottom of page 19. (As with the Implicated MacCrate Skills form, there are Benchmark forms for all DWS courses.) This form is intended to capture and assess in summative form those outcomes identified in the Implicated MacCrate Skills form. The student and/or professor checks off the description that best describes the quality of the work performed.

As of the 2010 fall semester, the Benchmark form will be completed by the professor and the student immediately following each activity. (These forms will be completed online as soon as the electronic portfolios are available.) Joint completion of the form will provide feedback and reflection for the student as well as information for the bar examiner as part of the student's portfolio. Bar examiners have repeatedly reported that they gain great insight into a student's development and ability by reading the student's own reflection on and evaluation of work that is in the portfolio and available to the bar examiner for independent review. Bar examiners have also reported that they can review the portfolios over the two-year period and identify growth and increased maturity that correlate directly with the MacCrate skills and values. Instead of grading a two-day bar exam, examiners are essentially evaluating a two-year exam.[23]

Additional Assessments

As noted above, the cycle of assessment is continual. Each semester, the students create written materials that are reviewed first by professors and then by bar examiners. Through simulations using trained actors, real judges, and court reporters, students also experience various events common to practice, such as taking a deposition and interviewing a client. They argue a motion for summary judgment before various judges in the judges' courtrooms, and they negotiate with each other using various fact patterns mostly involving commercial matters. They perform as lawyers in simulated civil and criminal trials.

INSTEAD OF GRADING A TWO-DAY BAR EXAM, EXAMINERS ARE ESSENTIALLY EVALUATING A TWO-YEAR EXAM.

These events are recorded and become part of the portfolio for evaluation by the bar examiners each semester. (The depositions are on video and transcript.) The students also evaluate each semester with a reflective paper, which is part of the portfolio. In addition to the benchmarks and the written feedback on the student's work, the professors provide a written summary of each student's overall performance for the course, which is also included in the portfolio. Bar examiners meet annually with each student and go over the portfolio and discuss the student's progress.

PRETRIAL ADVOCACY: IMPLICATED MACCRATE SKILLS

Assessing Performance of Webster Scholars According to MacCrate Skills

Fundamental Lawyering Skill (MacCrate)	Examples of Performances Showing that Student Is Client-Ready *(Language primarily based upon other work performed on a grant to the principal investigators, Marjorie M. Shultz and Sheldon Zedeck, from the Law School Admission Council.)*	Project(s) Demonstrating Skill
1. Problem Solving **1.1 Identifies and diagnoses legal problems** **1.2 Generates alternative solutions and strategies** **1.3 Develops a plan of action** **1.4 Implements a plan of action** **1.5 Keeps the planning process open to new information and ideas**	—Student demonstrates sufficient grounding in substantive law to enable him or her to recognize legal issues and potential courses of action —Student is able to identify potential outcomes and consequences and develop contingency plans to handle various possibilities —Student listens well and tries to use the experience, knowledge, and insight of others in dealing with a problem	Week 1: Interview of potential client by plaintiff's firm attorneys; oral report to partner by defense firm attorneys Week 2: Evaluative memo to partner by plaintiff's firm attorneys; conference call with HR person by defense firm attorneys Week 3: Letter to client Week 4: Discovery plan Week 5: Discovery requests Week 6: Discovery responses Week 7: Further discovery plans Weeks 8 & 9: Depositions Weeks 10 & 11: Summary judgment motion drafted by defense firm attorneys Week 12: Opposition to summary judgment motion drafted by plaintiff's firm attorneys Week 13: Oral argument Week 14: Post-discovery memorandum to partner Week 15: Reflective paper Summative evaluation by professor

PRETRIAL ADVOCACY BENCHMARKS (ABILITY-BASED OUTCOMES)

Assessing Performance of Webster Scholars According to MacCrate Skills

Nature of Task and Performance Goal	EXCEEDS	MEETS	APPROACHES
Initial Memo to Partner FINAL **Review FINAL memo in conjunction with initial memo and comments** **Individual Work** **Goal—demonstration of adequate evaluative and writing skills for first-year associate** **MacCrate 1, 2, 3, 4, 5, 6, 9**	—Memo includes facts and law and is well-organized, coherent, and concise. Supervising attorney would *be confident that writer understood and appropriately analyzed issues.* —Incorporates feedback from initial memo and improves quality.	—Memo includes facts and law and is *generally* well-organized, coherent, and concise. Supervising attorney would *require some additional clarification* or analysis. —Incorporates feedback from initial memo and improves quality.	—Memo *lacks clear organization, coherence, or conciseness*. Supervising attorney would require significant additional clarification or analysis. —Fails to incorporate feedback from initial memo and improve quality.

Standardized Clients

In the summer of 2008, the program added a new assessment component by training eight standardized clients.[24] Standardized clients, similar to standardized patients used in medical schools, are actors who are trained to assess a student's skill in communicating with clients according to standardized criteria.[25] Each actor is given a persona, using a carefully prepared simulation. Although the roles are not scripted, the actors are trained to stay in character, based upon the detailed scenarios that are provided to them. Each actor is then interviewed by a student and acts like an authentic client during the interview. The interview is videotaped. Each interview varies, depending upon how the student conducts it and what questions are asked.

Using the written standardized criteria, which evaluate eight effectiveness categories on a scale of one to five, with five being the best, each client then evaluates the student's interviewing skills. The student must obtain at least 24 points (a "three" average on the scale of one to five) in order to pass this component of the exam. In the event the student does not receive a passing score, the video is reviewed and scored by a bar examiner other than the one normally assigned to the student. If the student does not receive at least 24 points from the second bar examiner, then the student must do another standardized client interview with a different standardized client and a different fact pattern.

Standardized clients enable students to learn important client relationship skills, particularly those associated with client counseling, and allow the DWS Program to assess student performance in those skills. Professors Maharg, Barton, Cunningham, and Jones have already published their findings on the validity of this form of assessment as used at the Glasgow Graduate School of Law.[26] The DWS Program is carrying this work forward and expanding upon it. In the future, the number of standardized client interviews for each student will be increased.

Commencing with the class of 2011 in the spring 2011 semester, in addition to the summative standardized client assessments, each Webster Scholar will have a summative portfolio review and oral review before his or her assigned bar examiner and another bar examiner not previously assigned. The two examiners will participate at the same time.

In What Ways Are Webster Scholars Being Studied?

Given the small number of Webster Scholars during the pilot phase, the current available information is anecdotal. Here are some facts currently available:

1. Three classes have now graduated. All three classes began with the pilot size of 15 students per class. In the first class (2008), 13 completed the program. In the classes of 2009 and 2010, 14 students completed the program in each class, making a total of 41 Webster Scholar graduates. With the expanded class size of 20, there are currently 40 students in the program.

2. The 27 Webster Scholars who graduated in the first two years took a total of 13 bar exams in states other than New Hampshire, including Colorado (1), Illinois (1), Massachusetts (7), New Jersey (1), New York (2), and Virginia (1). All passed. (The information is not yet available for the graduates of the class of 2010.)

3. For the purpose of evaluating the effectiveness of the program, all Webster Scholars give permission to Franklin Pierce Law Center for subsequent interviews of employers, partners, associates, peers, judges, colleagues, and the like. Information has not yet been systematically

obtained via interviews, but a survey is being developed. Unsolicited employer feedback and judicial feedback to date, however, has been universally positive. In fact, I now regularly get inquiries from prospective employers specifically seeking Webster Scholar graduates, and I was recently informed by a major New Hampshire firm that it had just hired its second Webster Scholar associate in large part because of its positive experience with the first.

4. With the cooperation of the New Hampshire Supreme Court, recent New Hampshire Bar admittees are performing the same standardized client interviews as Webster Scholars so that their performances can be compared. Bar admissions in New Hampshire are twice per year, and the information has been collected for one year from two groups of admittees. Results will be published when sufficient data is obtained, but early information does suggest some positive findings.[27]

What Are the Costs of the Program?

The costs of the program to date have been modest. Because the program is a joint effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, and Franklin Pierce Law Center, the program has received strong volunteer support from the New Hampshire Bar, active judges, court reporters, and others. As the program director, I co-teach Pretrial Advocacy and Negotiations, teach the capstone course, and supervise the other DWS courses. The courses are taught in sections of not more than 20 students, which is typical of upper-level courses at Franklin Pierce Law Center.[28] Adjuncts are currently used to assist in Pretrial Advocacy and Negotiations and to teach a section of Trial Advocacy. The adjunct expense for 2009–2010 was less than $20,000.

The judges, clerks of court, lawyers, and court reporters have all been excited to participate as volunteers, and there are more volunteers each year than are needed. The court reporters have donated eight "real time" depositions per year, at a value of many thousands of dollars. The judges use their own courtrooms, and court personnel consistently enjoy the experience of participating in the program. Lawyers regularly volunteer whenever available. Now that there are three classes of graduates, those graduates are volunteering in large numbers; as they gain experience, they will also be available as adjuncts. The standardized clients are paid 15 dollars per hour. One of the greatest benefits to the bar has been the strong working relationship that has developed among the volunteers and their sense of involvement in and responsibility for the development of young attorneys.

Implementation on a larger scale will be more expensive and will require more faculty effort, but work on economies of scale and increased efficiency is under way, including electronic simulation software and secure online portfolios. Franklin Pierce Law Center is working with Professors Maharg, Barton, and Cunningham to apply and integrate the Simulated Learning Environment (SIMPLE) software as a platform for running and assessing simulations.[29] Developed by Maharg, Barton, and others, and already operating in the United Kingdom, this transactional software is a vibrant learning opportunity and can provide economies of scale for running simulations as the number of Webster Scholars increases. Franklin Pierce is also working with Christopher Conkey, a principal at FifthYear-Software, which designed Notebuuk™ online

academic portfolios,[30] to develop an electronic portfolio software that will be called Lawbuuk.

Can the Program Be Replicated in Other States?

Each state has its own unique needs and challenges. I would not presume to answer for others the question of whether the DWS Program can be replicated in their states. But the DWS Program has been very successful in New Hampshire, and early indications suggest that it has been worth the effort.

In April 2010, Supreme Court justices, bar examiners, examination professionals, state bar leaders, and law school personnel from eight other states met for a day at Franklin Pierce Law Center; they listened to a comprehensive program description from various DWS participants, including justices, judges, lawyers, bar examiners, professors, and students. One of the presenters (by video) was Lloyd Bond, a retired Senior Scholar at the Carnegie Foundation for the Advancement of Teaching who was an author of the 2007 Carnegie Report entitled *Educating Lawyers: Preparation for the Profession of Law*.[31] Professor Bond previously taught measurement and assessment at the University of North Carolina and the University of Pittsburgh and had this to say about the DWS Program:

> As many of you are no doubt aware, the Carnegie Foundation, as part of its series on education in the professions, published *Educating Lawyers* in 2007. . . . In the book we called upon law schools to rethink the way they educate aspiring lawyers. . . . We called for nothing less than a sea change in the way lawyers are prepared. More realistically, what we hoped for was to nudge legal education in the direction of preparing students to be competent lawyers rather than competent law students.
>
> Quite independent of our book, Pierce Law has done just that, and much more. Never in our most optimistic moments did the Carnegie authors envision a school bringing . . . real stenographers, real paralegals, real lawyers, and yes, real judges into the training program. We can only hope that other state Supreme Courts will seriously consider the Webster Scholar method as an alternative approach to training and licensing.
>
> When I studied the program in depth three or so years ago, I said that it fused instruction, assessment, and practice in such an integrated way that the three became indistinguishable. The Daniel Webster Scholar Program at Pierce Law exemplifies the sea change we had in mind. . . .[32]

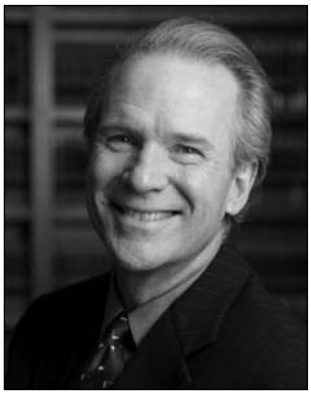
Franklin Pierce Law Center and the Supreme Court of New Hampshire are currently sharing information with other states that are interested in implementing similar programs, and welcome inquiries.[33]

Notes

1. N.H. Sup. Ct. R. 42(13).
2. For a thorough discussion of the history of legal education and the development of the DWS Program, *see* John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education,* 1 Duke Forum for Law and Social Change 101 (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1477391.
3. John D. Hutson, *Preparing Law Students to Become Better Lawyers, Quicker: Franklin Pierce's Webster Scholars Program,* 37 U. Tol. L. Rev. 103, 104–05 (Fall 2005).
4. *Id.*
5. American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 106 (ABA 1992) [hereinafter MacCrate Report].
6. Katherine Mangan, *N.H. Allows Law Students to Demonstrate Court Skills in Lieu of Bar Exam,* Chron. of Higher Education, Jul. 4, 2008, at 8.
7. Hon. Linda S. Dalianis & Sophie M. Sparrow, *New Hampshire's Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Program,* The Bar Examiner, Nov. 2005, at 23, 26 n.2.

   Franklin Pierce Law Center and the University of New Hampshire are in the process of fulfilling an affiliation agreement (likely to be effective at the time of this publication), the first step in a multi-year process toward full merger. Franklin Pierce Law Center will be named the University of New Hampshire School of Law pending approval of the affiliation by the American Bar Association and the New England Association of Schools and Colleges. The 2011 Webster Scholar graduates will graduate under the name of the UNH School of Law.

8. *Id.* at 25.
9. Hutson, *supra* note 3, at 103.
10. *Id.* at 105.
11. *Id.* at 106.
12. *Id.*
13. *Id.*
14. Dalianis & Sparrow, *supra* note 7, at 26. The class of 2011 is the first class to participate totally outside of the pilot phase of the program.
15. Press Release, New Hampshire Supreme Court, "Concord Lawyer John Garvey to Direct New Webster Scholars at Pierce Law Center" (May 12, 2005), *available at* http://www.courts.state.nh.us/press/2005/garvey.htm.
16. Thirteen of the original 15 scholars finished the program.
17. Pro bono work not only provides an opportunity for early exposure to clients but can also "strongly influence a student's future involvement in public service and even become a highlight of the law school experience." William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6, 138–39 (The Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).
18. The Domestic Violence Emergency (DOVE) Project is a program of the New Hampshire Bar Association's Pro Bono Referral Program that provides victims of domestic violence with emergency legal services. DOVE is operated in partnership with domestic violence services agencies throughout New Hampshire and relies on the donated services of specially trained attorneys. The DOVE Project provides free legal representation to qualifying clients at final Domestic Violence Restraining Order hearings under New Hampshire RSA 173-B, "Protection of Persons from Domestic Violence." For further information, see http://www.nhbar.org/uploads/pdf/DOVEbrochureNHEnglish.pdf.
19. *See* N.H. SUP. CT. R. 42(13).
20. Despite the stringent requirements, about one-third of the class (of approximately 150 students) has applied in each of the last two years.
21. For further detail regarding the selection process, *see* "Criteria for applicants," http://piercelaw.edu/websterscholar/criteria.php (last visited July 14, 2010).
22. Marjorie M. Shultz & Sheldon Zedeck, *Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering* (2008), *available at* http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf.
23. Bar examiners have stated that the total time they spend on their complete evaluation of five Webster Scholars each semester is comparable to the amount of time they spend on grading a single essay question for all exam takers of the traditional bar exam.
24. The standardized clients used in the DWS Program were initially trained by Paul Maharg, now of Northumbria Law School, and Karen Barton of the Glasgow Graduate School of Law. I am working with Professors Maharg and Barton as well as with Professors Clark Cunningham and Greg Jones of Georgia State University School of Law in connection with this aspect of the program, including conducting empirical research regarding a comparison of the client interview performance of Webster Scholars and other new bar admittees.
25. *See* Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence,* 13 CLINICAL L. REV. 1, 3–5 (Fall 2006), *available at* http://law.gsu.edu/ccunningham/PDF/ValuingWhatClientsThink.pdf.
    Franklin Pierce Law Center uses mostly local actors, who are paid 15 dollars per hour.
26. *Id.*
27. Clark Cunningham and I made a presentation at the 2010 AALS Conference on Clinical Legal Education entitled "Developing Criteria for Effective Client Communication from Standardized Client Assessment Protocols," during which Professor Cunningham presented some very preliminary observations. He can be reached at cdcunningham@gsu.edu.
28. More than half of all upper-level courses at Franklin Pierce Law Center have 20 or fewer students.
29. *See* The SIMPLE Project, http://130.159.238.105/?q=node/20 (last visited Aug. 3, 2010).
30. *See* http://notebuuk.com/ (last visited Aug. 3, 2010).
31. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6 (The Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).
32. Lloyd Bond, Consulting Scholar (retired), The Carnegie Foundation for the Advancement of Teaching, "Prepared Remarks to the Conference on a Performance-Based Approach to Licensing Lawyers: The New Hampshire 'Two-Year Bar Examination'" (Apr. 23, 2010).
33. I can be reached at john.garvey@law.unh.edu.



JOHN BURWELL GARVEY, Professor of Law and Director of the Daniel Webster Scholar Honors Program at Franklin Pierce Law Center (now University of New Hampshire School of Law) in Concord, New Hampshire, holds an A.B. cum laude from Harvard College and a J.D. cum laude from Suffolk University. Before becoming Director of the Daniel Webster Scholar Honors Program, he was a trial lawyer for over 25 years. In addition to teaching and heading the Daniel Webster Scholar Honors Program, Garvey serves as a part-time mediator and arbitrator. He is currently a member of the Law Education Analysis and Reform Network (LEARN), which is collaborating with the Carnegie Foundation for the Advancement of Teaching to promote innovation in law school curriculum, pedagogy, and assessment.

Apprentice/Practice Alternative to the Bar Exam

Draft 5/17/2021

Institute for the Advancement of the American Legal System - Minimum Competence Components

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of the legal process and sources of law
- An understanding of the threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the "big picture" of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning

The Apprentice/Practice Alternatives Subcommittee (APAS) met several times over the course of three months. The APAS researched and evaluated apprentice and practice models (APMs) currently in place in Canada, Utah, and Washington, D.C. Summaries of these programs are attached as a supplemental document. The APAS discussed the pros and cons of these models and envisioned ways in which an APM could be initiated in OR.

The APAS recommends that Oregon adopt an Apprentice Practice Model. The purpose of adopting an APM is to create an *alternative* to the bar exam for admission to the Oregon bar. The bar exam will remain as an option for licensure. An APM would allow Oregon to create an avenue for licensure that meets the Institute for the Advancement of the American Legal System (IAALS) minimum competence components while also ensuring consumer protection. The benefit of creating an APM will allow Oregon to reduce the barriers faced by some in taking the bar exam. An APM will allow Oregon to further its goals toward increasing access to justice.

The following draft APM proposal represents the work of the APAS. It will indicate where there was consensus, and areas where there are multiple things to consider in making a final decision. An implementation taskforce would need to further evaluate these issues.

1. Who is Eligible?
    a. Consensus point: This is an alternative admission to sitting for and passing the bar exam. People who are eligible to pursue APM for admission should mirror (but not expand or contract) the people who are able to sit for the bar exam. This can be accomplished by applying Rule of Admission 3.05.
    b. Consensus point: graduation from an ABA accredited law school. This is also covered by Rule of Admission 3.05.

c. Consensus point: no limitation on who can apply in a particular year. Recognition that there may be resource issues to consider depending on how supervisors are selected and other aspects of the APM.

d. Consensus point: no time limitation on when an applicant received their JD and when they apply for admission via the APM. If an applicant would be eligible to sit for the bar, then they would be eligible to participate in the APM. There may be a need to be a time limit on when supervision hours are attained in reference to application for APM. (see below).

    i. Alternative viewpoint: from a consumer protection perspective the passage of time may be considered meaningful and the implementation taskforce should consider whether there should be different requirements for people who have significant distance between seeking admission and attending law school. A potentially meaningful time frame would be five years because if one is inactive for five years, there is a requirement that one retake the bar. Thus, if one has been not admitted for five years after completing law school, an applicant can take the bar or participate in the APM with an increased term of supervised practice.
        1. This alternative viewpoint might make more sense if the APM is paired with another model (for instance one that included a requirement that applicants take certain classes in law school to be eligible to pursue an alternative admission).

e. Consensus point: the ability to pursue APM should not be tied to their law school's bar exam passage rate.

f. Consensus point: prior failure of a bar exam should not prohibit pursuing the APM.

    i. For both e. and f., the feeling is that tying the ability to pursue the APM to one's ability to pass a bar exam is counter to the APM. The APM recognizes a different way to establish minimum competency and should not be tied to an ability to pass the bar exam.

g. Consensus point: All other admission requirements still required (i.e. MPRE, character and fitness review, etc.); this approach is only a substitute for sitting and passing the bar exam.

2. <u>What are the requirements?</u>

The APAS discussed requirements for an APM at length. The APAS did not come to consensus on all requirements, but did come to consensus on many elements that should be included. Points of consensus are that all requirements should be designed using an equity lens and be designed to protect the consumer.

Supervised Practice leading to licensure

a. How long? Additional consideration of how long the period of supervision should be, is needed and should be considered by the implementation taskforce.

   i. The Canadian provinces, with the exception of Ontario, require a period of apprenticeship ("articling") after law school of between 9 and 12 months. In addition, they all have some type of exam(s), most of which are spaced, practice oriented and very passable. There is no uniform bar exam like the multistate exam. Some provinces have also designed practical training programs that are required in conjunction with the articling term to prepare lawyers to be competent practitioners. In recognition of a shortage of longer articling positions, Ontario has an additional program ("LPP") for licensure that allows students who have graduated from law school to attend a 4-month program that simulates the kind of training and experience they would receive as an articled student, followed by a 4-month period of articling with a qualified lawyer.

   ii. The Utah program is temporary. It allows for Diploma Privilege after 360 hours of supervised practice.

   iii. The Washington D.C. program is temporary and allows for licensure after three years of supervised practice.
      1. Additional information on these three models can be found in the supplemental materials.

The APAS agreed that the period should be in months, not years, and that the time period should be expressed in hours to avoid ambiguity. The amount of time that had the most consensus was 1000 to 1500 hours, which would need to be accomplished in a set-period of time. Notably, the majority agreed that the supervised work could take place during law school or after graduating with an APM supervisor. However, if the work takes place in law school, there were three points that the APAS thought were worth considering further. First, there should be a cap on how many hours can be earned while in law school. Second, the work must qualify in all other respects for the parameters of practice hours in the program. Third, there should be a cap on how long those hours can be used. For example, one option could be that they can only be used if the person enters the APM program within five years of graduation.

An alternative model could be a well-designed practical training program to accompany a period of supervised practice with a practicing Oregon lawyer. The total period of practical training plus apprenticeship should be no less than 8 months' post law school graduation. This is similar to the Ontario model, described above. Given equity concerns with the traditional articling process (see section iv.1 below), Ontario implemented its LPP program. above. In Ontario this program is coordinated by the bar association and paid for with fees paid to the bar. This type of instructional/skill development curriculum could be an alternative to supervised practice, or could be created in addition to a supervised practice model. (The British Columbia Bar also provides a

standardized practical training program that is required in addition to its longer 9-month post-graduation articling period.)

b. What type of work? The majority agreed that the supervised work could take place during law school or after graduating with an APM supervisor. There are several issues to consider where there was not consensus.
    i. The supervised work allowed would need to be consistent whether done in law school or after graduation. It could include time spent in any activity related to developing legal competence (whether paid, unpaid, pro bono, or low bono) including, but not limited to, all activities related to the representation of clients, assistance and counsel to judges, advising businesses and their employees, developing or implementing policies and practices for nonprofit organizations or government agencies, meeting with the supervising attorney or attorneys, CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice (up to 10% of total hours).

    ii. Timing of supervision: it was generally agreed that the supervised practice needs to be relatively close in time to when the person is seeking admission. For example, a person who graduated from law school 10 years ago would not be able to use hours of supervised practice that occurred in law school towards their minimum requirements for the APM. This doesn't mean they cannot participate in the APM, just that they would need to complete all requisite hours close in time to when they initiated participation in the APM for admission.

    iii. Where supervision takes place: more consideration is needed on how to evaluate supervision that takes place outside of Oregon (either before or after graduating from law school.) An implementation taskforce would need to consider whether any supervision outside of Oregon should be counted.

    iv. Consensus point: work can be paid (and should be paid).

    v. Legal aid issue – if people can qualify for supervision through pro bono work, we need to have mechanisms in place to support legal aid and other pro bono service providers. They do not have the resources to supervise an unlimited number of people to the extent that could be needed.

c. Who can supervise?
    i. The supervisor must be a licensed Oregon lawyer with a minimum of 5 years of experience, with two of those years being in Oregon, and no record of public discipline. Discussion included allowing federal court judges not licensed in Oregon to supervise, but no consensus was reached on this point.

    ii. Guidelines will need to be set for how supervisors are chosen/approved/evaluated.

1. There was general agreement that supervising attorneys would be given guidance focusing on both their tasks/obligations as supervisors as well as educating them on the eligibility requirements for admission to practice in OR. The group did not discuss training details, but the models reviewed provide multiple training options to consider.

d. How can the APM program ensure that there are sufficient supervisors?
   i. One issue that some of the Canadian articling programs have experienced is that not all participants have equal access to qualified and willing supervisors. The Canadian program that have been in place for decades are now being evaluated and criticized for equity barriers. It can be easier for dominant culture applicants to get supervisors than non-dominant culture applicants if the APM allows participants and supervisors to self-select. The APM could be just like a job where an applicant is hired and the employer is the supervisor and helps the applicant become licensed. Although articling is the only option for licensure in Canada, which creates supply/demand issues, the group expressed concern that barriers to finding supervisors might still exist if the APM were simply an alternative path to admission, particularly for individuals from non-dominant cultures. The group discussed the Ontario LPP alternative as one way to address this issue. Also, some noted that law schools are highly motivated to provide assistance with identifying and securing supervisors for those graduates who are interested in admission through this pathway.

   ii. Other considerations include: Who is regulating this to make sure everyone has a fair shot? Something the implementation taskforce would need to consider is what role the oversight group (Oregon State Bar (OSB), or wherever the program lands) has in connecting applicants to supervisors.

e. How is the supervised work evaluated? The APAS discussed this issue and came up with two different models for licensure evaluation. They may or may not be mutually exclusive.
   i. Utah model: briefly, in Utah there are a set-number of supervised practice hours that meet the requirements created by their bar. They include a preapproved supervisor; detailed timesheets; detailed scope of work rules. At the end of the apprentice time the supervisor signs off on the apprentice and they are licensed. Utah also an additional gatekeeping criteria, which is the applicant's law school has to meet a certain first time bar exam passage rate. The APAS committee has rejected the idea of tying the APM to bar exam passage rates. This model would need to be further evaluated to address concerns of malpractice claims against supervisors if their supervisees later commit malpractice (after the APM has ended).

   ii. Portfolio model: another idea the APAS discussed was rather than (or in addition to) having a supervisor sign off on an applicant's work, the APM

applicant could create a portfolio. Additional consideration would need to go into what would make up the portfolio, but it would be akin to a body of relevant writing samples that could be produced throughout the applicant's supervised practice period. The portfolio could be submitted along with the timesheets signed by the supervisor to the Oregon State Bar Board of Bar Examiners (BBX) for evaluation. Portfolio criteria would need to be thoughtfully planned out. Not all law practice is the same (litigation, transactional, subject matter, etc.). A once size fits all approach will not work. Another idea discussed was that OSB Sections could be asked to create extended nuts and bolts educational presentations to take some of the training onus off supervising attorneys.

3. Program logistics

Program logistics will need to be carefully developed and vetted. The APAS was not in a position to do this, but an implementation taskforce will be. The APAS did talk about some things that will need to be considered. They include:

a. Who will run the program or programs? The OSB (via the BBX)? Another board or designated group?

b. Who will create curriculum and criteria? How often will the curriculum and criteria be evaluated? What avenues will exist for feedback and input?

c. Who will oversee applicants? What avenue for redress will there be if an applicant is rejected?

d. Who will oversee supervisors? Who will recruit supervisors? What responsibility will the oversight group have if there are an insufficient number of supervisors?

e. Who will evaluate program completion? What avenue will be available for redress if an applicant is denied licensure for failing to complete the program?

f. Where will resources come from for creating and running APM's?

Canada

Canadian Articling Programs

The Canadian provinces and territories call their Bars "Law Societies." Canada's Law Societies require that students complete some kind of legal internship program as a prerequisite to admission to practice. Generally, this referred to as "articling" and the lawyer assigned to mentor the articled student is called the "Principal."

The specific requirements for articling vary among jurisdictions. Generally, however, the provinces and territories require that the student article with a Principal who has some minimum level of experience and a good record of professional conduct. There are also requirements regarding completion of an educational plan and a certification by the Principal that the student has completed the process.

There may be no other experience more helpful to the development of a lawyer than working closely with an experienced, ethical and accomplished lawyer. While articling with a good Principal is invaluable, there have been problems in parts of Canada with the varying quality and availability of articling positions. It is generally up to the students to find a position. Although most students find positions, some do not.

In Canada, the average pay for articled students is about $50,000 (Canadian). However, pay varies between $30,000 and $100,000. Because completion of the articling program is a requirement of admission to practice, some students feel forced to take unpaid articling positions. Further, the increasing demand for articling positions has apparently led to some marginal placements where students do not receive proper training or instruction.

The inability of some law graduates to find articling positions, their debt burdens after graduation and their consequent vulnerability to potential abuse has led to conversations about reform or elimination of the articling requirement. Some believe it would be better to reform law school curriculums so that the schools do a much better job of connecting the theoretical side of law with its practical applications.

Recently, a significant percentage of articled students in Canada have also reported discrimination and harassment in their workplaces. This has led to efforts on the part of some Law Societies to begin investigating reforms to the articling system, to address both lawyer competence and diversity, equity and inclusion issues.

However, a large part of the problem with the articling system in Canada is demand and supply. This has been particularly true in the province of Ontario where there has been too much competition for too few positions. Apparently, there is also a lack of willingness by students to seek articling positions outside the major urban areas. To address this issue, policy makers have suggested extending loan forgiveness to students willing to article in more rural underserved areas.

Ontario is the only province that has created an alternative to its traditional articling system, the Law Practice Program (LPP). The LPP is open to all students after graduation. The cost of the program is spread across all licensing lawyers and all licensed lawyers. The program begins with an instructional and skill development program and the second portion is a four month placement with a law firm. The LPP assists students in finding placements. Like the articled students, candidates in this program must also pass the Ontario licensing exams.

In anticipation of encountering problems similar to those of Ontario, in 2020, the Law Society of British Columbia formed a Lawyer Development Task Force to explore the development of alternatives to articling.

Obviously, the implementation of an articling type requirement in Oregon would require an analysis of whether there would be sufficient opportunity for graduating students to obtain good quality mentoring. This would depend on the number of graduates being released into the state each year compared to the number of qualified lawyers willing and able to mentor and pay students for any period of internship that would be required.

The Law Society of British Columbia

Exploring the development of alternatives to articling: Recommendations

Lawyer Development Task Force

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Introduction

1. The Lawyer Development Task Force (the "Task Force") was established in January 2020 and provided with a broad mandate that includes evaluating what is necessary to ensure the future development and maintenance of a well-educated and qualified bar.

2. In accordance with its terms of reference, the Task Force has begun to examine BC's pre-call educational requirements, particularly in light of developments in other Canadian jurisdictions. The Task Force's early work has explored a range of issues, including the regulatory objectives of, and inter-relationship between, the components of the "lifecycle" of pre-licensing lawyer development in BC. These discussions, which have been informed by the work of a number of legal commentators, as well as a review of the licensing approaches of other regulators, have led the Task Force to develop the first in what it anticipates will be a series of proposals for the Benchers regarding changes to BC's lawyer licensing process.

3. For the reasons discussed in this memo, the Task Force recommends that the Law Society engage in a process of exploring the potential development of new pathways to licensing, in addition to articling, that will satisfy the Law Society's pre-call experiential training requirements.

4. The development of options for alternatives to articling must be guided by two key principles. The first is that the primary focus of the licensing process is to ensure the competence of those that are admitted to practice law in BC. When evaluating the merits of prospective alternatives to articling, the Law Society's competency mandate must remain paramount. At the same time, however, consideration must be given to regulatory fairness and ensuring that the licensing system does not create barriers to entry into the profession for otherwise competent, qualified candidates.

Background

The current model for lawyer licensing and opportunities for change

5. BC's current educational model for lawyer licensing requires a period of study at university culminating in obtaining a JD, a term of articling under the guidance of a principal and the completion of the Law Society's Professional Legal Training Course ("PLTC"). This model has been in place since 1983 and, aside from PLTC replacing the previous tutorials, has undergone minimal changes since 1945. Those that obtain their law degree outside of Canada are required to undergo certification through the National Committee on Accreditation ("NCA") following an assessment of their legal credentials and the

completion of required exams before they can enroll in the Law Society's Admission Program (articling and PLTC).[1]

6. Over this same time period, the landscape of the legal profession has undergone significant changes. The numbers of law schools admitting students has increased and the number of candidates seeking entry into the profession has grown substantially. The profession has also seen a rise in the number of students obtaining their legal education outside of Canada. The impact of this trend in BC is apparent when reviewing student enrolment in PLTC, where the average number of foreign-trained graduates increased by 81% between 2010 and 2016. Currently, approximately 20% of those enrolled in the Law Society's Admission Program hold a Certificate of Qualification from the NCA rather than a Canadian law degree. In recent years, the percentage of candidates from equality-seeking groups entering the profession has also increased.[2]

7. Practice structures and locations have also shifted, with an increase in lawyers working in larger firms in urban centres and a decline in sole practitioners, particularly in smaller communities. Technological developments have had a profound influence on all aspects of the profession, and will continue to do so. The long-term impacts of the COVID-19 pandemic on firm culture and organization, and the legal marketplace, remain uncertain as does the likelihood of the occurrence of similar disruptive forces in the future.

8. Given the scope and scale of these social, economic and technological changes, the relatively static nature of legal education over this same time period raises a critical question: is a method for training lawyers that was created 70 years ago appropriate for 2020 and beyond? Recognizing that the fundamentals of pre-call legal education have not been discussed by the Law Society in detail in some time, the Task Force has examined, in broad terms, the current method for training entry-level lawyers in BC and considered whether it remains the optimal approach to licensing.

9. The variation in licensing programs across other common law jurisdictions demonstrates that BC's licensing scheme, which typically requires the completion of a four year undergraduate degree and a three year law degree, followed by a nine month articling

[1] The Law Society assesses whether those with an NCA Certificate of Qualification must complete the entire PLTC and articling program based on their previous practice and educational experiences.

[2] See the Law Society of BC, "Demographics of the legal profession", which documents the growth in the percentage of lawyers identifying as racialized, a visible minority or a person of colour.

period[3] and a ten week bar admission course,[4] is not the only method for developing competent entry-level lawyers. Pre-call training requirements across Canada, Australia, the UK and the United States can take anywhere between five to seven years to complete. Although some foreign jurisdictions require a first degree prior to commencing law school, others permit students to proceed directly to an undergraduate law degree. Several regulators permit students to pursue a graduate law degree without completing an undergraduate law degree. In the UK, a student can bypass a law degree entirely by completing a lengthy apprenticeship.[5] Most regulators require licensing candidates to complete a practical training course following law school, ranging from several months to a year in length, and a period of experiential training in the form of articling, work contracts or work placements that are also months to years in duration. Other regulators have no such requirements.[6]

10. Notwithstanding these variations, each jurisdiction is presumably confident that their licensing scheme consistently produces competent entry-level lawyers. This is certainly the case in BC, where the Law Society has been satisfied that requiring prospective licensees to complete law school, articling and PLTC fulfills its statutory duty to ensure that newly admitted lawyers are competent to serve the public.

11. Having a functional system for pre-call lawyer education does not, however, preclude an examination of whether the system that is currently in place is the *optimal* approach to lawyer licensing. Could the current system be improved and, if so, in what ways? How might these changes benefit the public, applicants and the profession more broadly? What challenges and opportunities might modifications to the existing licensing scheme present? As discussed below, the Task Force recommends that the Law Society undertake a detailed examination of these issues.

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[3] These requirements vary. For example, those that complete a clerkship, article in another jurisdiction or have practice experience outside of Canada may have their articling term reduced by up to five months.

[4] Some individuals may be exempt from PLTC if they have completed a bar admission course in another Canadian jurisdiction or have engaged in the practice of law in another common law jurisdiction for at least five full years.

[5] In the United States, applicants must complete four years of undergraduate work followed by a three year law degree. In the UK, prospective lawyers need not complete undergraduate work before commencing a two to five year law degree. Following graduation, solicitors are required to complete a one year legal practice course and a two year apprenticeship/training contract. Barristers must complete a one year training course and complete a year of training in barristers chambers. Solicitors can also become qualified through the completion of a six year legal apprenticeship rather than attending law school. In Australia, law can be a three to five year undergraduate degree or a two or three year graduate degree followed by a three to six month practice legal training course, which includes a work placement.

[6] There is no requirement to complete a bar course prior to licensing in the United States or Ontario.

Articling as the sole pathway to lawyer licensing

12. Currently in BC, candidates for licensing must complete a period of articling in order to be eligible for call to the bar.[7] As there are no alternatives means of obtaining pre-call experiential training, the inability to secure an articling position creates a barrier to licensing.

13. Whether articles should serve as the gateway to the profession has been the subject of discussion and debate for some time. Criticisms of articling include the variability across experiences and the challenges of effectively assessing consistency; the increasingly restricted location, size and substantive practice areas of firms that hire students; and the pressure on the articling system generated by the growing number of internationally trained students and, to a lesser degree, Canadian law school graduates.

14. The Task Force will be examining the extent to which these and other issues arise in the context of BC's articling program.[8] A core element of this work will involve the analysis of the results of a voluntary, online survey of lawyers in their first three years of call.[9] The results of the survey are expected to provide the Law Society with additional insight into the experience of those candidates that were successful in obtaining articles and may shape future recommendations with respect to the existing articling program.

15. Concerns have also been raised about the "regulatory fairness" of a system in which the market dictates access to an essential component of the licensing regime. Critics have highlighted that unfair barriers may be created for some candidates if entry into the profession is dependent on the availability of positions rather than an individual's qualifications and competence. Where there is a limited number of articling positions available, for example, students who are otherwise competent may not be able to secure a placement and thereby are unable to gain admission to the profession. Obtaining statistical data about the composition and experience of this group is difficult given that these

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[7] Some students are eligible to be called and admitted without articling on the basis of transfer from another jurisdiction under Law Society Rules 2-81 and 2-79.

[8] The Law Society's 2018-2020 Strategic Plan included a review of the Admission Program. This work commenced under the Lawyer Education Advisory Committee in mid-2018, and will be completed by the newly established Lawyer Development Task Force.

[9] The survey explores the availability of articling positions, remuneration, quality of articling experiences and competencies associated with entry-level practice, as well as issues surrounding wellness, harassment, discrimination and bullying within the articling experience.

individuals have not enrolled in the Law Society's Admission Program[10] and therefore are not represented in surveys or consultations involving articling students and lawyers.

16. Notwithstanding these concerns, the articling system has been the traditional form of transitional training for generations of lawyers, creating opportunities for students to acquire real-world practical experience prior to being called to the bar and fostering the development of professional networks.

17. Canadian legal regulators have consistently rejected the abolition of articles.[11] Within BC, for at least the past two decades, each time the subject of Admission Program reform has been raised, an early preference has been stated for a period of post-graduation experiential learning to bridge the gap between academics and practice.[12] In Ontario, however, concerns that a shortage of articling positions was creating barriers to entry into the profession led to a comprehensive review of the Law Society of Ontario's ("LSO") pre-call lawyer education requirements, commencing in 2011. Over the course of the following seven years, a series of consultations, studies and reports resulted in significant changes to Ontario's lawyer licensing process. This included the introduction of two new training programs that provided candidates with an alternative to articling: the Law Practice Program ("LPP") and the Integrated Practice Program ("IPP"), which both satisfy the LSO's pre-call experiential training requirements. These programs are discussed in more detail in the latter portion of this memorandum.

18. Although the available data suggests that BC is not currently experiencing an articling shortage akin to that in Ontario, the increasing number of Canadian law school graduates and internationally trained applicants have fuelled a growing demand for positions. Anecdotally, there are reports of a highly competitive articling market in which NCA students, in particular, are facing challenges finding placements. Looking forward, a variety of factors have the potential to further reduce the number of available positions, including changes in the demand for, and delivery of, legal services, the continued growth in the

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[10] Only those individuals that have secured an articling position are eligible to enroll in the Law Society's Admission Program.

[11] The Law Society of Ontario has directly addressed the issue of whether articling should be abolished twice in the last decade, in 2011 and 2018, and has rejected the elimination of articles on both occasions.

[12] In 2002, the Articling Task Force's comprehensive review of the Law Society's Admission Program expressed, at the outset, support for articling remaining a prerequisite to admission to the bar and did not fundamentally question the role of articling in the licensing process. Similarly, no detailed consideration was given to the issue of eliminating articles as part of the Lawyer Education Advisory Committee's 2015 review of the Admission Program, which included a recommendation to maintain the articling requirement with minor changes.

number of internationally trained applicants and the uncertain impacts of large-scale social and economic disruptions, such as the COVID-19 pandemic. In the event that these, or other conditions contribute to a decline in the number of articling positions, market forces, rather than the competence of applicants, have the potential to determine who becomes a lawyer in BC and who does not.

Discussion

19. The Task Force is of the view that, as a modern and proactive regulatory body, the Law Society ought not wait for a "placement crisis" to emerge before considering whether a system in which articling is the only means for licensing candidates to satisfy the Law Society's experiential training requirement remains the optimal approach. Accordingly, the Task Force recommends that the Law Society establish a process for examining the merits of, and options for, creating alternative pathways to licensing in addition to articling.

20. This work falls squarely within the Law Society's statutory duty to establish standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission. In discharging this duty, section 21(1)(b) of the *Legal Profession Act* gives the Benchers the authority to make rules to establish requirements and procedures for call to the bar and s. 28 gives them the authority to take steps to promote and improve the standard of practice by lawyers, including by establishing, maintaining or otherwise supporting a system of legal education. The Law Society therefore has some significant latitude to modify its existing licensing processes and programs.

21. In accordance with this mandate, the Law Society's primary concern is to ensure that the licensing program significantly contributes to the development of competent entry-level lawyers. At the same time, however, the scheme should ensure fairness to all candidates. Such an approach does not imply that the licensing process must guarantee every candidate entry into the profession, regardless of competence. However, it does demand that the Law Society ensure that the licensing program does not create or perpetuate barriers to entry into the profession for otherwise competent candidates. As discussed in more detail below, the development of alternatives to articling provides the Law Society with an opportunity to create innovative forms of experiential training that advance this and other goals.

Alternatives to articling

22. In developing this recommendation, the Task Force undertook a detailed review of the two alternatives to articling recently adopted by the LSO. These approaches are presented not as models for adoption, but rather, as examples of the types of licensing pathways that may

warrant further study going forward. Importantly, the LSO has demonstrated that the shifting professional landscape may require novel and innovative forms of pre-call legal education, and that the regulator need not be constrained by traditional approaches when re-envisaging the future of lawyer licensing. Ontario's experience is valuable as it illustrates how articling can be retained as a licensing option, while developing parallel experiential training streams that address issues of regulatory fairness and realize a number of additional benefits.

Law Practice Program (LPP)

23. The LPP is a program developed by the LSO as an alternative to articling, arising from its analysis of a perceived growing gap between the supply of, and demand for, articles in Ontario. In 2012, the program was initially approved as a three year pilot project at Ryerson University (in English) and at the University of Ottawa (in French). Each comprised four months of skills training followed by a four month work placement that would operate alongside the articling program.[13]

24. The first cohort of the LPP commenced in 2014. Over the course of pilot, the program was continually reviewed and assessed, and was the subject of additional consultation with the profession. After considerable discussion and debate, Convocation approved the LPP as a permanent pathway to lawyer licensing in Ontario in 2018.

25. The LPP is open to all students in the LSO licensing process that have completed either a JD from a recognized Canadian law school or have obtained an equivalent degree as evidenced by the receipt of a Certificate of Qualification from the NCA. The costs of administering the program are spread across all licensing candidates and licensed lawyers, and there are no additional fees associated with participation.[14] There are no limits on the number of registrants, and annual enrollment in the LPP has averaged 220 students in the English program and 15 candidates in the French program.

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[13] Articling Task Force Final Report, "Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario" (October 2012). At the same time, the articling program would be enhanced, with a recommendation to introduce a uniform final assessment to ensure that each candidate, whether they articled or took the LPP, had successfully completed a set of practice skills covering core competencies.

[14] Each year the LSO's lawyer members contribute one million dollars ($25-$27 per licensee) to offset the costs of the LPP. Licensing fees for all candidates (not just those enrolled in the LPP) increased approximately $1900 to offset the costs associated with the program at the commencement of the pilot project.

26. The composition of the LPP is more diverse than the articling program. Approximately half of LPP students are Canadian law schools graduates. Twenty-five percent of the other half typically start their undergrad in Canada, but complete a law degree in the U.K., Australia or the United States before returning to Ontario for licensing. The LPP also has a larger percentage of candidates from equality-seeking groups than the articling program.[15]

27. The LPP begins with a 17-week instructional and skill development component that replicates the experience of legal practice by organizing students into small virtual law firms. Using interactive, web-based modules and digital tools, students develop a range of lawyering competencies by completing tasks and acquiring practical skills as they work through simulated files.[16] Using online technologies to meet with practising lawyers that serve as the virtual law firm's "supervising lawyer," students discuss matters raised by the files, including practice and client management, professionalism and ethics. A three week in-person session also provides students with additional training and networking opportunities. The second portion of the LPP is a four month work placement during which candidates further develop lawyering competencies in the context of a practical legal workplace experience. Work placement teams assist students in locating positions, which may be paid or unpaid.[17] Most of the positions are in small firms and, for at least the first several years of the LPP, the majority were located outside of Toronto.

28. Upon successfully completing both components of the LPP, candidates must only pass the licensing exams and fulfill the LSO's good character requirement to be called to the bar. Graduates of the LPP are generally succeeding in obtaining employment, with over 85% working in law or law related positions at the one year call mark.

Integrated Practice Program (IPP)

29. At the time that the LPP was initially proposed, the LSO also suggested creating an additional pathway to licensing by integrating a training program into the law school curriculum. In 2012, Convocation supported, in principle, the accreditation of an integrated

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[15] For example, in the 2016/17 and 2017/18 cohorts, the percentage of self-identifying racialized candidates in the articling pathway was 17% and 22% respectively, while the percentage of self-identifying racialized candidates in the LPP were 22% and 36% respectively.

[16] The LPP covers seven key practice areas: wills and estates, real estate, business law, administrative law, family law, criminal law and civil litigation.

[17] During the pilot project, approximately 30% of LPP work placements were unpaid as compared to 3% of articling placements (Professional Development and Competence Committee Report to Convocation, May 2018). Although work placements are not guaranteed, to date every student that has completed the first four months of the LPP has obtained a position.

practice program ("IPP") embedded within the law school curriculum that fused formal legal education with skill development across a three year course of study and included a mandatory work placement.

30. The approval of an IPP requires the law school to demonstrate that its curriculum satisfies the requirements for skills and task exposure and assessment identified in the LSO's competency achievement list.[18] Within this broader framework, however, law schools have considerable flexibility as to how they develop and deliver their curriculum.

31. In 2013, the LSO approved the first IPP at Lakehead University. In 2018, a second program was approved at Ryerson University. Although the Lakehead and Ryerson programs operate independently, they share a number of common features. During the three year law degree, students must complete numerous mandatory courses that integrate a theoretical foundation of legal knowledge with the development of practical skills.[19] For example, students write factums and make oral submissions in constitutional law, complete bail review hearings in criminal law, draft opinion letters in tort law, and participate in client interview role playing assignments in ethics and professionalism courses. Academic faculty typically have experience working in firms and many courses are taught by practising lawyers. In their third year of study, IPP students must complete a three month unpaid work placement, which is coordinated through the student services office. Practice experiences are monitored by the law school and evaluations are conducted by placement supervisors at the firm.

32. Graduates of an approved IPP must only pass the LSO's licensing exams and fulfill the good character requirement to be called to the bar. As such, students benefit from focusing on the early integration of legal skills and knowledge and avoid the potential challenges of securing an articling position, as well as the additional time and costs associated with completing the LPP or articles.

Rationales for exploring innovative approaches to lawyer licensing

33. In the course of examining BC's current lawyer licensing scheme, the Task Force has identified several rationales for exploring alternatives to articling. A key impetus for this

[18] These competencies are based on both the entry-level practice competencies set out in the Federation's National Competency Profile and additional competencies set by the LSO.

[19] Ryerson's IPP includes 26 mandatory courses. Lakehead's IPP has more than 18 mandatory courses.

work is to proactively address concerns with the regulatory fairness of an approach in which the market dictates access to an essential component of licensing. These concerns have become increasingly relevant in an environment that is experiencing unprecedented changes, including the significant and continuous growth in the number of internationally trained applicants seeking entry to the BC bar and the uncertainties surrounding the magnitude and duration of the COVID-19 pandemic's impact on all facets of economy and society, including the legal profession.

34. Retaining a scheme in which articling is the sole pathway to licensing may result in factors other than the competence of candidates impacting whether otherwise qualified and competent individuals are able to complete the experiential training required to be called to the bar. The fact that many competent, qualified candidates do not face difficulties finding articling positions does not mean that those that are unable to secure articles lack the knowledge, skills or attributes to become competent lawyers. Rather, other factors, unrelated to competence, may be influencing the ability for some students to compete for scarce positions in a competitive articling market.

35. The LSO's licensing review, for example, suggested that equality-seeking groups may be disproportionality affected by challenges in obtaining articles in circumstances where the demand for positions outstrips the supply. Although a variety of factors made it difficult for the LSO to develop a robust statistical analysis of how placement issues affected specific demographics,[20] qualitative data resulting from consultations with the profession emphasized that those from equality-seeking groups — almost all of whom were supportive of developing alternatives to articling — may be less likely to secure articles, are underrepresented in articling positions in large firms, have fewer networks to assist with job finding opportunities and are more likely to have significant law school debt.

36. These issues were the subject of further study during successive evaluations of the LPP, which revealed that certain categories of candidates are more heavily represented in the LPP population, as compared to the articling stream, including internationally educated, racialized and older (40 years+) students. In approving the LLP as a permanent pathway to

[20] The LSO's 2011 consultation report indicated that licensing candidates that identified as being from an equality-seeking group were less successful in securing an articling placement. The LSO noted, however, that a minority of members of equality-seeking groups self-identify, and that the experience of different groups within this cohort were not consistent, resulting in incomplete information respecting placement issues. The LSO also observed that the increased number of unplaced racialized candidates also correlated with an increase in NCA students and suggested that internationally trained candidates, whether originally Canadian or not, with more limited connections to Canadian legal practice, have more difficulty obtaining placements.

licensing, the LSO highlighted that the program supported fairness by ensuring access to the profession for all candidates, including those that had previously faced barriers to securing articling placements for reasons unrelated to competence.[21]

37. In BC, the Law Society has limited information about who does not obtain articles because these individuals are not enrolled in the Admission Program, and relies on self-reporting to obtain demographic information about those that do secure placements. This results in incomplete data sets. However, anecdotal reports suggest that NCA students and out-of-province candidates miss out on critical opportunities which lead to articling positions, including networking events hosted by law schools, firm interviews and recruitment information provided by BC law school career offices. The difference between the format of NCA students' transcripts and those of Canadian law school graduates, as well firms' unfamiliarity with out-of-province and out-of-country law schools is another factor that may influence hiring decisions. In some circumstances, bias within the articling interview process—whether conscious or unconscious— may also play a role in qualified candidates being unable to secure a position.

38. Developing alternatives to articling may therefore provide the Law Society with an opportunity to improve access to the experiential training portion of the licensing process for those that have historically faced barriers. In addition to the benefiting those individuals seeking call to the bar, the public interest is also greatly served by improving the diversity of the profession.

39. The Task Force also observes that a number of additional benefits may accrue from developing alternatives to articling. These include the opportunity to establish a form of experiential training that improves access to justice; for example, by providing work placement or training requirements that include areas of practice or practice settings that are dedicated to providing legal services to underserviced or disadvantaged groups, and expanding the opportunities for experiential training in environments that fall outside of the traditional law firm or government articling experience. The development of alternative pathways also presents an opportunity to improve the consistency of students' experiential training and to reduce the extent to which the time and costs associated with articling create a barrier to entry into the profession for some students.

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[21] Law Society of Ontario, Professional Development and Competence Committee Options for Lawyer Licensing: A Consultation Paper (May 2018).

Recommendations and next steps

40. On the basis of the rationales identified above, the Task Force recommends that the Law Society commence a process of exploring and developing options for the creation of additional pathways to licensing that provide candidates with an alternate means of obtaining the necessary pre-call experiential training. Possible approaches may include a program that follows the completion of law school, or that is integrated into a law school curriculum, or both. These options should be developed with the view to recommending a program that operates in addition to, rather than as a replacement for, articling.

41. The Task Force recommends that the review of the licensing program includes, but is not limited to, further examination of the LPP and IPP and whether the introduction of a similarly structured program in BC may benefit candidates, the profession and the public, both by improving opportunities for licensing and integrating with other initiatives, such as increasing the diversity within the profession and addressing access to justice issues. Additionally, in an effort to build a licensing program that is resilient and agile in the face of disruptors such as the current pandemic, consideration should also be given to enhancing the role of technology in experiential training, including increased opportunities for remote learning and mentorship.

42. With respect to timing, the Task Force believes that the Benchers' decision to approve, in principle, a recommendation to explore the development of new pathways to licensing need not wait for the analysis of the Law Society's current articling program to be completed. Although that analysis may inform future proposals regarding modifications to the existing articling program, the survey's focus on newly called lawyers, all of whom articled, will limit the extent to which the results will advance the Law Society's understanding of the policy issues raised in this memorandum.

43. Once options are developed by the appropriate Law Society body, potential reforms to the licensing process will be returned to the Benchers for further discussion.

Canada – Post Law School Graduation Admission to Practice Requirements[1]

Alberta, Saskatchewan, Manitoba, Nova Scotia, Northwest Territories and Nunavut

For admission to practice in these provinces and territories, law school graduates must complete a course prepared by the nonprofit Centre for Professional Legal Education (CPLED), as well as completing a clerkship/articling period. Articling means working in a law firm or legal workplace under the supervision of a lawyer ("Principal").

The CPLED program is based on skills and competencies needed by new lawyers and is described as "Practice Readiness Education." Further information regarding this program is located at www.cdpled.ca. The program trains lawyers and evaluates them on the following competencies:

- Lawyering skills
- Practice management skills
- Ethics and professionalism
- Legal knowledge

The cost of the CPLED program to students is $2,600 (Canadian). The Law Societies (Bars) subsidize the program. The training takes place over a period of 9 months and takes about 300 hours to complete. Generally, the student completes this program during the articling period. Under normal circumstances, part of the program is virtual and part is in person.

Alberta, Saskatchewan, Northwest Territories, and Nunavut require Articling Programs usually consisting of a 12-month work period during which the student works with a Principal. The articling period in Manitoba is 52 weeks.

British Columbia

Admission to practice in B.C. requires:

- Completion of nine months of articling in a law firm or other legal workplace.
- Completion of a 10-week Professional Legal Training Course (PLTC). This course covers legal practice and procedure, legal skills, ethics, and practice management. The cost of admission to practice includes the cost of PLTC, ($3,018.75 CDN). (This is subsidized.) Classes are held at the Law Society in Vancouver and at a community college in Victoria.
- Passing two relatively easy practice oriented examinations, (with a 90% pass rate), covering the following areas:
    - Civil litigation
    - Criminal procedure
    - Family law

[1] I have not included Quebec and Yukon, both of which are somewhat unusual.

- Commercial law
- Company law
- Estates
- Practice Management
- Professional responsibility
- Real estate
- Wills
- Ethics

Ontario

Admission to practice in Ontario requires:

- Completion of the Barrister Licensing Examination
- Completion of the Solicitor Licensing Examination.

  Both practice-oriented exams are self-study and open book. The pass rate is about 90%.

  The Barrister Examination tests knowledge of Practice Management Issues; Litigation Process; Alternative Dispute Resolution; Problem/Issue Identification, Analysis and Assessment; Establishing and Maintaining the Barrister-Client Relationship; Ethical and Professional Responsibilities; and Knowledge of Ontario law, Federal legislation and Case Law.

  The Solicitor Examination tests knowledge of Ontario, Federal and Case law, along with all policies, procedures and forms; Ethical and Professional Responsibility; Establishing and Maintaining the Solicitor-Client Relationship; Practice Management; and Fulfilling the Retainer. Each exam takes seven hours to complete and can be done online.

- Experiential Training.

  This may be through the traditional Articling Program or through Ontario's Law Practice Program (LPP). The Articling Program involves a 10-month placement with a Principal (licensed lawyer) who must approve of the student's work. The LPP involves a training course, given by one of the universities, followed by a four-month work placement. LPP assists students in finding placements for which they may or may not be paid.

  The LPP allows students who do not want or have articling positions an alternative route to admission to practice. The LPP is funded through the licensing fee charged to all lawyers applying for admission.

New Brunswick

Admission to practice requires:

- A 48-week Articling period.
- Completing four weeks of full-time class attendance at a Bar Admission Course on legal competencies and skills.
- Passing a Bar exam that includes:
    - Examination on the Rules of Court of New Brunswick
    - Examination on New Brunswick Statutes

Prince Edward Island

Admission to practice in PEI requires:

- Completion of certain required core courses in law school.
- An Articling period of 12 months.
- Mandatory participation in a Bar Course that concentrates on PEI law and practice, and testing on these subjects with a required pass score of 60%.

Newfoundland and Labrador

Admission in Newfoundland and Labrador requires:

- Completion of certain required core courses in law school.
- An Articling period of 12 months.
- A 7 week Bar Admission Course (included in the 12 month articling period) focusing on Civil Procedure, Criminal Law, Family Law, Administrative Law, Corporate Law, Commercial Law, Real Estate & Wills, with testing on these subjects.

Utah

Preliminary summary of
Utah's temporary (2020)
Diploma Privilege
***Following* 360 Hours Supervised Practice**

- This summary is intended as a preliminary outline to prompt further discussion and is not complete.
- In addition to the rule (and miscellaneous Internet reading), this summary heavily relies on https://utahdiplomaprivilege.org/ a website created by the Utah State Bar.

I. Who was eligible? ("Qualified Candidates" / "QCs")

A. Law school graduates who:

- Graduated by June 30, 2020 from an ABA-accredited law school with a 2019 Bar passage rate of 86% or greater.
  - NOTE: Believe this was BYU's passage rate.
- Applied for Utah Bar Exam by April 1, 2020;
- Had not (as of the date of the April 2020 Order) sat for any Bar Exam;
- Not scheduled to take *any* Bar Exam in *July 2020.*
  - NOTE: Qualified candidates were permitted to take Utah's September Bar Exam while contemporaneously seeking admittance through the diploma privilege. Failure on the September exam did not impact qualifying through diploma privilege if the person otherwise qualified.
  - NOTE: QCs/new admittees through this process who applied within 2-years for the Bar Exam could submit a "reapplication" (updated application) rather than starting anew. Fees separate.

B. Qualified Out-of-State Attorney Applicants (Not summarized or further referenced in this memo)

II. How are Qualified Candidates Licensed Under Utah DP?

A. Submit proof of graduation by *June 30, 2020*;
B. Complete 360 hours of supervised practice by December 31, 2020;
C. Pass the MPRE;
D. Be approved for Admissions by the Character and Fitness Committee;
E. Provide a completed criminal background check by no later than December 31, 2020; and

F. Pay the Utah State Bar Annual Licensing fees and take the Oath of Admission.

NOTE: Licensees admitted rolling basis as they met qualifications.

III. Program Does NOT replace the New Lawyer Training Program.

IV. What types of work count as supervised practice?

A. Diploma Privilege applicants must follow the restrictions in the Law School Student rule (Rule 14-807).

B. All time spent in any activity related to developing legal competence (whether paid, unpaid, pro bono, or low bono) including, but not limited to,

1. all activities related to the representation of clients,
2. assistance and counsel to judges,
3. advising businesses and their employees,
4. developing or implementing policies and practices for nonprofit organizations or government agencies,
5. meeting with the Supervising Attorney or attorneys,
6. CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice (up to 10% of total hours)

C. Need consent from client/supervising attorney for applicant to:
1. Negotiate for the client (subject to supervisor approval) and give legal advice to the client if the applicant gets the supervising attorney's approval of the advice/plan and performs activity under their general supervision.
2. Appear for client in depositions if the applicant has passed a course on evidence and is under the direct supervision of the attorney (who must also be present at the deposition).
3. Appear in court, subject to various requirements and restrictions based on the type of proceeding.
    - Detailed breakdown for civil matters, varying severity and prosecution/defense for criminal matters, appellate, and indigent defense.
4. Perform other appropriate legal services.

D. Work for pro bono programs pre-approved by Utah Bar) by the Utah State Bar's Access to Justice Commission. Organizations included (Utah Legal Aid Services, Utah Immigration Collaborative, BYU Law School, Utah State Bar, Timpanogos Legal Center (family law))
   - Primary SA does not have to expressly delegate work to pre-approved pro bono programs. (SA from pro bono organization presumably supervises; signs timesheets, etc.)

V. Supervising Attorneys ("SAs")

A. Who qualifies?
   - Active Utah License;
   - 5 years of experience as a licensed attorney with 2 of those being in Utah;
   - No record of public discipline
     OR
   - Be a state or federal court judge.

B. How many SAs can a QC have?
   - No limit.

C. How much supervision?
   - Does not need to assign work or directly supervise. Supervisor is responsible to do the following:
     - Ensure that your work complies with the Supreme Court's Order.
     - Demonstrate professionalism and impart principles of ethics, civility, and service.
     - Communicate regularly and substantively with other attorneys to whom the Supervising Attorney delegates authority.
       - Such attorneys can include those who don't meet 5 yr/2yr requirements.
       - SAs do not have to "work in the same office or even be in the same state as the attorney providing the direct supervision."

E. How to find a Supervising Attorney?
   - Qualified candidates find their own.
   - If problems, reach out to New Lawyer Program or Access to Justice offices.
   - Pre-Approved pro bono options

VI. Documentation / Insurance / Billing

A. Before beginning supervised practice, the applicant must:
   1. Get consent of the supervising attorney to act in that capacity
   2. Provide the name of that attorney to the bar
   3. Give the bar admissions office a signed letter from that attorney confirming that they are qualified, willing to serve, and have read the rules.

B. Supervised Hours Tracking Sheet (6-minute increments; both QC and SA sign timesheets).

C. The SA can bill for QC's time. (Or count it towards pro bono goals.)

D. The QC does not have malpractice insurance; per FAQ of Utah Diploma Privilege website:

> "As a non-licensed attorney, you cannot apply for legal malpractice insurance because you must have a bar number to apply for insurance (which you will not be assigned until after you become fully licensed). Your work will likely be covered by the attorney directly supervising you as his or her name will be on the final documents that are submitted to a client, to the court, etc. and he or she should be reviewing all of your work. However, discuss this with your direct supervisor to make sure that you are covered for insurance purposes."

VII. Potential Sources for more information:

- United for Diploma Privilege
- Deborah Jones Merritt, Ohio State Univ., Working Paper on diploma privilege (she is part of IAALS study)
- Utah Working Group (appointed by the Utah Supreme Court to look at future options)
- Gordan Smith, Dean of BYU

VIII. Misc. Thoughts for our group as looking at this program

- Who would be eligible to apply if this were pursued in Oregon?
    - Distance from graduation before ineligibility;
    - No prior admission anywhere else? (Other Bar admission provisions cover how such folks get admitted to OR.)
    - Any prior bar exams?
    - How does it interact with our Bar Exam (could someone pursue diploma privilege and sitting for bar contemporaneously or must it be somewhat sequentially)?
    - If there were an ABA accredited/Bar Passage Rate requirement, how is that determined? What factors should be considered?
- Is 360 hours sufficient? Too much?
- What types of partnerships could be developed with pro bono programs?
- Could program be matched with some law school curriculum requirements?
- How to measure/incorporate the various types of work that law students can do in law school? (Not just for credit; not just as part of a temporary practice rule.)
- Should some sort of portfolio be created for review by various Bar Committees or some greater obligation on supervising attorney to ensure broad range of skills covered? (Maybe Bar sections could take on obligation to create portfolio review committees.)

Washington, D.C.

Apprentice/Practice Alternatives Subcommittee

To the Alternatives to the Exam Task Force

Review of Washington, D.C. Model

By: Akriti Bhargava and Maya Crawford Peacock

- Washington D.C. cancelled their July 2020 bar exam and held an online examination in October 2020. They created two alternative models.
    - The first was a one-year temporary status that permits law school graduates to practice law while under supervision of a licensed DC attorney. This status expires after one year – after the application deadline for the next in-person bar exam in D.C.
    - The second is a permanent admission to the DC bar. This status has been granted on a **one-time basis**, so may or may not be available going forward. These notes will focus on the permanent admission status.

Admission to Bar Based on COVID-19 Emergency Examination Waiver (D.C. App. R. 46-A)

- Eligibility requirements:
    - Received a JD in 2019 or 2020 from an ABA approved law school;
    - Had a timely completed application to the July 2020 DC Bar exam;
    - Not admitted to a bar in a different jurisdiction, and has not failed a bar exam in any jurisdiction;
    - Passed the Multistate Prof. Responsibility Exam;
    - Good moral character.
- Applications are reviewed and approved by a Committee on Admissions. There is a fee
- Additional requirements:
    - Must complete a mandatory course on DC RPC's;
    - Must be **supervised for three (3) years** by an attorney licensed and in good standing with the DC bar. The supervisor must be the applicant's employer or a nonprofit that provides legal services for low-income people;
    - For those 3 years the person must give notice in all documents that their practice is supervised and must note that they were admitted under the examination waiver.

If Adopted in Oregon

Pros

- Still has a character & fitness review; still need the ethics exam and course.
- Applications being reviewed by a Committee on Admissions is feasible in the State of Oregon, given our manageably small incoming attorneys class every year, so as to avoid inequities that crop up when trying to streamline a process like this but on a larger scale.

Cons

- How would we deal with people who don't have an employer willing to supervise them? This needs more discussion and thought. I also have questions about saying a legal aid provider can supervise them. If this is not in an employment setting (i.e. pro bono), legal aid and other nonprofits don't have the resources to supervise an unlimited number of people to the extent needed.
- Equity lens needs to be used in considering the supervision piece. How do we ensure that all people have equal access to high quality supervisions if it is dependent on employment?

Changes

- Not a one-year program but ongoing
- No need to apply to take a bar exam
- Not failed a bar exam: I think we need to think about this. I don't think failing a bar exam should disqualify people from the alternative licensing.
    - Perhaps a subcommittee of the Bar could be formed to review these cases on a case-by-case basis, since it might not end up being more than a handful of people every year who fail the bar exam but would like to practice in a particular field they are skilled in, under the supervision of another attorney.
    - Alternatively, there could be an added insurance coverage for the supervising attorney (which would need to be balanced with some benefit they will receive) by supervising someone who failed the bar
- Consider how we can use the existing OSB Mentor Program as an avenue for supervision.
- Who should review applications? BBX? Another group?
    - Group should people from the Oregon law schools