



Recommendation to Develop a Competence Based System for lawyer licensing

Lawyer Development Task Force

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Prepared for: Benchers

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Purpose: For Decision

Purpose

The purpose of this report is to present the Benchers with a recommendation with respect to the development of a Competence Framework for lawyer licensing in British Columbia.

Proposed Resolution

BE IT RESOLVED the Law Society develop a competence based system for lawyer licensing in British Columbia beginning with the development of a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of, and entrusted to, lawyers in BC, as well as the threshold levels at which these competencies should be performed at the point of licensure.

If the resolution is approved, the Lawyer Development Task Force (the “Task Force”) will return to the Benchers at a later date with recommendations concerning how the Law Society can utilize the Competence Framework as the foundation of a new lawyer licensing system in which licensure candidates can acquire and demonstrate their possession of the threshold competence of entry-level lawyers.

Task Force Process

The Task Force has a broad mandate to evaluate what is required to ensure the future development and maintenance of a well-educated and qualified bar in British Columbia. This includes an examination of the Law Society’s pre-call education requirements and includes addressing the core professional competencies that entry-level lawyers need to possess.

In 2021, the Task Force retained Jordan Furlong to provide a series of issues papers identifying issues facing, and proposing possible changes to, the Law Society’s licensing process. This work culminated in a summary report (“the Competence Report”) that was presented to the Benchers in May 2022. The discussions that followed suggested that there was a strong consensus among the Benchers for the Competence Report’s central recommendation that the Law Society adopt a competence-based approach in which a Competence Framework is developed and implemented that provides the basis for future modifications to the lawyer licensing system. Having concluded a period of additional policy analysis, the Task Force members unanimously endorse these recommendations, and proposes that this work commence with the retention of experts in legal education and professional development.

Other matters addressed in the Competence Report will be considered by the Task Force at a future date.

Background and Issue Being Addressed

In recent years, significant changes have occurred throughout the legal services sector as public demands, client needs, specialization, technological capabilities, law firm business models and justice system access continually transform many aspects of the practice of law. The pandemic has further impacted the profession in ways that would have been inconceivable only a few years ago.

These developments stand in stark contrast to the relatively static nature of the licensing system over the last decades. The juxtaposition between this stasis and the transformations occurring within the profession raises a question as to whether BC ought to continue to educate, train and licence lawyers in the same ways that have been done in the past. It also invites an inquiry into whether a competence-based approach to licensure would better serve the public interest by enhancing the reliability, validity, transparency and fairness of the licensing system and improving the extent to which public and professional expectations of the competence and qualification of lawyers are met.

The Competence Report suggests that by maintaining the current credentials-based approach, which relies on the completion of law school, the PLTC and articling as a proxy measures of competence, the Law Society risks falling short of fulfilling its statutory duty. Specifically, if pressed to enumerate the capacities and attributes that collectively constitute competence in a new lawyer, the Law Society could cite various individual features (e.g. basic knowledge of fundamental laws) or the credentials obtained prior to being admitted to the bar, but cannot point to a comprehensive framework for identifying those competencies or a systemic process by which the core set of knowledge, skills and attributes that are required at the point of licensure are developed and demonstrated. On this basis, the Competence Report recommends that the Law Society establish a framework that answers the fundamental question that the lawyer licensing process seemingly ought to address, namely: at what level of competence is an aspiring lawyer fit to practise?

The Law Society established the Task Force to consider how the core competencies for entry-level practice are identified, demonstrated and assessed. The Competence Report is a foundational step in this process, providing the Benchers with a comprehensive overview of how and why BC's licensing system could be modified to ensure that the profession and the public are better informed about entry-level lawyer competencies, and that candidates are provided with opportunities to acquire and demonstrate their competence in a fair and accessible manner.

In a professional or regulatory context, competence is typically understood to be expressed through the acquisition of knowledge, skills and attributes (individual "competencies") that signal a professional's overall fitness to reliably perform the essential duties expected of, and entrusted to, their profession. A "competence framework" is a model that describes the competencies required to successfully fulfill a role within a profession.

The Competence Report recommends that the Law Society develop, test, validate and implement a Competence Framework for lawyer licensing in BC, and to subsequently utilize this framework as the basis for any future changes to the licensure system. For the reasons discussed in the next section of this report, the Task Force unanimously endorses those recommendations.

Within the legal profession, a competence-based approach to licensure begins with ensuring that all key stakeholders in the licensing process understand what the core competencies for entry-level practice are. This requires knowing the precise standards to which the regulator is holding those seeking admission to the bar in order to formulate a defensible, transparent licensure system. Maintaining confidence in the legal profession also demands that members of the public have an understanding of the parameters of the knowledge, skill, conduct and character they should expect from a lawyer. Licensing candidates and other stakeholders in the lawyer formation process, including law schools, legal employers, professional development organizations and the Federation of Law Societies also ought to know, with some degree of precision, the competencies that must be possessed by those individuals seeking to gain entry into the legal profession in BC.

Discussion

Once established, the Competence Framework is anticipated to improve the Law Society's regulatory capabilities by enhancing efforts to ensure competence and quality in the delivery of legal services. Improved identification and assessment of entry-level competence also benefits legal practitioners and the public by providing a more reliable, transparent and accurate gauge to determine the readiness of a candidate for licensure to take on the duties of a lawyer. Access to justice is also enhanced when the public understands what they are entitled to experience from lawyers. In the context of impending reforms to the regulation of the profession, clearly defining the competencies that aspiring lawyers must acquire may also bolster the government's confidence that the Law Society is fulfilling its statutory mandate.

As the gatekeeper to entry to the profession, the Law Society's paramount concern must be the protection of the public interest by ensuring that new lawyers are qualified to practise on the basis that they have demonstrated that they have met the requisite competence standards. Regardless of which core competencies are eventually identified, a competence-based licensure system must provide aspiring lawyers with accessible and equitable opportunities to acquire and demonstrate those competencies in order to support the Law Society's commitment to making access to the legal profession as transparent, consistent and fair as possible.

Significant work will be required to define, precisely, what knowledge, skills and attributes are required of entry-level practice. Additional efforts will subsequently be necessary to ensure that programs and processes are in place that support licensure candidates in acquiring these competencies and that enable the Law Society to confirm that they have done so. This process,

from start to finish, would likely last several years and will require a considerable investment of time, money and other resources.

Given the scale and significance of this initiative, a substantial portion of this work will be undertaken by experts in professional development and legal education, retained for this purpose by the Law Society. During this developmental phase, it is expected that the draft framework will be subject to consultation with, and validation by, a number of legal sector stakeholders, and consideration may want to be given about whether, and if so how, to engage the broader public in developing the initiative. Consideration will also need to be given to how continuous improvement to the Competence Framework will be addressed, such that systems are in place to ensure it remains effective in developing entry-level competence in a manner that protects the public interest for years to come.

The Task Force is of the view that these are required elements of laying a solid foundation for the restructuring of the processes and outcomes of lawyer licensing in BC.

Cost and Organizational Implications

The development of the competencies and addressing options for how they may be assessed must first be completed before the full cost and organizational implications can be assessed. The Benchers will be provided with a more comprehensive cost and organization impact assessment once the Competence Framework has been completed.

Subsequent Steps

If the recommendations contained in this report are approved by the Benchers, Law Society staff will commence the process of identifying experts to oversee the development of the Competence Framework. Once this expertise is retained, the Benchers will be provided with additional information regarding the process of, and associated timelines for, generating a robust and draft framework.

In considering these recommendations, the Benchers are reminded that establishing a Competence Framework represents the first stage of much larger set of potential changes to the system of lawyer licensing in BC. Although the approval of the proposed resolution does not commit the Law Society to other modifications, including those identified in the Competence Report, it is likely that further reforms to the programs and processes that support lawyer formation will logically flow from this policy decision.

Appendix A: Jordan Furlong, “A Competence-Based System for Lawyer Licensing in British Columbia: Interim Report (May 10, 2022)

Appendix B: Regulatory Impact Statement