

A Competence-Based System For Lawyer Licensing in British Columbia

Interim Report

Submitted to the Law Society of British Columbia

May 10, 2022

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1. Introduction

1. This Report recommends that the Law Society of British Columbia (the “Law Society”) develop a competence-based system for the licensing of lawyers in this province. It sets out a rationale for abandoning B.C.’s current credentials-based licensing system, explains the nature of and reasoning behind a competence-based licensing system, suggests a process by which the new system could be developed, and outlines several ways in which the lawyer licensing system would change significantly as a result.
2. The provincial government grants the Law Society authority over the lawyer licensing process in British Columbia through the *Legal Profession Act*. Section 3(c) of that statute directs the Law Society to “uphold and protect the public interest in the administration of justice by ... establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.”¹
3. In January 2021, Dean Lawton, Q.C., President of the Law Society of B.C., provided Steven McKoen, Q.C., Chair of the LSchools aw Society’s Lawyer Development Task Force, with a mandate letter² that enclosed the Terms of Reference³ of the Task Force. Included in those Terms of Reference were the following directions:

2. Identify the core professional competencies lawyers must possess at the various stages of their development in order to inform the educational and experiential requirements necessary to develop a well-educated and qualified B.C. bar;

3. Consider whether the current educational and development programs and processes develop and maintain those professional competencies lawyers must possess;

4. Take into account the work of the Federation of Law Societies of Canada, other law societies and legal professional organizations on the matters identified in the mandate.

¹ *Legal Profession Act*, 1998, British Columbia: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/98009_01#division_d2e550

² 2021 Mandate for Lawyer Development Task Force, Law Society of British Columbia: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/mandate_LawyerDevelopment.pdf

³ Lawyer Development Task Force Terms of Reference: https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/committees/terms_LawyerDevelopment.pdf

4. Pursuant to these Terms of Reference, the Law Society’s Lawyer Development Task Force wishes to re-evaluate all the elements of the lawyer licensing process in British Columbia. This Report is intended to help the Task Force carry out that re-evaluation. It makes a single recommendation, supported by extensive additional information and suggestions for further inquiry and development.
5. **This Report recommends** that the Law Society take steps to create a Competence Framework for newly licensed lawyers in B.C., and to transform the lawyer licensing process so that it conforms to and fulfills that Framework.⁴ This Report goes on to describe how the Law Society can change the lawyer licensing system to ensure that candidates for licensure can be informed about entry-level lawyer competencies in British Columbia, can acquire those competencies in a fair and accessible manner, and can demonstrate to the Law Society their possession of those competencies.
6. It is a formidable task to contemplate the overhaul of a lawyer licensing system that has brought multiple generations of excellent lawyers into British Columbia. The Professional Legal Training Course (PLTC) was first introduced in 1983. The province’s first law school, at the University of British Columbia, opened in 1945. “Articling” has been part of bar admissions in B.C. for more than a century. No one can say that these elements of the current lawyer licensing system have not produced competent, honourable, and independent lawyers.
7. During that time, however, we have also experienced remarkable advances in understanding how adults learn,⁵ along with new thinking about how professional skills are acquired, developed, and applied.⁶ It can safely be said that the lawyer formation process in Canada has not kept pace with these trends in professional

⁴ A significant implication of this recommendation is that the Competence Framework could also be applied to experienced lawyers as part of their continuing competence requirements. This issue is outside the scope of this Report and is not addressed further.

⁵ “Lifelong Learning: Effective Adult Learning Strategies and Implementation for Working Professionals,” Jonathan Westover, *International Journal of Learning* 2009, Vol. 16 Issue 1, p 435-443: https://www.researchgate.net/publication/45072702_Lifelong_Learning_Effective_Adult_Learning_Strategies_and_Implementation_for_Working_Professionals

⁶ “Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals,” Neil W. Hamilton, 45 *Creighton L. Rev.* 763 (2011-2012): <https://heinonline.org/HOL/LandingPage?handle=hein.journals/creigh45&div=30&id=&page=>

learning. The three core components of Canadian lawyer development and licensing today — a three-year law degree, a bar admission program, and law firm articling — would be familiar to the Class of 1972, fifty years ago.

8. To state the obvious, the legal profession is not the same as it was fifty years ago. The last twenty years alone have seen an astonishing amount of change throughout the legal services sector, in terms of public demands, client needs, lawyer specialization, law firm business models, technological capabilities, and justice system access. The last two years of pandemic life have transformed parts of our society in ways that would have seemed inconceivable in 2019. The future promises us only more change — faster, more disruptive, and more transformational.
9. Given these extraordinary times, and the demands they are making on the legal system, we cannot continue to form lawyers — to educate, train, and license them — the same way we did fifty years ago, twenty years ago, or even two years ago. It is a disservice to our profession and the public we serve to pretend otherwise, or to merely make incremental, uncontroversial tweaks to an outdated and increasingly unfit system. We cannot continue to prepare lawyers for law practice in the 20th century nearly a quarter of the way into the twenty-first.
10. This Report does not, and is not intended to, constitute a standalone blueprint with which the lawyer licensing system in British Columbia can be transformed. A project of that size, scope, and effect is the work of several years, conducted by trained specialists and requiring extensive consultation with myriad legal sector stakeholders throughout the province and across the country. That is not a project to be undertaken lightly — but it is time to undertake it all the same. This Report is intended to serve as that project's starting gun.

2. The Credentials-Based System for Lawyer Licensing

11. The Lawyer Development Task Force has been directed to “identify the core professional competencies lawyers must possess at the various stages of their development.” It might come as a surprise to the casual observer that, here in 2022, these competences have not yet been formally identified.
12. Although the provincial legislature long ago directed the Law Society to establish standards for the competence of lawyers and applicants for bar admission, it specified neither what those competencies might be nor what standards should be applied when assessing that competence. This is not unique to British Columbia. Every other provincial and territorial legislature in Canada has also delegated to its respective legal regulator the determination of standards of lawyer competence. Up until very recently, however, no law society had actually done so.⁷
13. The failure to identify core lawyer competencies represents a problem for the Law Society’s public interest mandate. If pressed by a member of the public (or the provincial legislature) to enumerate the capacities and attributes that collectively constitute competence in a B.C. lawyer, the Law Society could cite various individual features such as “basic knowledge of fundamental laws,” “client service skills,” and “ethical and personal integrity.” But it could not point to a comprehensive framework of all those competencies, or to a systematic process by which licensure candidates can acquire and demonstrate their possession of those competencies.
14. Instead, the Law Society would refer to a series of competence *proxies* upon which it has traditionally relied as proof of a licensure candidate’s capacities and attributes.
 - Instead of a detailed description of the legal knowledge required of a new lawyer, the Law Society would cite completion of a Canadian common-law degree from an accredited law school (or a Certificate of Qualification from the Federation of Law Societies of Canada’s National Committee on Accreditation⁸) as acceptable legal knowledge to begin the licensure process.

⁷ The Law Society of New Brunswick’s work in this area will be detailed later in this Report.

⁸ Licensure applicants who did not attend a Canadian common-law school must obtain an NCA Certificate of Qualification, which is intended to show that an applicant’s knowledge of Canadian law is similar to the knowledge of an applicant who obtained their degree through an approved Canadian common-law school program: <https://nca.legal/>. Given that the NCA certification process is outside the Law Society’s authority, and that the process itself is currently under review, relatively little will be said about the NCA Certification system in this Report.

- Instead of a detailed description of the knowledge of professional responsibility required of a new lawyer, the Law Society would cite completion of a ten-week bar admission program (the PLTC) in which ethics and professional responsibility issues are briefly canvassed, as constituting acceptable proof that a licensure candidate possesses this understanding.
 - Instead of a detailed description of the legal and professional skills required of a new lawyer, the Law Society would cite completion of the PLTC, as well as a nine-month period of apprenticeship in a legal workplace, as constituting acceptable proof that a licensure candidate possesses these skills.
15. Rather than explicitly defining the content and standards of new lawyer competence, the Law Society accepts certain *credentials* obtained by a licensure candidate — graduation from an accredited law school or the NCA program, passage of the PLTC, and completion of a period of supervised practice in a legal workplace — to constitute *de facto* fulfillment of whatever the core competence of a newly licensed lawyer might be. The Law Society does not assess the competence of licensure applicants so much as it approves various mechanisms and entities through which these credentials are obtained.
16. In favour of this credentials-based lawyer licensing system, it can at least be said that, generally, it works. For nearly 40 years, ever since the PLTC was first introduced in 1983, British Columbia has licensed lawyers in this fashion, and the legal system has held together. Clients have been as well-served in B.C. as in any other jurisdiction; lawyers have led successful careers; the justice system has continued to operate. B.C.'s credentials-based lawyer licensing system is more or less doing the job it has been tasked with doing.
17. Additional benefits of this system are its familiarity (all the primary current stakeholders in the lawyer formation process — law schools, law students, PLTC administrators, licensure candidates, and the Law Society — understand this approach and make it work) and its affordability (by outsourcing much of the process to third parties such as law schools and law firms, the Law Society dramatically lowers its own costs of licensure assessment).
18. Against this credentials-based lawyer licensing system, however, more can be said. The Law Society's use of a credentials-based system for lawyer licensing suffers from two fundamental problems.

- As a matter of practice, the individual elements of B.C.'s credentials-based licensing system are inadequate to meet public and professional expectations of the competence and qualification of lawyers.
- As a matter of principle, the Law Society should create and administer a competence-based licensing system to increase the reliability, validity, transparency, and fairness of the process by which people become lawyers.

A. Practical Concerns

1. Law School

19. The Law Society does not direct the contents of the Canadian common-law programs whose degrees it accepts as a proxy for legal knowledge competence. Canadian law schools are entirely independent of law societies' control, and their faculty boards unilaterally determine their curricula. Law school deans in B.C. and elsewhere in Canada have repeatedly reminded law societies that regulators have no role in determining the substance of law schools' degree programs.

20. Nevertheless, if these schools wish their graduates to be eligible to enter law society admission programs, their law degrees must meet the FLSC's national accreditation standards. The "National Requirements for Canadian Common-Law Degree Programs," promulgated in their final form in 2018,⁹ specifies the competencies and skills law school graduates must have attained in order to be eligible for lawyer licensing. The National Requirement's list of competencies and skills, which occupy two-and-a-half-pages of the brief five-page document, can be summarized as follows:

1. Skills Competencies

- Problem-solving;
- Legal research; and
- Oral and written legal communication.

2. Ethics and Professionalism

- Knowledge; and
- Skills.

⁹ <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>

3. *Substantive Legal Knowledge*, including:

- Foundations of Law, including:
 - a. principles of common law and equity;
 - b. the process of statutory construction and analysis; and
 - c. the administration of the law in Canada.

- Public Law of Canada, including
 - a. the constitutional law of Canada;
 - b. Canadian criminal law; and
 - c. the principles of Canadian administrative law.

- Private Law Principles, including:
 - a. contracts;
 - b. torts; and
 - c. property law.

21. It is important to note that the National Requirement was formulated decades *after* the content of most Canadian law degree programs — especially standard mandatory first-year courses in constitutional law, contract law, criminal law, torts, and property — had become entrenched. In other words, law schools did not develop their degree programs in accordance with the National Requirement so much as the Requirement codified the existing practice in law schools.

22. A Canadian common-law degree purportedly provides a licensure candidate with the legal knowledge necessary to become a lawyer. In reality, however, hardly anyone in the legal profession considers that to be true. “I didn’t learn in law school what I needed to practise law” is one the most common refrains of practising lawyers nationwide.

23. Many law school deans, interestingly, would agree. They would contend that people obtain law degrees for myriad reasons, that law schools are not trade schools, and that a law degree is not intended to give a person all the knowledge they need to practise law. Law schools’ longstanding resistance to “teaching the practice of law” is rooted in the firm belief that the law degree stands on its own merits; if law societies wish to use the degree as part of their lawyer licensing processes, that is their choice and their business. As independent entities that value and protect their academic freedom, law schools have every right to take this position.

24. But it is not only practising lawyers and law school administrators who believe a law degree does not provide all the legal knowledge needed by a competent lawyer. Law societies themselves also believe this.
25. Many law societies have decided that the legal knowledge components of the National Requirement — the mandatory elements of the common-law degree — do not adequately reflect the full range of knowledge competence that a newly licensed lawyer should possess. Accordingly, they have determined that licensure candidates must acquire and demonstrate other legal knowledge before they can be admitted to practice.
26. For example, in British Columbia, the PLTC addresses several legal subjects other than those listed in the National Requirement: commercial and company law, real estate, wills, civil litigation and procedure, criminal procedure, and family law. Much PLTC class time is devoted to learning about and applying knowledge of these areas of the law to hypothetical client situations; candidates' ability to recall and apply this knowledge is assessed in two Qualification Examinations at the conclusion of the course. Other law societies structure their bar admissions programs in similar fashion, presumably for similar reasons.
27. It is reasonable to conclude, therefore, that hardly anyone involved in the Canadian lawyer licensing system believes a common-law degree provides candidates with legal knowledge sufficient for lawyer licensing. Most legal regulators provide supplemental legal knowledge instruction in their bar admission programs to ensure candidates possess basic knowledge of a wider range of subjects. Nevertheless, all legal regulators make possession of a law degree a *mandatory* element of lawyer licensure, and consider it the primary proxy measure of legal knowledge competence.
28. This seems like an appropriate place to observe that at Canadian common-law schools, annual tuition alone ranges from \$10,370 at the University of Victoria to \$33,040 at the University of Toronto; fees, books, and room and board costs can easily double that expenditure.¹⁰ In 2018, the average Canadian law student graduated

¹⁰ "Canadian law schools 2021 / 22: Resources if you're considering whether, and where, to become a lawyer," *Canadian Lawyer*, Sep. 2, 2021: <https://www.canadianlawyermag.com/resources/legal-education/canadian-law-schools-202122-resources-if-youre-considering-whether-and-where-to-become-a-lawyer/359445>

with \$71,000 in debt.¹¹ Individual debt loads of \$200,000 or more are not uncommon.¹² Although most law schools have done an admirable job providing bursaries and scholarships to students with limited financial assets, these efforts are supplementary at best to the larger population of students who either pay their own way or take out loans to afford the cost.

29. It is also well-established that law school debt restricts the capacity of lawyers to offer affordable legal services and advance the goal of better access to justice.¹³ In addition, recent studies have found that high levels of debt compromise the mental and emotional well-being of newly called lawyers.¹⁴ Moreover, law school admission requirements¹⁵ and the ever-increasing cost of tuition might also be discouraging members of racialized minorities from pursuing a legal career.¹⁶

¹¹ "The debt burden," *Canadian Lawyer*, Aug. 7, 2018: <https://www.canadianlawyermag.com/resources/legal-education/the-debt-burden/275350>

¹² "Canada's growing student debt crisis," *National*, Oct. 21, 2019: <https://nationalmagazine.ca/en-ca/articles/law/in-depth/2019/canada-s-growing-student-debt-crisis>

¹³ "Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear," Christa McGill, *Law & Social Inquiry*, Vol. 31, No. 3 (Summer, 2006), pp. 677-708: <https://www.jstor.org/stable/4092722>; "Skyrocketing law school tuition fees disrupting access to justice," Rabeea Khalid, *The Lawyers Daily*, Nov. 30, 2018: <https://www.thelawyersdaily.ca/articles/8844/skyrocketing-law-school-tuition-fees-disrupting-access-to-justice>; "Law Grads' Student Loan Burden is an Access-to-Justice Issue," Canadian Bar Association press release, April 11, 2019: <https://www.cba.org/News-Media/Press-Releases/2019/student-loan-burden>

¹⁴ "Just or Bust? Results of the 2018 Survey of Ontario Law Students' Tuition, Debt, & Student Financial Aid Experiences," Law Students' Society of Ontario report, January 2019: <https://s3.amazonaws.com/tld-documents.llnassets.com/0010000/10102/law%20students'%20society%20of%20ontario%20-%20just%20or%20bust%20report.pdf>; "Crushing Law School Debt Is Destroying Lawyers' Mental Health," Staci Zaretsky, *Above The Law*, Oct. 27, 2020: <https://abovethelaw.com/2020/10/crushing-law-school-debt-is-destroying-lawyers-mental-health/>

¹⁵ "Do Law Schools Limit Black Enrollment With LSAT?" Scott Jaschik, *Inside Higher Ed*, April 15, 2019: <https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-black-enrollment-through-lsat>

¹⁶ "Tuition fee increases and the history of racial exclusion in Canadian legal education," Charles C. Smith, then-Equity Advisor to the Canadian Bar Association, December 2004: <https://www.ohrc.on.ca/en/book/export/html/8976>

30. In addition, the time commitment required to obtain a law degree should not be overlooked. From the first day to the last day of a full-time law degree, at least two years and eight months will elapse, not counting time spent working to afford tuition, books, and room and board. Those 32 months represent a significant commitment of a person's life, myriad opportunities postponed or foregone. It is true that the decision to pursue a legal career requires dedication and sacrifice on the part of an aspiring lawyer; but it also seems true that this dedication and sacrifice ought to deliver a payoff greater than "partial fulfillment of a single aspect of the licensing process."
31. A question worth asking, given all the foregoing, is why every law society in Canada — knowing that the legal knowledge conferred by the Canadian common-law degree is inadequate for lawyer licensing, knowing that law schools have no intention of adjusting their programs to suit the needs of law societies in this regard, and knowing that the cost of law school is a barrier to equitable entry into the legal profession — nevertheless makes the possession of this degree a mandatory element of the lawyer licensing process.
32. That question will be explored at more length in Section 4 of this Report. All that need be said here is that the Canadian common-law degree credential cannot reasonably be considered an effective proxy for the legal knowledge necessary for entry-level lawyer competence.

2. *The PLTC*

33. The PLTC, British Columbia's bar admission course, is a full-time, 10-week program that covers supplemental legal knowledge instruction, practical application of legal knowledge and procedures, some skills training, professional responsibility instruction, and practice management skills. Completion of the PLTC is the least "credential"-like aspect of the Law Society Admission Program — the Law Society develops and administers the program itself — but the execution of the program presents problems nonetheless. We have already canvassed legal knowledge issues in the previous section, so we will focus here on the PLTC's coverage of practice skills, professional responsibility, and practice management.
34. The PLTC carries out four skills assessments, which collectively evaluate on a range of lawyer skills, including opinion-letter writing, contract drafting, client interviewing, and advocating. Candidates are introduced to these skills, given the opportunity to practice them in simulated role-play sessions, and given feedback and guidance from instructors.

35. Candidates demonstrate their skills in these areas through four assessments near the end of the course — two written (drafting a contract and drafting a client opinion letter) and two performative (presenting an oral argument for a contested application, and interviewing and advising a new client), with a passing mark of 70% required for each assessment.¹⁷
36. The PLTC instructs licensure candidates on professional responsibility and practice management mostly in the course of developing candidates' other legal knowledge and skills. One day each in the PLTC schedule is devoted to "Professional Ethics" and "Practice Management." The relevant Practice Materials include the 84-page document "Professionalism: Ethics" and the 184-page document "Professionalism: Practice Management."¹⁸
37. Candidates demonstrate their professional responsibility and practice management competence in the PLTC in two ways: during the skills assessments, and by identifying and addressing issues that arise in the course of answering questions on the Qualification Examinations. However, 90% of the marks on each exam are devoted to substantive law topics, with just 10% devoted to practice management; ethics topics are "included throughout."
38. It perhaps goes without saying that the skills required of a new lawyer range well beyond the four that are taught and evaluated in the PLTC, and that the complex and vital issues of professional responsibility and law practice management require more than two days of classes to capably address. The PLTC, as currently structured, cannot be said to effectively ensure that licensure candidates are acquiring entry-level competence in the full range of professional responsibility knowledge and law practice and management skills needed for entry-level competence.
39. This problem is entirely understandable, however, given the remarkably wide remit of the PLTC and how much ground it is required to cover. The PLTC must:

¹⁷ <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-skills-assessments/>

¹⁸ <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-practice-material/>

- Instruct candidates on several areas of substantive law¹⁹ and assess their practical application of this knowledge to entry-level client situations;
- Instruct and assess candidates on four key lawyer and professional skills;
- Instruct and assess candidates on professional responsibility issues; and
- Instruct and assess candidates on practice management issues.

40. This is an intense, multi-faceted workload that PLTC candidates and their instructors must accomplish in a period of time shorter than a single law school semester. By contrast, law schools have three years to meet the various demands of the FLSC's National Requirement. PLTC administrators and instructors unquestionably are doing their utmost to bring candidates to a point of acceptable licensure competence in these areas. But the program's mandate is difficult to reconcile with its duration.

41. This conclusion is consistent with surveys of participants in the 2019 and 2021 PLTC sessions (no surveys were conducted in 2020), which paint a picture of a program that is obliged to do too much in too little time. These surveys suggest that candidates find the skills assessments to be significantly more difficult than the course had prepared them for, and that completing the assessments so close to the Qualification Examinations added to the difficulty.

42. Asked to rate their workload on a 1-to-5 scale, where 3 represented "Reasonable" and 5 represented "Too Much," participant scores ranged from 3.75 to 4.33. Asked to rate the quality of various practice materials on a 1-to-5 scale (1 was "Poor," 5 was "Excellent"), participants gave scores ranging from 3.46 to 3.75. In other words, PLTC participants reported that the heaviness of the workload outranked the quality of materials across virtually every subject.

43. While program participants gave the PLTC generally good reviews for its "overview of different areas of practice" and "exposure to subjects not covered in law school," they were critical of the intensity of the workload in such a short period of time, as well as both the length and currency of the materials. Especially troubling were concerns about the disconnect between what the PLTC taught and what "real-life practice" required, and the negative impact of the experience on participants' mental and emotional wellness.

¹⁹ The PLTC Practice Materials covering substantive law are themselves quite substantial. The current online version of the "Civil" materials runs 148 pages, "Criminal Procedure" is 151 pages, "Family" is 98, "Commercial" is 66, "Company" is 127, "Real Estate" is 135, and "Wills" is 131, for a total of 856 pages of reading: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/professional-legal-training-course/pltc-practice-material/>

44. Most importantly, there is reason for concern that the PLTC is not fulfilling its most essential role. One survey question, also offered on a 1-to-5 scale, asks: “As a result of PLTC, do you feel better able to perform the following entry-level tasks as a lawyer?” Across eight categories, participant scores ranged from 2.38 to 3.09 out of 5 — expressed in percentage terms, grades ranging from a low of 47.6% to a high of 61.8%.
45. There are other ways to evaluate the PLTC, of course, and other assessors whose input would be helpful; participant surveys should not be the sole measure. But it is difficult to resist the conclusion that completion of the PLTC cannot be considered a reliable and effective “proxy measure” of the knowledge, skills, and professional responsibility understanding the Law Society demands of licensure candidates.

3. Articling

46. Licensure candidates in British Columbia are also required to complete nine months of articles in a law firm or other legal workplace. It is perhaps noteworthy that the word “articles” is not defined anywhere on the Law Society website.
47. In practical terms, an “articling student” is a licensure candidate who spends several months in a legal workplace as a trainee lawyer with limited powers and responsibilities. The articling period is intended to provide the licensure candidate with a period of direct experience with law practice under the supervision of a veteran lawyer.
48. The numerous challenges and shortcomings of the articling experience — in terms of the effectiveness of articling as a preparation for law practice, the fair availability of articling opportunities, the salaries and working conditions of articling positions, the arbitrary length of the articling period, the absence of standards and training for articling principals, and the future viability of articling in a rapidly evolving legal sector — are explored in more detail in Section 5 of this Report. But it seems safe to say that articling in its current form has few staunch defenders in the legal profession, and fewer still who believe it does not require some kind of reform.
49. The Law Society has no direct control over a licensure candidate’s articling experience — it effectively “outsources” to a law firm or other legal workplace the conduct and oversight of the articling period. To compensate for this lack of direct supervision, the Law Society places the following requirements on the candidate and their articling principal:

- The candidate must submit an Articling Agreement²⁰ and an Articling Skills and Practice Checklist,²¹ each signed by the candidate and their articling principal, that outline the responsibilities of both parties during the articling term.
- Three months into the articling term, the candidate must conduct a personal interview with a Law Society Benchers, who will “make a report to the Law Society.” The purpose and content of the interview or the subsequent report are not specified in the Articling Guidelines.²²
- Approximately halfway through the articling term, the candidate and their principal must meet to discuss the candidate’s progress and must submit a mid-term report to the Law Society.²³
- At the end of the articling term, the candidate and their principal must meet to discuss the term, and the principal must submit a final report to the Law Society certifying that the candidate has completed their obligations under the Articling Agreement.

50. The Articling Skills and Practice Checklist specify that the candidate “shall obtain practical experience and training in” a detailed list of areas, including ethics, practice

²⁰ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/articling-agmt.pdf>

²¹ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/forms/MS-admissions/articling-check.pdf>

²² “Articling Guidelines for Students”: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/articling-centre/articling-guidelines-for-students/>. These interviews, it should be noted, commonly devolve into “venting sessions” by overworked or harassed articling students, who nonetheless often plead with the Benchers not to report or act on any complaints for fear of repercussions. These interviews change little about the individual articling experience and nothing about the articling system in general. Moreover, coming governance reforms that will reduce the size of the Law Society Board mean that fewer Benchers will have to conduct interviews with B.C.’s 650 articling students every year. In his December 2021 report on Law Society governance, Harry Cayton recommended that this practice be discontinued, finding it “time-consuming for both parties and a pointless initiation rite”: <https://www.lawsociety.bc.ca/about-us/governance-review/>. This Report agrees.

²³ “Details of Articling”: <https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/admission-program/articling-centre/details-of-articling/>

management, research, writing, drafting, advocacy, negotiating, interviewing, and problem-solving, as well as a limited number of substantive law subjects. But these documents require only that the candidate receive “practical experience and training” in these areas, without specifying the levels or degrees of required knowledge and facility.

51. The Law Society, then, provides little guidance to and oversight of the articling experience. It does not set threshold parameters for the skills the candidate is to develop, it rarely interacts with the candidate during their term, and it neither seeks nor receives any final assessment of the candidate’s performance. The Law Society’s approach to the articling term can best be described as “hands-off.” In its own way, articling is as much of a “credential” as the law degree.

B. Principled Concerns

52. Taken together, there is reason to doubt that the three foregoing elements of the credentials-based lawyer licensing system — the law degree, the PLTC, and articling — would give an outside observer confidence that they collectively provide licensure candidates with the competence necessary to enter the legal profession and begin serving clients.
53. This is not intended as a blanket condemnation of these three elements. They each have excellent qualities and deliver real benefits to licensure candidates and the legal profession. Law schools teach the law and legal reasoning very well; the PLTC inculcates some much-needed legal skills and practical applications of the law; articling allows licensure candidates to test their knowledge and skills in a real-life legal services environment. Each of these three elements could conceivably be strengthened or reformed, albeit some more easily than others.
54. But therein lies the problem. If we were setting out to make these elements better at preparing competent lawyers, how would we know that we had succeeded? How could we objectively measure whether and when these elements became capable of meeting our goal? How can we know whether our lawyer licensing procedures and institutions are producing competent lawyers *if we do not even know what a “competent lawyer” looks like?*
55. Whatever we might tell ourselves, licensure candidates do not spend nearly four-and-a-half years acquiring “the competence of lawyers.” They spend that time taking courses, passing tests, writing essays, obtaining degrees, completing programs, learning and practising a few skills, and carrying out quasi-lawyer duties, all at

considerable expense to themselves and others. These are admirable achievements. They are surely connected in some way to the competence of lawyers. But the nature of that relationship is opaque to everyone — most of all, to the licensure candidates themselves.

56. Many new lawyers anecdotally report feeling a surge of panic upon their arrival in the profession, confronted by the sudden reality that they are licensed to be lawyers but unaware of what that license demands. They know neither the competencies required of them nor their own inventory of professional capabilities, and so they fear they are incompetent, unready to practise law, and unfit to help clients.
57. Sometimes, those fears are unjustified — these new lawyers know more and can do more than they think. More often, however, there truly are gaps in the knowledge, skills, and other attributes new lawyers possess — gaps that are all the more dangerous because new lawyers “don’t know what they don’t know.” Because the lawyer competence profile is invisible, they have to feel it out over time, through trial and error. They have neither a map to their destination, nor any clear conception what that destination looks like. Licensure candidates are not acquiring the “competence of lawyers,” because no one knows what that is supposed to be.
58. The consequences of a failure to define entry-level lawyer competence are also felt by clients and members of the public. They have a vague sense of what a competent lawyer should look like — someone who understands the law, knows what to do in a legal situation, can argue on your behalf, and will keep confidential what you tell them. But they are normally incapable of judging whether any particular lawyer is actually qualified in these respects. They rely on the regulator to have made that assessment, and they would be dismayed to learn that the regulator does not actually assess the lawyer at all — it merely scans their credentials and issues a licence.
59. The lawyer licensing system assumes that by obtaining the required credentials, a candidate has thereby acquired the competence to practise law. That assumption has become invisibly integrated into the lawyer licensing process, in British Columbia and elsewhere in Canada. It has the strength and force of long tradition to sustain it. But it is still only an assumption.
60. Entry-level, “Day One” lawyers should be able to carry out certain tasks and perform certain roles to a certain level of achievement, because they possess certain knowledge and skills and have undergone certain training and experiences. The purpose of the licensing process should be to define these tasks, roles, attributes, and

experiences; to decide what “certain” means for each of those elements; to ensure that these elements can be reasonably acquired; and to confirm that new lawyers can demonstrate they have acquired them.

61. The Law Society is statutorily required to “establish standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission.” The Law Society has never defined the specific knowledge, skills, attributes, and experiences necessary for a person to gain admission to the legal profession. It is time that it did.
62. Enhancing the lawyer licensing process, therefore, first requires the Law Society to determine precisely what it demands of a newly licensed lawyer. It must define, as clearly as it can, the competence that must be possessed by successful licensure applicants. The balance of this Report will address that challenge.

3. A Competence-Based System for Lawyer Licensing

A. What is Competence?

63. Most Canadian law societies define “competence” in their rules of professional conduct, albeit in a rather circular fashion. The Code of Professional Conduct for British Columbia states:

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.²⁴

64. The Commentaries following this definition suggest that competence means a lawyer is “knowledgeable, skilled and capable in the practice of law... [M]ore than an understanding of legal principles, [competence] involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.” That is the extent of the Code’s formal guidance on the subject.

65. Broadly speaking, “competence” can be understood as the capacity to carry out a task or perform a function in order to generate an effective outcome. Competence in a professional context is expressed by the acquisition and application of myriad attributes and capabilities (individual “competencies”) that signal a professional’s overall fitness to reliably perform the essential duties expected of and entrusted to their profession.

66. Legal regulators use the term “competence” in this technical sense. They are statutorily mandated to define the standards of fitness and reliability for lawyers, and to ensure that everyone who is or wishes to become a lawyer meets those standards, in order to protect and advance the interests of clients and the public.

67. Lawyers, on the other hand, tend to use “competence” in the more common sense of the word, to mean “adequacy.” They might regard the term, if applied to themselves, almost as an insult. Few lawyers consider themselves to be merely adequate — most would prefer to be known as “adept,” “proficient,” or “expert.”

²⁴ “Chapter 3 – Relationship to Clients – annotated,” Code of Professional Conduct for British Columbia, Law Society of British Columbia: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/chapter-3-%E2%80%93-relationship-to-clients/#3.1-2>

68. Achieving “mere adequacy,” however, is cause for celebration for new lawyers. It represents the successful culmination of several years’ work and opens up an exciting new chapter in their lives. But it also signifies the arrival of many new expectations and responsibilities, which can quickly become burdens if the lawyer is unprepared or ill-equipped to fulfill them.

69. It is therefore essential that all key stakeholders in the lawyer licensing process understand exactly what “mere adequacy” to practise law represents:

- The Law Society needs to know the precise standards to which it is holding lawyers at the point of admission, in order to formulate a defensible licensing system that provides transparency to all stakeholders.
- Members of the public deserve to know the precise degree of knowledge, skill, conduct, and character they should expect from the lawyers they encounter. Public confidence in the legal profession begins with public understanding of the parameters of minimum competence for lawyers.
- Aspiring lawyers ought to know the precise attributes they must possess and skills they must acquire in order to gain entry to the profession. These elements are central to a lawyer’s professional purpose and career and should be accessible to anyone who wishes to enter the profession.

70. Point-of-licensure competence must represent a fine balance. Entry into the legal profession should not be too difficult, or else members of the public will have too few qualified lawyers available to assist them (with negative consequences for access to justice) and deserving licensure candidates will be unjustly barred from practising law. But entry to the profession should also not be too easy, or else the interest of the public in capable and trustworthy lawyers may be compromised (with negative consequences for the reputation of the profession and the rule of law). The challenge is immense, and the stakes are very high.

71. What are the individual components of lawyer competence that a licensure candidate must demonstrably possess? And what threshold level of overall competence must that candidate meet before they are considered fit to practise? To answer those questions — and thereby take the first step towards building a better lawyer licensing system — the Law Society must develop, test, validate, and implement a *Competence Framework for Lawyer Licensing*. This is the foundational task from which every other improvement in the licensing process will flow.

B. Competence Frameworks for Professional Licensing

72. There is no single all-purpose definition of “competence framework,”²⁵ perhaps because the concept is so widely used across many different disciplines and working environments. Its most frequent application is within a company or organization, as this description suggests:

*[A competence] framework outlines specifically what people need to do to be effective in their roles, and it clearly establishes how their roles relate to organizational goals and success. ... A competency framework defines the knowledge, skills, and attributes needed for people within an organization.*²⁶

73. In a professional or regulatory context, a competence framework is better understood as a model that describes the competencies required to successfully fulfill a role within a profession. Competence frameworks establish the standards to which a person performing a professional role must hold themselves and be held by others. To adapt the previous definition, a competence framework defines the knowledge, skills, and attributes required of people who wish to belong to a profession.

74. Most professions in Canada have developed competence frameworks or profiles for licensing new members. Some are relatively straightforward: The National Association of Pharmacy Regulation Authorities’ 2014 “Professional Competencies for Canadian Pharmacists at Entry to Practice” runs 28 pages.²⁷ Geoscientists Canada’s “Competency Profile for Professional Geoscientists at Entry to Practice,” also published in 2014, is just 17 pages.²⁸ The FLSC’s “National Entry to Practice Competency Profile for Lawyers and Québec Notaries,” which runs exactly 7 pages, also dates from this period (2012).

²⁵ Other professions and jurisdictions sometimes use the phrase “competence profile” or “competence map” to express the same concept.

²⁶ “Developing a Competency Framework: Linking Company Objectives and Personal Performance”: https://www.mindtools.com/pages/article/newISS_91.htm

²⁷ https://www.napra.ca/sites/default/files/2017-08/Comp_for_Cdn_PHARMACISTS_at_EntrytoPractice_March2014_b.pdf

²⁸ https://geoscientistscanada.ca/source/pubs/images/EN_Competency-Profile-for-Professional-Geoscientistsat-Entry-to-Practice.pdf

75. More recently, however, professional competence frameworks have become more detailed and sophisticated, as regulators learned more about professional development theory and conducted more wide-ranging consultations and in-depth research. For example, the fifth edition of the College of Licensed Practical Nurses of Alberta's Competency Profile for Licensed Practical Nurses, published in 2020, is a whopping 191 pages long.²⁹ The current version of Royal College of Physicians and Surgeons of Canada's CanMEDS Framework, first developed in 1996 and constantly updated since, is a deep and complex work that has been adopted by physician regulators worldwide.³⁰

76. The dynamic nature of professional competence is also spurring professional regulators to ensure their frameworks keep pace with the realities of a rapidly changing world. The Chartered Professional Accountants' "Competence Map," first published as a 100-page document in 2012,³¹ has just been updated to "Competence Map 2.0" after two years of study and consultation.³² The International Engineering Alliance, of which Engineering Canada is a member, is updating its "Graduate Attribute and Professional Competencies Framework" to account for several factors, including the United Nations Sustainable Development Goals.³³ The College of Patent and Trademark Agents of Canada has recently embarked on its own "multi-year initiative to refine entry-level and continuing competencies."³⁴

77. In contrast to their counterparts in other professions, Canada's legal regulators mostly have not grappled with issues of licensure competence or developed systems to delineate the features of a competent lawyer. The majority of law societies have no frameworks or profiles that describe what a new lawyer should know and be able to

²⁹ https://www.clpna.com/wp-content/uploads/2020/01/doc_Competency_Profile_for_LPNs_5th_Ed_2020.pdf

³⁰ <https://www.royalcollege.ca/rcsite/canmeds/about-canmeds-e>

³¹ <https://smith.queensu.ca/ConversionDocs/GDA/CFA.pdf>

³² "Competency Map 2.0: Learn today. Lead tomorrow": <https://www.cpacanada.ca/en/become-a-cpa/why-become-a-cpa/the-cpa-certification-program/the-cpa-competency-map/competency-map-2-0>

³³ "Updating the IEA's Graduate Attributes and Professional Competencies Framework," Nov. 19, 2020: <https://engineerscanada.ca/news-and-events/news/updating-the-ieas-graduate-attributes-and-professional-competencies-framework>

³⁴ "Competency Initiative," <https://cpata-cabamc.ca/en/about-us/competency-initiative/>

do. Those frameworks that do exist tend to resemble “wish lists” of desirable qualities or “kitchen sink” collections of legal know-how.

78. For example, the Law Society of Ontario’s “Entry-Level Solicitor Competencies” page lists no fewer than 247 separate items of knowledge, skill, or professional conduct required of a new solicitor.³⁵ The page does not make clear through what process this list was developed, or how the regulator determines whether a licensure candidate possesses all these competencies.³⁶ But at least there is a list.

79. In addition to the National Entry to Practice Competency Profile for Lawyers and Québec Notaries, there are a few other examples of lawyer competence frameworks or profiles in Canada:

1. The Law Society of Alberta uses a competence profile to guide lawyers using the LSA’s self-directed CPD system,³⁷ providing several examples of areas of learning and knowledge for each competency and suggesting activities by which an Alberta lawyer could acquire that learning and knowledge.
2. The Law Society of Ontario’s Competence Task Force published a report in 2021, “Renewing the Law Society’s Continuing Competence Frameworks,” that contains, among other things, a “Working Definition of Competence” that runs almost a full page.³⁸

³⁵ <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-solicitor-competencies>

³⁶ It is difficult to believe, for example, that every new Ontario lawyer “demonstrates knowledge of secondary real estate statutes and related regulations and case law (e.g., *Beds of Navigable Waters Act*; *Building Code Act, 1992*; *Business Corporations Act*; *Canada Business Corporations Act*; *Cemeteries Act (Revised)* (repealed); *Conservation Authorities Act*; *Criminal Code*, Section 347; *Environmental Protection Act*; *Extra-Provincial Corporations Act*; *Fraudulent Conveyances Act*; *Indian Act*; *Interest Act*; *Line Fences Act*; *Municipal Act, 2001*; *Ontario Water Resources Act*; *Power Corporation Act*; *Public Utilities Act*; *Religious Organizations’ Lands Act*; *Statute of Frauds*; *Surveys Act*; *Technical Standards and Safety Act, 2000*)” (competence #59).

³⁷ “Competencies,” Law Society of Alberta: <https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies>

³⁸ “Renewing the Law Society’s Continuing Competence Framework,” Report of the Law Society of Ontario’s Competence Task Force, June 23, 2021: <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-june-2021-competence-taskforce-report.pdf>

3. The Nova Scotia Barristers' Society employs a "competency framework" in its articling program, "identifying performance criteria for each identified skill, behaviour and attitude listed in the objective," meant to guide licensing candidates and their principals through the articling process.³⁹
4. In Alberta, Manitoba, Nova Scotia, and Saskatchewan, where the Canadian Center for Professional Legal Education (CPLED) runs the bar admission program, a Competency Framework,⁴⁰ designed by professional development experts and lawyers, underpins the Practice Readiness Education Program.⁴¹

80. Developing and implementing a competence framework for an entire profession can be a monumental undertaking. Professional development experts and psychometricians spend years researching, consulting, testing, and validating myriad aspects of professional knowledge and skill in order to generate a robust and defensible competence framework. That might explain why, to date, only two common-law jurisdictions seem to have developed full-scale competence framework for the legal profession: New Brunswick, and England & Wales.

C. Two Competence Framework Models

81. In June 2021, as part of its new bar admission program,⁴² the Law Society of New Brunswick published a detailed "Competency Profile."⁴³ This profile was developed by an independent social enterprise that reviewed, analyzed, classified, and compiled data from a range of sources, including:

- The FLSC's National Entry to Practice Competency Profile;
- The *Educating Tomorrow's Lawyers* Foundations for Practice report and subsequent work by the Institute for the Advancement of the American Legal System (IAALS);

³⁹ <https://nsbs.org/wp-content/uploads/2019/12/NSBSCompetencyFramework.pdf>

⁴⁰ <https://cpled.ca/about-cpled/competency-framework>

⁴¹ <https://cpled.ca/students/cpled-prep/>

⁴² <https://lawsociety-barreau.nb.ca/en/becoming-a-lawyer>

⁴³ https://lawsociety-barreau.nb.ca/uploads/LSNB_BNB_Competency_Profile_Profil_de_comp%C3%A9tences_2021_BIL.pdf

- Randall Kiser’s 2017 book *Soft Skills for the Effective Lawyer*, which describes and applies hundreds of multi-disciplinary studies in the areas of psychology, law, and “soft skills”;
- Other sources, including legal education and regulation trends, competency profiles from other disciplines, lawyer claims data, and perspectives of New Brunswick lawyers.

82. New Brunswick’s lawyer competence profile applies both to the licensing of new lawyers and the ongoing competence of experienced lawyers. It is structured according to seven related roles or functions of a lawyer — as a professional, a problem-solver, a communicator, a collaborator, a manager, a leader, and a practitioner — along with the qualities the lawyer should develop within each function and the key competencies the lawyer should be able to perform.
83. A total of 21 sub-categories of competence, consisting of 143 individual competencies, are identified under the first six lawyer functions, accompanied by several performance criteria to assess whether the competencies are being met. The seventh function, “Practitioner,” is accompanied by an additional 87 competencies in important knowledge areas, critical lawyering tasks, and suggested qualities associated with safe, effective, and sustainable practice.
84. The Profile’s individual competencies were approved by the Law Society’s Bar Admission Program Task Force in June 2018. In January 2019, the Law Society validated the core competencies (those required for safe and effective practice) through a large-scale validation survey of all New Brunswick lawyers, with oversight by PhD-level psychometricians. An interim competency review was conducted in May 2021, and the current version of the Competence Profile was published the following month. In other words, three years were required to turn task force approval of a proposed set of competencies into a published competence profile in a small province.
85. This brief summary of New Brunswick’s lawyer competence framework and the road travelled to develop it is not meant to suggest British Columbia should follow precisely the same path. It is meant to provide the Law Society with a clearer picture of the enormous amount of preparation, development, consultation, and review that a regulator must undertake to generate a comprehensive and defensible profile of a competent regulated professional — a profile that can then be used to build and maintain a vigorous and effective lawyer licensing system that all legal sector stakeholders will regard as legitimate and reliable.

86. The other useful illustration in this regard is provided by the Solicitors Regulatory Authority of England & Wales (SRA), the only other common-law jurisdiction to produce a competence profile for both lawyer licensing and continuing competence.⁴⁴ As with New Brunswick, the SRA's Competence Statement serves as both a new lawyer assessment framework and a tool for continuing professional development for experienced lawyers. It has three components:

1. A Statement of Legal Knowledge;⁴⁵
2. A Statement of Solicitor Competence; and
3. A Threshold Standard.⁴⁶

87. The Statement of Legal Knowledge sets out 12 broad categories of knowledge that solicitors are required to demonstrate at the point of qualification. The Statement of Solicitor Competence contains four categories (ethics, professionalism, and judgment; technical legal practice; working with others; and managing yourself) encompassing 91 individual competencies. The Threshold Standard sets out the level at which the competencies in the competence statement should be performed upon qualification as a solicitor.

88. To gain a sense of the process that led to this point, the Competence Statement dates back to the 2013 Legal Education and Training Review (LETR), a joint project of the SRA, the Bar Standards Board, and ILEX Professional Standards that conducted a fundamental, evidence-based review of education and training requirements across legal services in England and Wales.⁴⁷ In January 2022, the SRA conducted its first Solicitors Qualification Examination, based on the Competence Statement — more than eight years after the LETR's publication. British Columbia's legal profession is larger than New Brunswick's but smaller than that of England & Wales, and so the Law Society might reasonably anticipate a period of between three and eight years to follow a similar path.

⁴⁴ "Statement of solicitor competence," Solicitors Regulatory Authority of England & Wales: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement>

⁴⁵ "Statement of legal knowledge," Solicitors Regulation Authority: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge>

⁴⁶ "Threshold standard," Solicitors Regulation Authority: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard>

⁴⁷ <https://letr.org.uk/>

D. A Lawyer Competence Framework for B.C.

89. This Report concludes that the time has arrived to define the knowledge, skills, attributes, and experiences — that is to say, the competence — required of new lawyers in British Columbia. The shortcomings of the credentials-based licensing system have been outlined. The merits of a competence-based licensing system have been presented. The examples of licensing competence frameworks developed by other professional regulators and other legal regulators have been cited. This Report believes that switching to a competence-based lawyer licensing system in B.C. is not a matter of “if it should happen,” but “when and how it will happen.”
90. Therefore, **this Report recommends** that the Law Society develop a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of and entrusted to lawyers in British Columbia, as well as the threshold levels at which these competencies should be performed at the point of licensure. In addition, **this Report recommends** that the Law Society use 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.
91. It need hardly be said that these two recommendations, if accepted and implemented, would represent a fundamental restructuring of the culture, apparatus, and outcomes of the lawyer licensing system in British Columbia. This process, from start to finish, likely would last several years and would require a major investment of time, money and other resources, to say nothing of the extensive planning and careful management involved in rolling out the new system.
92. The Lawyer Development Task Force and the Law Society will no doubt wish to consult widely regarding a Competence Framework for lawyer licensing and the particular elements thereof. That being said, the Lawyer Development Task Force’s Terms of Reference, set forth in paragraph 3 of this Report, includes a directive to “identify the core professional competencies lawyers must possess at the various stages of their development.” This Report was commissioned in order to assist the Task Force in achieving that objective, among others.
93. Without seeking to prejudge the result of the consultation process, this Report believes there is value in providing the Task Force with a “starter kit” of competencies for its consideration, rather than obliging the Task Force to begin this process from scratch at considerable time and expense.

94. This Report accordingly presents, for the Task Force's consideration, four broad categories of lawyer competence and several entries under each category, based upon other lawyer competence frameworks as well as a detailed assessment of the changing demands of the Canadian legal market and the evolving interests of the public, now and in the future.

1. *Knowledge of the law*

- Administrative law and procedure
- Business and corporate law and procedure
- Civil litigation, procedure, and remedies
- Contract law and drafting
- Constitutional law
- Criminal law, procedure, and sentencing
- Evidence
- Family law and procedure
- Legislative, regulatory, and judicial systems
- Property and tenancy law and procedure
- Torts
- Wills, estates, and trust law and procedure

2. *Understanding of a lawyer's professional responsibilities*

- Client confidentiality
- Client trust accounts
- Conflicts of interest
- Fiduciary duties
- Select other aspects of the Code of Professional Conduct

3. *The skills of a lawyer*

- Gather relevant facts through interviews and research
- Carry out legal research
- Conduct due diligence
- Draft essential legal documents
- Solve problems using legal knowledge and analysis
- Help negotiate solutions and resolve disputes
- Advocate for a client's position
- Provide legal advice to clients
- Use law practice technology
- Fulfill the basic business and professional requirements of a private law practice

4. *The skills of a professional*

- Establish, maintain, and conclude a client relationship
- Establish and maintain respectful and collaborative relationships with colleagues and others
- Communicate accurately and concisely, verbally and in writing, to different audiences
- Understand and use information management systems effectively
- Understand and use financial management systems effectively
- Manage projects and responsibilities to ensure they are completed efficiently, on time, and to an appropriate professional standard
- Organize one's time and activities to ensure the prompt and successful fulfilment of one's obligations

95. Some readers of this Report might have reactions, perhaps strong ones, to some aspects of the foregoing lists. These readers are encouraged to develop these reactions into detailed arguments with supporting evidence and to be ready to submit them to the Law Society as part of an extensive consultative process of determining the eventual entry-level competence of British Columbia lawyers.

96. However, the Law Society should be careful not to restrict the ambit of its competence consultation solely or even mostly to lawyers. The views of related and affiliated legal sector participants — including judges, court staff, justice officials in government, law firm professionals, paralegals, and notaries — should also be solicited and seriously considered. Even more so, the Law Society should consult current and former clients of lawyers, members of communities frequently or systematically affected by the legal system, and members of the general public. The consultation tent should be large and welcoming.

97. But consultation alone will not be enough. Even if collaborative discussions with stakeholders yield a promising list of competencies, they should be validated by reference to focus groups, workshops, and panels of individuals experienced in entry-level legal skills and lawyer professional development, using experts with the appropriate technical skills and knowledge. A wide-scale survey of the B.C. legal profession to test the competence framework might also be valuable. Defining the threshold standard of all these competencies for licensing would be another task altogether.

98. This recommended course of action might seem daunting; certainly, most legal regulatory bodies have traditionally done much less when determining how to license new lawyers. But the more extensive efforts recently undertaken in New

Brunswick and England & Wales reflect the increasingly common approach taken by other professions, as the competence frameworks in paragraphs 74-76 also suggest. When it comes to assembling and defending a robust framework for licensing competence, lawyers appear to be lagging well behind other professionals.⁴⁸

99. A case can certainly be made that the development of a Competence Framework for lawyer licensing is a project better suited to the Federation of Law Societies of Canada. After all, the competence required of new lawyers is largely consistent across the country. The development of a “National Lawyer Competence Framework” could be seen as a natural successor to the National Entry to Practice Competency Profile for Lawyers and Québec Notaries. A national Competence Framework would also reduce the risk of a patchwork of such frameworks emerging across the country.

100. However, given the time and effort that would be required to coordinate such a wide-ranging project across all Canadian legal regulators, it is recommended that the Law Society forge ahead with this project while keeping its fellow regulators informed and inviting their input as appropriate. As subsequent sections of this report will make clear, some of the shortcomings of B.C.’s current lawyer licensing system cannot be ignored for much longer.

101. Regardless of which elements of competence are eventually determined to be essential for new lawyer licensing in British Columbia, and regardless of where the “entry-level” threshold of competence is set, any licensure system that is built upon this framework must accomplish two things:

- Ensure that aspiring lawyers have accessible and equitable opportunities to learn what the competencies are and *acquire* them.
- Allow aspiring lawyers to *demonstrate* their possession of these competencies to the Law Society in order to gain licensure.

102. These two outcomes are essential to the success of a competence-based system because they help ensure the transparency, fairness, and validity of the licensing process.

⁴⁸ See: Ronald M. Epstein and Edward M. Hundert, “Defining and Assessing Professional Competence,” *The Journal of the American Medical Association*, February 2002, 287(2):226

- Publicizing the competence framework and ensuring fair opportunities to obtain its competencies represents a commitment to making access to the legal profession transparent, equitable, consistent, and as barrier-free as it can be made.
- Allowing aspiring lawyers to show the Law Society they possess those competencies gives everyone — aspirants, regulators, the public — confidence that the baseline standards of lawyer competence have been met by every successful applicant for licensure.

103. The next three sections of this Report will set out several ideas and suggestions for ways in which these conditions could be met in a new lawyer licensing system. Without explicitly endorsing any specific potential competencies, this Report will examine three broad categories of lawyer competence — knowledge of the law, understanding of professional responsibility, and deployment of legal and professional skills — and describe how they could be more transparently, fairly, and validly accounted for in a competence-based licensing system.

4. Knowledge of the Law

104. Under a competence-based licensing system, successful candidates must be able to acquire and demonstrably possess the elements of competence required by the regulator. This section describes how a lawyer licensure candidate could accomplish these goals with regard to legal knowledge competence, beginning with the means by which a candidate acquires this competence.

A. Acquiring Knowledge Competence

105. This section proceeds on the assumption that the Law Society has created, tested, and validated a Competence Framework for lawyer licensing, and that this Framework includes both the nature and the extent of “knowledge of the law” that an entry-level lawyer is expected to possess. Notwithstanding the 12 legal knowledge competencies suggested in paragraph 94, this section of the Report does not and need not make any assumptions about which competencies the Framework will eventually specify in this category.

106. Setting aside for present purposes the NCA certification process for internationally trained lawyers, the Law Society currently considers that the acquisition of a Canadian common-law degree signifies possession of core legal knowledge necessary to begin the licensing process. The shortcomings of this approach were laid out in detail in paragraphs 19 to 32.

107. The introduction of a Competence Framework that requires candidates to acquire and demonstrate possession of regulator-specified legal knowledge would immediately conflict with the *status quo*. Law degrees contain only a few mandatory subjects, those codified in the FLSC’s National Requirement (*e.g.*, torts, criminal, property). It is possible, if not likely, that the Competence Framework will specify entry-level competence in many more subjects, and to different extents, than what the standard law degree includes. The mismatch would be clear and significant.

108. The Law Society has no formal authority over Canada’s law schools and cannot direct schools to teach their students any specified content. Exercising its power more indirectly — for example, by refusing to accept the validity of any law degree that does not meet the Competence Framework standards — would be politically challenging, since law school accreditation is currently managed by the Federation of Law Societies on a national basis. And in any event, the Law Society has little to gain by starting a war with Canada’s law schools, especially one that would be seen as threatening schools’ academic integrity. That war would have no winners.

109. It is certainly possible that one or more of the three law schools in British Columbia, working alongside the Law Society in a collaborative fashion, might voluntarily decide to overhaul their degree program to reflect the requirements of a Competence Framework for lawyer licensure in this province. In that event, it would be open to the Law Society to affirm that enrolling in that degree program would be a valid way for an aspiring lawyer to acquire the elements of legal knowledge required by the Competence Framework.
110. But that happy circumstance would be only half the battle. The licensure candidate would still have to *demonstrate* possession of knowledge competence to the Law Society. Possessing a degree from a common-law school, even one whose curriculum satisfied every aspect of the Competence Framework, would still be only a credential; it would not demonstrate possession of competence to the regulator.
111. The situation would be even more challenging with regard to law schools outside the province. It can safely be anticipated that the Competence Framework will include several areas of law and procedure specific to British Columbia. No law school outside B.C. is going to include these subjects in its mandatory curriculum. On that basis alone, a law degree from outside the province would not provide the licensure candidate with the full range of legal knowledge that the Competence Framework would require.
112. Nor would it be practical for the Law Society to evaluate every licensure candidate's law school transcript against the Competence Framework to decide whether the candidate had acquired all the required legal knowledge through their course selection and other activities. Not only would this require a significant injection of administrative resources, but it would also raise the difficult question of what to do if a candidate's transcript did not show the acquisition of core legal knowledge — does the Law Society send the graduate “back to school” to take more courses?
113. The inescapable conclusion from all the foregoing is that a competence-based lawyer licensing system would simply not be compatible with a system that “deems” a law degree to fulfill the core knowledge requirements of practising law. Obtaining a law degree is expensive and time-consuming; it brings a candidate only partway to the goal of acquiring the legal knowledge required by the Competence Framework; and it does not advance the candidate towards the goal of demonstrating possession of that competence to the regulator. A law degree re-engineered to match the Competence Framework would fully satisfy the

“acquisition” function, but not the “demonstration” function. How can this dilemma be resolved?

1. Law Schools

114. The first step towards resolution is to recognize that no law school ever forced a law society to make its degree a mandatory element of the lawyer licensing process. It was the decision of legal regulators to declare that every licensure candidate must first possess an expensive academic credential issued by a small handful of institutions that owe no obligations to those regulators. In making this decision, law societies effectively gave law schools an uncontested monopoly over the acquisition of legal knowledge for lawyer licensing.

115. By limiting themselves to a single “supplier” of legal knowledge, law societies gave law schools the exclusive right to develop this knowledge in licensure candidates without negotiating any control over or even persuasive input into how the schools go about it. Law schools can hardly be faulted for accepting these terms while defending their academic independence.

116. To achieve an outcome that better suits its needs, the Law Society must remember that by adopting a competence-based licensing system, it is creating two obligations for itself. The regulator must give candidates the opportunity to (a) acquire the knowledge necessary for licensure, and (b) demonstrate possession of this competence to the regulator.

117. By creating and publicizing to all stakeholders the Competence Framework and its “knowledge of the law” requirements, the Law Society will take a giant step towards fulfilling the first obligation. Aspiring B.C. lawyers can study the Framework’s “legal knowledge” requirements and identify what they must learn in order to be a viable candidate for licensure in the province. B.C. law schools can also study the requirements and, if they so desire, adjust their curricula to match the Law Society’s licensure needs. Everyone will be able to work from the same transparent set of legal knowledge standards; everyone will know what the Law Society requires entry-level lawyers to know.

118. But the next step towards that goal will be just as important. If the Law Society is to mandate legal knowledge competence standards for licensure, it must also enhance *the accessibility of opportunities to obtain* the knowledge competence it requires.

119. As previously noted, the current suppliers of legal knowledge are limited in number — just 20 common-law schools across Canada, only three in British Columbia — and their cost is high. Moreover, each of those suppliers places strict limits on their annual intake of law students. No law school is going to expand its first-year cohort to 3,000 students, even if there were sufficient demand — the schools’ facilities, infrastructure, and culture will not permit it. There are only so many “legal knowledge seats” available every year for licensure candidates, which represents another limit on the accessibility of a legal career.

120. Even if every B.C. law school decided to match its curricula precisely to the Competence Framework, therefore, these schools’ own structural features (exclusivity, cost, and size) would still constitute systemic barriers to acquiring the legal knowledge necessary to enter the legal profession in this province. And not every law school, it can safely be predicted, will match its curriculum to the Competence Framework.

121. What all this means is that in order to make opportunities for the acquisition of legal knowledge for licensure fairly and broadly accessible, the Law Society must think beyond law schools.

2. New Providers

122. A number of other organizations and entities in British Columbia already provide legal learning, training, and professional development services of various kinds. If these entities had access to legal knowledge competence standards for lawyer licensing, and if they wished to develop or adapt some programs to meet those standards, they could become additional options by which licensure candidates can acquire the legal knowledge they require. For example:

- Continuing Legal Education-British Columbia⁴⁹ and the Canadian Bar Association’s British Columbia Branch⁵⁰ produce a host of legal learning courses and programs every year.

⁴⁹ <https://www.cle.bc.ca/aboutcourses/>

⁵⁰ <https://www.cbabc.org/Professional-Development>

- Capilano University’s School of Legal Studies equips students for careers in administrative and paralegal services at law firms and a range of other employers.⁵¹
- Simon Fraser University’s Legal Studies program offers a minor, a certificate program, and a post-baccalaureate diploma in legal studies.⁵²

123. Other B.C. educational institutions or private-sector learning entities might also see an opportunity to develop programs that could deliver entry-level legal knowledge to meet the requirements of the Competence Framework. It is even conceivable that practicing lawyers might decide to offer entry-level education programs in their own areas of specialization. The ability to deliver legal knowledge education and training that meets the standards of a Competence Framework for new lawyer licensing should not be considered inherently exclusive to law schools.

124. All these potential providers, however, have no incentive to develop and offer programs of this type. Because the Law Society mandates the possession of a law degree to begin the licensure process, no candidate will spend time and money on other legal knowledge courses, and a market for these services cannot be expected to develop. It is difficult for the Law Society to “think beyond law schools” when it has made law schools an essential element of the licensing process.

125. The introduction of a competence-based licensing system for B.C. lawyers, therefore, leads to a remarkable yet inevitable conclusion: The Law Society should consider removing the law degree requirement for entry into the lawyer licensure process.

126. This would not be a decision that the Law Society should take lightly. It could only follow upon the establishment of a Competence Framework that sets out clear standards for the legal knowledge required for licensure. It would have to be preceded by extensive discussions with all current and potential future providers of legal knowledge education and training. Given its radical departure from accepted norms of legal education, it would have to be developed and implemented with deliberation and care.

⁵¹ <https://www.capilanou.ca/programs--courses/search--select/explore-our-areas-of-study/business--professional-studies/school-of-legal-studies>

⁵² <https://www.sfu.ca/students/admission/programs/a-z/1/legal-studies/overview.html>

127. But if the Law Society did decide to pursue this course of action, several benefits could be anticipated:

1. It would allow candidates to forgo a full three-year law degree, and instead enrol in only or primarily those law school courses and clinics by which they could acquire the knowledge competencies necessary for lawyer licensure. This would also reduce the amount of time and money required to begin the lawyer licensing process, increasing the accessibility of a legal career and the affordability of some legal services.
2. It would make possible and incentivize an “open space” for innovation for all providers of legal knowledge for licensure. For example, providers might develop individual “modules” of learning and offer them in combination — perhaps a mix of asynchronous online learning, in-person lectures and discussions, and simulated applied practice opportunities.
3. It would help prepare a pathway towards the eventual recognition of other legal professionals, including notaries and paralegals, as licensed providers in the delivery of legal services. If and when law societies are obliged to oversee the formation of other legal professionals, the development of a more modular approach to legal education and training would be beneficial.⁵³
4. It would allow licensure candidates trained outside British Columbia the opportunity to acquire B.C.-specific legal knowledge. A candidate with a law school degree from, say, Alberta, might choose to take individual courses in B.C. law as required by the Framework. This would also give the Law Society a licensure solution that encompasses internationally trained candidates.

128. None of the foregoing should be considered a rejection of the value and viability of a traditional legal education. Canada’s law schools have amply demonstrated their educational expertise and pedagogical proficiency, along with high standards of integrity, authority, and reliability in teaching and grading their courses. The experience of attending law school delivers significant benefits in terms of learning,

⁵³ This is particularly relevant given the March 2022 announcement by the British Columbia government that it intends to consolidate the regulation of all legal professionals in B.C., including lawyers, notaries, and paralegals, under a single statute and regulator: <https://news.gov.bc.ca/releases/2022AG0029-000285>. The Law Society might soon have a mandate to set licensing and competence standards for all legal professionals in the province, accelerating the need for a modular, multi-provider approach to legal knowledge and skill acquisition.

growth, networking, and socializing. It is also possible that some legal employers would still set a law degree as a requirement for hiring new lawyers.

129. But the Law Society's concern does not lie with the future employment and career prospects of the lawyers it licenses. The Law Society's concern is to ensure that aspiring lawyers can accessibly acquire the legal knowledge set out in the Competence Framework as a requirement for licensure. The foregoing discussion is offered as a potential pathway for the Law Society to consider in meeting that goal.

B. Demonstrating Knowledge Competence

130. Regardless of the method or methods the Law Society eventually chooses by which licensure candidates can acquire the legal knowledge required by the Competence Framework, there remains the equally important matter of how a candidate can demonstrate their possession of this competence to the regulator. The previous section established that the completion of a law degree, even one that has been tailored precisely to the Competence Framework's requirements, cannot constitute demonstration of competence to the Law Society.

131. How, then, can this requirement be met? An answer to this question can be found in current licensing systems — not just in the British Columbia legal sector, but throughout Canada, in other countries, and across myriad professions.

132. Every law society in Canada requires licensure candidates to pass several written examinations (in law school, through the NCA, and/or through bar admission exams) in order to prove their knowledge of the law. The PLTC itself requires candidates to pass two Qualifying Examinations on barristers' and solicitors' practice in order to complete the course. Obtaining a passing grade on a written examination is the most practical and widely used method for demonstrating knowledge competence.

133. The ubiquity of written examinations in lawyer licensure does not, in itself, prove their worthiness or validity. Indeed, as will be discussed shortly, written examinations are fraught with problems and challenges. But this Report has been unable to identify any superior alternative to using written exams for assessing knowledge competence at scale. Professional skills, responsibility, and demeanour can be assessed and proven through practical application in real or simulated client situations. Assessing and proving knowledge, however, for better or worse, remains the domain of examinations.

134. Accordingly, this Report suggests that the Law Society use the legal knowledge component of its Competence Framework as the foundation to develop a “Legal Knowledge Examination,” by which licensure candidates can demonstrate their possession of required legal knowledge competence. A candidate would have to obtain a passing grade on this Examination to satisfy the Law Society’s legal knowledge competence requirement.

135. Setting legal knowledge exams is a longstanding specialty of the legal profession. However, the Law Society should be aware that the creation of a valid and defensible Legal Knowledge Examination for licensing would be a more complex, challenging, and resource-intensive process than it might first appear.

136. It is widely accepted that high-stakes licensing exams ought to be developed in accordance with the Standards for Educational and Psychological Testing, developed jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.⁵⁴

137. The Standards cover a wide range of issues related to all aspects of the testing process, including foundational concepts such as validity and fairness, details of test development and implementation, and applications in specific areas such as employment credentialing and educational accountability. The Standards are organized into 15 categories:

1. Validity;
2. Reliability and Errors of Measurement;
3. Test Development and Revision;
4. Scales, Norms, and Score Comparability;
5. Test Administration, Scoring, and Reporting;
6. Supporting Documentation for Tests;
7. Fairness in Testing and Test Use;
8. The Rights and Responsibilities of Test Takers;
9. Testing Individuals of Diverse Linguistic Backgrounds;
10. Testing Individuals with Disabilities;
11. The Responsibilities of Test Users;
12. Psychological Testing and Assessment;
13. Educational Testing and Assessment;
14. Testing in Employment and Credentialing; and
15. Testing in Program Evaluation and Public Policy.

⁵⁴ <https://www.apa.org/science/programs/testing/standards>

138. The Standards are in the process of becoming part of the lawyer licensing toolkit in the United States. The National Conference of Bar Examiners (NCBE) develops and produces the licensing tests used by most U.S. jurisdictions for admission to the bar: the Multistate Bar Examination, the Multistate Essay Examination, and the Multistate Performance Test. It also coordinates the Uniform Bar Examination and develops the Multistate Professional Responsibility Examination.⁵⁵ It is fair to describe American bar exams as “much-maligned,” and so the NCBE appointed a Testing Task Force to study how these exams might be improved. The task force’s January 2021 Final Report⁵⁶ recommended significant changes to the bar exam, all made in accordance with the Standards for Educational and Psychological Testing.⁵⁷

139. Outside of New Brunswick’s new bar admission course, however, it is not clear if any Canadian law society’s licensing exams have been created in accordance with the Standards. The legal profession has not traditionally developed its licensure exams on the basis of the Standards or any other cross-disciplinary systems and measures of fairness, validity, and defensibility. Doing so would be a much more expensive endeavour than that to which most legal regulators are accustomed. One rough estimate of the cost of developing an industry-grade legal knowledge examination ran into the hundreds of thousands of dollars.

140. To develop a comprehensive and reliable Legal Knowledge Examination, the Law Society would benefit from examples and models to study. The Law Society of New Brunswick offers one such model, but so too does the Solicitors’ Regulation Authority of England & Wales, which administers the Solicitors’ Qualification Examination (SQE) to assess the knowledge competence of its licensure candidates.⁵⁸

⁵⁵ <https://www.ncbex.org/about/>

⁵⁶ <https://nextgenbarexam.ncbex.org/reports/>

⁵⁷ “Testing Task Force Final Update,” *The Bar Examiner*, Spring 2021: <https://thebarexaminer.ncbex.org/article/spring-2021/testing-task-force-final-update/>

⁵⁸ <https://www.sra.org.uk/become-solicitor/sqe/>

141. The SQE is based on the SRA's Statement of Solicitor Knowledge, described in paragraph 87. The SQE tests a wide array of “functioning legal knowledge”⁵⁹ through a comprehensive, closed-book, multiple-choice, multi-day examination that poses 360 questions over the course of ten hours. The results of the initial edition of the SQE,⁶⁰ which featured an overall pass rate of just 53%, would be useful for the Law Society to consider as part of its inquiries in this area.

142. In addition to the challenges and considerations already cited, the Law Society should be aware of evidence that the results of written licensing examinations tend to reflect systematic discrimination on the basis of race and ethnicity.⁶¹ A 2021 ABA study⁶² found that among first-time bar exam takers in 2020, white candidates passed at a rate of 88%, compared with 80% of Asians, 78% of Native American candidates, 76% of Hispanic candidates, and 66% of Black candidates. In 2019, whites passed at a rate of 85%, compared with 74% of Asians, 72% of Native Americans, 69% of Hispanics, and 61% of Blacks.⁶³

143. Similar results occurred in the first administration of the Solicitors Qualification Exam last November. While 66% of white candidates passed the SQE, that total was 58% for candidates from mixed/ multiple ethnic groups, 43% for Asian/ Asian British candidates, and 39% for Black/ Black British candidates. The SRA stated that it had “anticipated the troubling difference in performance for candidates from Black,

⁵⁹ The Solicitors’ Regulation Authority describes “functioning legal knowledge” as “core legal principles and rules.... A candidate should be able to apply these fundamental legal principles and rules appropriately and effectively to realistic client-based and ethical problems and situations which might be encountered by a newly qualified solicitor in practice.” <https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/pilot/sqe-assessment-specification/>

⁶⁰ <https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/first-sqe-assessment-results/>

⁶¹ “Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination,” Scott DeVito, Kelsey Hample, and Erin Lain, Jan. 26, 2022: *University of Michigan Journal of Law Reform*, Forthcoming, <https://ssrn.com/abstract=4018386>

⁶² “2020 and 2021 Bar Passage Data by Race, Ethnicity, and Gender”: https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/20210621-bpq-national-summary-data-race-ethnicity-gender.pdf

⁶³ “Bar Exam Race Gap Shown in New Passage Rate Data for Law Grads,” Sam Skolnik, *Bloomberg Law*, June 22, 2021: <https://news.bloomberglaw.com/social-justice/bar-exam-race-gap-shown-in-new-passage-rate-data-for-law-grads>

Asian and minority ethnic groups, which has been a longstanding and widespread feature in examinations in the legal and other sectors.”⁶⁴

144. The Law Society should be fully aware of these perverse outcomes, and should take them into account when addressing itself to the challenge of crafting a truly fair Legal Knowledge Examination. The Law Society also must be clear-eyed about the potential costs of upgrading its legal knowledge assessment process to meet the cross-disciplinary professional standards noted earlier. The prospect of developing a new system by which licensure candidates can demonstrate their legal knowledge competence can certainly seem daunting.

145. This Report submits, however, that even if the Law Society does not adopt any of these recommendations and continues to employ a credentials-based licensing system in future, the issues raised herein with regard to knowledge exams for high-stakes licensing apply fully to the LPTC’s Qualification Examinations. Regardless of any other considerations, the Law Society should consider itself alerted to the new challenges, existing biases, and emerging standards in the assessment of the legal knowledge of licensure candidates.

⁶⁴ “First SQE assessment results,” Solicitors’ Regulation Authority, Jan. 21, 2022: <https://www.sra.org.uk/SQE1results>

5. Professional Responsibility and Awareness

146. There are few precise definitions of “professional responsibility” for lawyers. Most tend to be somewhat circular, referring to a lawyer’s “obligation to act professionally,”⁶⁵ “the duty to act in a professional manner,”⁶⁶ or the “obligation of lawyers to adhere to rules of professional conduct.”⁶⁷ The term is not defined in the British Columbia Code of Professional Conduct.

147. For present purposes, this Report will define “professional responsibility” as a lawyer’s duty to ethically and honourably exercise their powers, fulfill their obligations, comply with the lawyer’s governing Code of Professional Conduct, and promote the administration of justice and the rule of law. New lawyers are expected to understand and be able to fulfill these binding standards and ethical obligations. Professional responsibility lies at the heart of what it means for a lawyer to be trustworthy and reliable. It should be regarded as a separate category of competence for licensing.

148. This Report suggested, in paragraph 94, that entry-level professional responsibility competence should at least include matters of client confidentiality, client trust accounts, conflicts of interest, and fiduciary duties. In this section, the Report will further suggest that the Law Society develop (a) a standalone program for the acquisition and demonstration of professional responsibility competence, passage of which is necessary for licensing, and (b) a complementary education program in “professional awareness.”

A. Professional Responsibility Competence

149. Currently, licensure candidates in B.C. are instructed in professional responsibility through the PLTC. However, “professional responsibility” as a topic does not appear to occupy dedicated space on the PLTC schedule. Rather, professional responsibility is included along with instruction on other topics, and is assessed both through the four skills assessments as well as by embedding professional responsibility issues within the questions on the Qualification Examinations.

⁶⁵ <https://www.2civility.org/expanding-our-definition-of-professional-responsibility/>

⁶⁶ https://en.wikipedia.org/wiki/Professional_responsibility

⁶⁷ <https://legal-dictionary.thefreedictionary.com/Professional+Responsibility>

150. It seems doubtful that this approach gives licensure candidates the opportunity to be fully informed about their entry-level professional responsibility competence requirements, or to demonstrate their possession of this competence to the regulator. If the Law Society believes that the ability of a lawyer to act ethically and responsibly is a core element of professional licensure, then it ought to allocate more time and dedicate more resources to thoroughly establishing this competence through the lawyer licensing process.

151. Specifically, the Law Society should introduce a standalone online “Professional Responsibility Program” that both instructs licensure candidates on the elements of professional responsibility competence and allows candidates to demonstrate their understanding of and ability to respond to entry-level professional responsibility situations. Successful completion of this program should be a mandatory element of the lawyer licensing process.

152. Withdrawing professional responsibility issues from the “all-in-one” PLTC, and dedicating an entire standalone program to the topic instead, would deliver two significant advantages.

153. First, it would allow licensure candidates to delve more deeply into the complex and nuanced world of lawyers’ ethical duties than is currently afforded through the PLTC. The Code of Professional Conduct is 138 pages long, covering four separate sets of ethical duties: to clients and potential clients, to the administration of justice, to employees and students, and to the Law Society and other lawyers. Properly advising candidates of the Code’s contents, and helping them develop skills to detect ethical issues in practice and apply techniques to address them, requires significant dedicated time and attention. A standalone program in professional responsibility would make that outcome more achievable.

154. Secondly, it would solidify public respect for the Law Society’s determination to ensure that new lawyers are well-trained and duly assessed in legal ethics and professional conduct — two aspects of a lawyer’s competence that the public naturally considers to be especially important. The Law Society would be able to declare that its new lawyer licensure program has significantly increased the time and training devoted to ensuring that licensure candidates are deeply versed in their professional obligations.

155. The proposed Professional Responsibility Program should be conducted online rather than in person. This is not because “live” instruction is inferior to virtual. Indeed, licensure candidates would naturally be expected to benefit from interacting

with each other and with their instructors face-to-face more than they would in the confines of a “Zoom room.” In a perfect world, this program would be conducted entirely on-site and in-person.

156. But the realities of the licensing process mean that the disadvantages of in-person instruction outweigh these benefits. The greatest drawback is the cost to candidates of attending an in-person program for several weeks. Many candidates, as is the case now with the PLTC, would have to travel from their current locations to Vancouver or another urban centre, find affordable short-term rental accommodations (if any is available), and pay for travel, daily meals, and other expenses, in addition to the registration fees for the program. Those candidates who have not secured a position that pays a salary during the licensing process face greater challenges again.

157. By contrast, an online program dispenses with all these expenses, drastically reducing candidates’ financial outlay and logistical challenges. Although the cost of rent and meals during a short-term licensing program does not constitute the same barrier to entry as a massive law school debt load, nonetheless every extra burden, no matter how small, accumulates over time. Where the Law Society can do away with unnecessary costs and delays in the licensing process without compromising its integrity and effectiveness, it should do so.

158. In addition, the experience of the pandemic has demonstrated that every aspect of the lawyer licensing process (including law school classes) can be at least partially performed in an online environment. The PLTC has successfully made this transition, as have other bar admission courses across Canada. The new professional workplace ethic might be described as “in person if necessary, but not necessarily in-person.” The same philosophy should apply to the professional responsibility portion of the Law Society’s licensing process.⁶⁸

159. The actual structure and design of an online Professional Responsibility Program that both teaches and assesses candidates’ knowledge and skills in this area is best left to qualified Law Society personnel. However, as a starting point for discussion, the Law Society might wish to consider a diversified instructional format, perhaps along the following lines:

⁶⁸ This is not intended to minimize the difficulties some candidates encounter with online learning, including access to the internet, speed and bandwidth challenges, and private and secure locations from which to join an online licensing program. The Law Society should consider creating an “In-Person Cohort” for candidates who would prefer to attend a professional responsibility program in person. But the “default setting” should be online.

- The Professional Responsibility Program could run for a scheduled period of several weeks, with one or two topics introduced, studied and discussed each week. A candidate could spend part of each week accessing online materials and taking assessment tests asynchronously, and other parts of the week connecting by videoconference with classmates and an instructor for group activities.
- During their asynchronous time, candidates could complete a self-guided video series on each topic, including interactive comprehension tests to ensure that they understand the concepts, can spot them when they emerge, and can apply the knowledge and skills they have learned to hypothetical entry-level professional responsibility situations.⁶⁹
- During their synchronous time, candidates could hear from instructors and guest speakers, discuss ethical challenges, role-play professional responsibility scenarios, and identify opportunities to develop skills in practice, guided by their instructors, who could gauge and assess candidates' grasp of these issues and their ability to competently address them.
- Throughout the program, candidates could also maintain a "Reflective Journal," making ten entries of at least 150 words each, reflecting upon their learnings and observations related to professional responsibility. They could submit this Journal to their instructor at the end of the course, not for "assessment" so much as to demonstrate their attention and learning.

160. An online Professional Responsibility Program along these lines could give candidates the opportunity to demonstrate their possession of this competence in three ways:

1. Correctly answering professional responsibility questions and identifying valid responses to hypothetical scenarios in the asynchronous self-guided portion of the program;

⁶⁹ This format is loosely modelled on the Illinois Attorney Registration and Disciplinary Commission (ARDC)'s Proactive Management-Based Regulation Self-Assessment Program, used for experienced lawyers who have entered the state bar disciplinary process at some point. The program's educational focus and effective use of hypothetical professional responsibility quizzes have generated positive reviews from Illinois practitioners. <https://pathlms.iardc.org/courses/15664>

2. Participating successfully in group exercises and role-play simulations to such an extent that the course instructor is satisfied with the candidate's possession of professional responsibility knowledge and skill; and
3. Completing a Reflective Journal and submitting it to the course instructor, who would review the Journal to ensure that the minimum requirements of comprehension have been met.

161. The Code of Professional Conduct of British Columbia could reasonably be the foundational text for the development of this program's content. However, this Report wishes to draw the Law Society's attention to a subject not included in the provincial Code: the issue of a lawyer's technological competence.

162. In 2019, the Federation of Law Societies of Canada integrated technological competence into its Model Code of Professional Conduct.⁷⁰ Commentaries 4A and 4B to Rule 3.1-2 of the Model Code⁷¹ read as follows:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend on whether the use of understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including: (a) the lawyer's or law firm's practice areas; (b) the geographic locations of the lawyer's or firm's practice; and (c) the requirements of clients.

163. Since 2019, legal regulators in six Canadian jurisdictions (the Law Societies of Alberta, Manitoba, Newfoundland & Labrador, the Northwest Territories, and Saskatchewan, as well as the Barreau du Québec) have incorporated a duty of technological competence into their codes of professional conduct. British Columbia

⁷⁰ Amy Salyzyn, "It's Finally (Sort Of) Here!: A Duty of Technological Competence for Canadian Lawyers," *Slaw.ca*, Nov. 26, 2019: <http://www.slaw.ca/2019/11/26/its-finally-sort-of-here-a-duty-of-technological-competence-for-canadian-lawyers/>

⁷¹ <https://flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>

is not one of those jurisdictions, and this Report does not suggest the Law Society ought to change that. But given the clear importance of technology to the competent performance of lawyers' myriad duties, technological competence might usefully be incorporated into the Professional Responsibility Program.

B. A Professional Awareness Program

164. To the extent the lawyer licensing process requires candidates to acquire and demonstrate possession of entry-level competence in professional responsibility, that competence should cover only the core principles of legal ethics and the contents of the Code of Professional Conduct for British Columbia. This Report has no mandate, and no interest in attempting, to rewrite the binding ethical standards of British Columbia lawyers.

165. However, this Report does suggest that there are issues of importance and relevance to new lawyers that, while not rising to the level of "binding professional duties and responsibilities," nonetheless closely inform a new lawyer's understanding of and ability to competently navigate the rapidly changing professional landscape of modern legal sector. They are not really "knowledge of the law" or "lawyer and professional skills," but they do lie somewhere in between. This requires some explanation.

166. Traditionally, the legal profession has considered that lawyers' "professional responsibility" is owed to three entities: to lawyers' own clients, to the legal system, and to the public. For example, the Canadian Bar Association's Code of Professional Conduct states in its preface: "The essence of professional responsibility is that the lawyer must act at all times *uberrimae fidei*, with utmost good faith to the court, to the client, to other lawyers, and to members of the public."⁷² The preamble to the American Bar Association's Model Rules of Professional Conduct similarly begins: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."⁷³

⁷² [https://www.cba.org/getattachment/Publications-Resources/Resources/Ethics-and-Professional-Responsibility/Code-of-Conduct/Code-of-Professional-Conduct-\(2009\)/codeOfConduct2009Eng.pdf](https://www.cba.org/getattachment/Publications-Resources/Resources/Ethics-and-Professional-Responsibility/Code-of-Conduct/Code-of-Professional-Conduct-(2009)/codeOfConduct2009Eng.pdf), p. vii.

⁷³ https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/, s. 1.

167. From time to time, however, some members of the profession have argued that a lawyer's duties ought to extend in other directions and towards other entities than clients, the legal system, and the public. These suggestions have included:

- *A Duty to Improve Access to Justice*: The proposition that lawyers have an ethical obligation to enhance access to justice is not new.⁷⁴ Writing in the *Queen's Law Journal* in 2016,⁷⁵ Mr. Justice Thomas Cromwell and Siena Anstis stated: "[F]acilitating and improving access to justice is an ethical responsibility of lawyers. Most law societies have adopted the commentary on access to justice and *pro bono* services proposed in the Federation of Law Societies of Canada's Model Code of Professional Conduct."⁷⁶
- *A Duty to Respect the Self-Represented*: Many individuals engage with the justice system personally rather than hiring a lawyer to guide and assist them.⁷⁷ The Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons⁷⁸ declares that lawyers are expected to be respectful of SRLs and "to adjust their behaviour accordingly" when dealing with them, in accordance with their professional obligations.⁷⁹

⁷⁴ More than 20 years ago, the Chief Justice of Ontario's Advisory Committee on Professionalism's Working Group on the Definition of Professionalism observed: "The lawyer's public interest mentality finds expression, for example, in advancing access to the law and the legal system for all persons, regardless of their means." https://clp.law.utoronto.ca/sites/clp.law.utoronto.ca/files/documents/Elements-of-Professionalism_CLP.pdf

⁷⁵ "The Legal Services Gap: Access to Justice as a Regulatory Issue," 2016 42-1 *Queen's Law Journal*: <https://www.canlii.org/en/commentary/doc/2016CanLIIDocs4538>

⁷⁶ See also the preamble to the December 2020 report of the Law Society's Access to Justice Advisory Committee: "Legal service providers, including lawyers who are authorized to provide legal services for a fee, have an obligation to make their services appropriately accessible to the public." <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020AccessToJusticeVision.pdf>

⁷⁷ "The Rise of Self-Representation in Canada's Family Courts," Rachel Birnbaum, Nicholas Bala, and Lorne Bertrand, *The Canadian Bar Review*, Vol. 91 No. 1 (2013): <https://cbr.cba.org/index.php/cbr/article/view/4288>

⁷⁸ <https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>

⁷⁹ See also: "Analyzing the 2017 Supreme Court of Canada decision in *Pintea v. Johns*," Jennifer Leitch, *Slaw.ca*, July 31, 2020: <http://www.slaw.ca/2020/07/31/lawyers-and-self-represented-litigants-taking-pintea-more-seriously/>.

- *A Duty to Recognize Systemic Discrimination:* The legal profession is slowly acknowledging the considerable evidence⁸⁰ supporting the existence of systemic discrimination in the law, and the extent to which the justice system systematically discriminates against individuals from racialized communities and particularly against Indigenous people.⁸¹ Some commentators go so far as to suggest lawyers are ethically bound to fight this discrimination.⁸²
- *A Duty to Be Culturally Competent:* Lawyers can be considered culturally competent if they possess a set of skills, behaviours, attitudes, and knowledge that enable them to provide services appropriate to a diverse range of clients.⁸³ In 2021, the Law Society required Indigenous cultural competence training of all B.C. lawyers, covering “the history of Aboriginal-Crown relations, the history and legacy of residential schools, and specific legislation regarding Indigenous peoples of Canada.”⁸⁴

⁸⁰ See, for example: “Rooting out systemic racism is key to a fair and effective justice system,” Department of Justice Canada, Dec. 7, 2021: <https://www.canada.ca/en/departement-justice/news/2021/12/rooting-out-systemic-racism-is-key-to-a-fair-and-effective-justice-system.html>; “Systemic discrimination in the criminal justice system,” Ontario Human Rights Commission, April 19, 2017: <https://www.ohrc.on.ca/en/systemic-discrimination-criminal-justice-system-ohrc-letter-attorney-general-naqvi>; “Anti-Black Racism in Canada’s Criminal Justice System,” Canadian Civil Liberties Association, August 2021: <https://ccla.org/wp-content/uploads/2021/08/CCLA-Anti-Black-racism-criminal-justice-system.pdf>.

⁸¹ “Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses,” Department of Justice Canada: <https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/p4.html>

⁸² “Canada and the Rule of Law: 150 Years after Confederation” (excerpt), Raj Anand, June 21, 2017: <https://www.weirfoulds.com/rule-of-law-and-the-ethical-lawyer>

⁸³ “Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence,” Pooja Parmar, *The Canadian Bar Review*, Vol. 97 No. 3 (2019): <https://cbr.cba.org/index.php/cbr/article/view/4558>.

⁸⁴ “B.C. law society requires Indigenous cultural competency training of all lawyers in the province,” Bernise Carolino, *Canadian Lawyer*, Dec. 17, 2021: <https://www.canadianlawyermag.com/practice-areas/esg/bc-law-society-requires-indigenous-cultural-competency-training-of-all-lawyers-in-the-province/324238>

- *A Duty to Safeguard One's Own Wellness*. The ABA's 2017 National Task Force for Lawyer Well-Being Report⁸⁵ directly linked a lawyer's wellness to "the affirmative ethical duties of competence, diligence, truthfulness, communications, and relationships with people other than clients."⁸⁶ The Canadian Judicial Council amended its Ethical Principles in 2021⁸⁷ to state: "Judges should set aside sufficient time and make a commitment to the maintenance of physical and mental wellness, and take advantage of judicial assistance programs as appropriate."⁸⁸

168. Reasonable people may disagree over whether a lawyer is ethically duty-bound to fight systemic discrimination in the law or help alleviate the access-to-justice crisis. But this Report contends that licensure candidates should at least *be made aware* that these issues and problems exist and will likely pose challenges to lawyers throughout their careers. New lawyers receive no advance notice of, and no preparation for dealing with, these subjects from their professional regulator.

169. To that end, while designing and implementing a Professional Responsibility Program along the lines suggested above, the Law Society should also consider developing, and requiring licensure candidates to complete, a complementary "Professional Awareness Program" that educates candidates about these emerging, important, and systemic professional issues.

⁸⁵ "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change": https://www.americanbar.org/groups/lawyer_assistance/task_force_report/

⁸⁶ "The Legal Ethics of Lawyer Wellness," Daniel O'Rielly, California Attorney Ethics Counsel Blog, Dec. 5, 2017: <https://attorneyethicscounsel.com/2017/12/05/the-legal-ethics-of-lawyer-wellness/>

⁸⁷ https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual%20FINAL.pdf, p. 32.

⁸⁸ It should be noted that some experts believe reports of lawyers' poor mental health have been overstated. One recent American study suggested that lawyers' mental well-being resembles mental health in professions with similarly educated workers, and is actually better than that of the general population. Nonetheless, the study also found that "lawyers drink excessively at higher rates than the general population. In particular, lawyers drink excessively at much higher rates than other groups of highly educated professionals." Yair Listokin and Ray Noonan, "Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey" (August 4, 2020), *Journal of Empirical Legal Studies* Forthcoming, Yale Law School, Public Law Research Paper: <https://ssrn.com/abstract=3667322>

170. In contrast to the Professional Responsibility Program, which would be formally structured and assessed and would feature instructors leading group discussions and activities, the Professional Awareness Program would be an entirely self-guided online offering and would not require candidates to demonstrate knowledge to the Law Society. It would exist to give clarity and depth to the lawyer licensing process without rising to the level of a “competence” required for licensure.

171. The content of the Professional Awareness Program, like the structure of the Professional Responsibility Program, should be determined by Law Society personnel. However, particularly careful attention should be paid to the subject of lawyer wellness, to ensure that no stigma or regulatory judgment is attached to issues of mental health or substance use. These are extremely sensitive matters that have been poorly understood and dealt with by legal regulators in the past. Experts both within and outside the legal profession should be closely consulted in these areas.

172. In order to make the Professional Awareness Program as accessible as possible for licensure candidates, the Law Society should make the program available at no charge, and should permit licensure candidates to complete the program at any point prior to or during the lawyer licensing process. Indeed, there is no reason why experienced lawyers should not be encouraged to access this program, perhaps as part of their continuing professional development requirements. The information supplied by this program would provide insights for lawyers at every stage of their careers.

6. Lawyer and Professional Skills

173. The category of “Lawyer Skills” refers to the myriad competencies required to carry out tasks specifically associated with effective law practice. The category of “Professional Skills” refers to the equally myriad competencies required to carry out the tasks associated with effective professional business practice. Together, they cover the entire spectrum of “practical competencies” expected of new lawyers. Partly for convenience, but mostly because the acquisition and application of these two groups of skills usually occurs in an integrated fashion, this Report groups both sets of skills together.

174. The capacity to effectively apply lawyer and professional skills is arguably the paramount ability of a good lawyer. It lies at the heart of the competence to practise law — to carry out tasks accurately and proficiently in order to accomplish clients’ goals and protect and advance their interests. It is therefore critically important that new lawyers enter the profession with clear and demonstrated competence in this regard.

175. The comprehensive development and reliable assessment of a licensure candidate’s lawyer skills and professional skills is a significant undertaking. This challenge is all the greater because many candidates arrive at this point in the licensure process with little knowledge of or experience in deploying these skills. PLTC administrators have noted that the overall competence of many recent licensure candidates is sufficiently substandard as to make the development of their skills to an acceptable professional level in a ten-week course a difficult task.

176. With regard to “Lawyer Skills,” the eight suggested in paragraph 94 represent only the most foundational skills of a lawyer, expressed in the broadest terms.⁸⁹ The lawyer skills identified in the competence profiles and frameworks of other jurisdictions are more numerous and detailed, reflecting the reality that lawyers are expected to carry out myriad tasks across a wide range of contexts and situations. When the Law Society sets out to develop its Competence Framework for lawyer

⁸⁹ For example, just the first aspect of the first skill on the list — “Establish, maintain, and conclude a client relationship” — would include elements such as confirming the client’s identity, explaining the nature of the lawyer-client relationship, assessing the client’s needs and objectives, noting the client’s instructions along with any resulting undertakings, estimating the time and fees likely required to achieve the client’s objectives, and confirming all the foregoing in a retainer letter.

licensing, it should strive to assemble a comprehensive list of such skills, without overburdening new lawyers beyond what mere entry-level competence requires.

177. The Law Society has a particular obligation to ensure that *all* newly licensed lawyers — regardless of where and how they begin their careers — have acquired and can deploy these skills to the same acceptable degree. This is necessary because some new lawyers will begin their careers in very different circumstances than others.

178. For example, a brand-new associate in a large law firm with a strong support and training infrastructure might not personally need entry-level competence in, say, providing legal advice to clients or meeting the day-to-day requirements of a law practice. Senior associates and experienced staff members in these workplaces often help new lawyers develop these skills over their first several months or years in the profession.

179. But these kinds of skills would be essential to a Day One sole practitioner, or a new associate in a law firm where business support and training are inadequate or unavailable altogether. Many lawyers begin their careers in such workplace environments, where they are obliged or expected to “fend for themselves” from the start. Clients of these lawyers deserve the same level of lawyer competence as do clients of lawyers in more well-supported environments.

180. So long as it is possible for a Day One lawyer to hang out their own shingle, “Day One preparedness” must include the ability to carry out all the fundamental tasks of a lawyer in that situation.

181. With regard to “Professional Skills,” the ten suggested in paragraph 94, as well as the competence profiles and frameworks developed by other jurisdictions, can be grouped into three broad categories:

- *Communication*: This includes understanding the difference between casual and professional communication, the various types of communication (written, oral, body language), the value of brevity and precision, and the central importance of timeliness and reliability in communication, especially with clients. Basic written communication skills, unfortunately, must also be included here.
- *Organization*: Prioritizing, coordinating, and regulating one’s time, tasks, and responsibilities, as well as managing one’s external files, projects, duties, and inquiries, is a key balancing act for a lawyer. Since the volume of these activities

and the intensity of their accompanying pressures will only increase over time, organizational basics are an essential core competence for new lawyers.

- *Relationships*: Starting, maintaining, fulfilling, and ending a relationship with clients is an extraordinarily valuable skill whose fundamentals a new lawyer should possess. But lawyers must also know how to build and maintain empathetic relationships with others — *e.g.*, colleagues, support staff, court and government personnel — and navigate a professional office environment.

182. As the Law Society knows only too well, shortcomings in these three areas of competence bring about most of the practice-related errors, client disappointments, and professional liability claims that lawyers experience. The Law Society should ensure that licensure candidates acquire baseline competence in these categories and prove to the regulator's satisfaction that they possess them.

183. Currently, the Law Society teaches and assesses lawyer skills and professional skills within the PLTC. This seems like an appropriate time to consider the impact of all the foregoing suggested changes on the Professional Legal Training Course.

184. As noted in paragraph 40, the PLTC is asked to accomplish a great deal within a very limited period of time. It must introduce licensure candidates, whose knowledge and experience of the law is often limited to a three-year law school degree, to the substantive and practical application of several different areas of law, legal ethics and professional responsibility, cultural competence, and law practice management, as well as assess candidates in these areas, in the space of ten weeks.

185. This Report has suggested that a licensure candidate should acquire and demonstrate legal knowledge competence before entering the bar admission process, and that the teaching and evaluation of a candidate's understanding of professional responsibility should be expanded and moved to a standalone online program. These changes, if implemented, would have the positive effect of "opening up" a great deal of time and space on the PLTC's schedule to focus on lawyer and professional skills.

186. On the other hand, the PLTC's schedule likely would have to accommodate a larger set of skills to teach and assess. Currently, the PLTC instructs and assesses licensure candidates on four skills assessments (opinion-letter writing, contract drafting, client interviewing and advocating). By way of contrast, paragraph 94 suggests 18 lawyer and professional skills; but that pales in comparison to the SRA's Statement of Solicitor Competence, which lists 91 skills, or the Law Society of New Brunswick's

Competence Profile, which sets out no fewer than 201. Again, recall that these latter two competence frameworks cover the entirety of a lawyer's career, not just the point of licensure, so the comparison is inexact. Nevertheless, these lists should give some sense of the size and scale of the legal and professional skills that define lawyer competence.

187. In all events, the introduction of a competence-based licensing system heralds a moment of reconsideration and perhaps an opportunity for reconfiguration of the PLTC. The Law Society will need to develop a new approach by which licensure candidates can acquire the skills of a lawyer and professional, and demonstrate to the Law Society their competent possession of these skills. This Report suggests two options through which the Law Society might develop this new approach:

- Expand and redesign the PLTC solely as a lawyer and professional skill development program to both train and assess candidates in these skills.
- Partner with an established third-party provider of lawyer and professional skill development to both train and assess candidates in these skills.

A. Redesign and Restructure the PLTC

188. The Law Society might redesign and restructure the PLTC so that it receives the resources and support needed to transform itself into a dynamic and authoritative Lawyer and Professional Skills Program for British Columbia. This would involve relocating all the PLTC's current other duties to new programs and narrowing its focus to lawyer and professional skill development, practice, and evaluation.

189. Obviously, the PLTC has several built-in features that make this option attractive to the Law Society. First and foremost is the PLTC's extensive experience in delivering law practice skill development in British Columbia for more than 35 years. The PLTC employs an array of professional educators and designers with comprehensive knowledge of and facility with the instruction of aspiring lawyers.

190. The PLTC also features a wide-ranging collection of instructional practitioners deeply versed in helping new lawyers learn the ropes of practice. The value of this diverse "faculty" should not be underestimated, considering that few lawyers can realistically be described as natural educators. Many of these practitioners, especially the more experienced ones, have the additional advantage of institutional memory — they have seen both the PLTC and the profile of the typical licensure candidate

evolve over time, and they can bring this perspective to bear both in their courses and in the feedback and advice they provide to course administrators.

191. Closely related to that asset is a third one: the PLTC's strong brand and reputation within the British Columbia legal community. Scores of experienced lawyers have given freely of their talents and billable time to serve as an instructor in or contributor to the PLTC. One reason they do so, certainly, is a commendable sense of professionalism that prompts them to "give back" to younger lawyers what they themselves received as candidates. But another reason is that these lawyers take pride in associating themselves with the PLTC and its well-earned reputation as a highly regarded bar admission program. That value is not easily found or quickly replicated.

192. A potential model to study for restructuring the PLTC to focus on practice and professional skills could be found in New Brunswick's new Bar Admission Program.⁹⁰ New Brunswick's program contains several elements touching on legal knowledge, sustainable practice, and continuing competence self-assessment, but two elements in particular are of present interest:

- Intensive Skills Training, an eight-day program in which candidates participate in several complex training cases and develop client-centred strategies, conduct "client" interviews, negotiations, and advocacy exercises, and conduct financial, work management, technology, and legal document exercises related to the cases. Candidates are actively engaged in activities, discussion, and debrief throughout the program, receiving regular feedback to help them hone their skills.
- A Professional Skills Exam, intended to assess the capabilities and competencies inculcated during the Intensive Skills Training (professionalism, problem-solving, communication, collaboration, and management skills). These competencies are assessed in three live performance simulations (interviewing, negotiation, advocacy), as well as a task-based technology simulation, and a written exam that is mainly performance-based.

193. It is not recommended that British Columbia simply copy-and-paste these aspects of New Brunswick's Bar Admission Program, which was specifically developed for that province's unique legal profession and culture. But if the Law Society wishes to

⁹⁰ https://lawsociety-barreau.nb.ca/uploads/LSNB_BAP_Program_Guide_EN_2021_2022_Rev_02.pdf

transform the PLTC into a lawyer and professional skill development program, it might find some useful guidance here.

B. Partner With a Third-Party Skills Programs

194. It is not just British Columbia and New Brunswick that include practical skill instruction in their bar admissions programs. In many ways, Canada leads the world in this area, nowhere more so than in two programs that develop licensure candidates' lawyer and professional skills through a combination of self-guided individual and directed group learning. These programs also provide candidates with an opportunity to apply these skills in a simulated law firm environment, and to have their competence in these skills evaluated by expert assessors.

- The *Practice Readiness Education Program* (PREP), operated by the Canadian Center for Professional Legal Education, provides law practice competence development and assessment for all licensure candidates in Alberta, Manitoba, Nova Scotia, and Saskatchewan. Licensure candidates in these provinces must complete PREP, along with a period of supervised practice; PREP does not replace the articling requirement in these provinces.
- The *Law Practice Program* (LPP) provides law practice competence development and assessment for some licensure candidates in Ontario. The LPP includes a four-month work placement that fulfills the supervised practice requirement; LPP candidates do not article. More than 1,600 licensure candidates have completed the LPP since its inception in 2014, although that is a relatively small percentage compared to those who chose to article.

195. PREP is organized into four parts.

1. Online "Foundation Modules" combine self-directed study and interactive assessments with multimedia learning to provide a foundation in lawyer skills, practice and self-management, and professional ethics and character.
2. In "Foundation Workshops," candidates work together and with facilitators in interactive sessions that include role-played interviewing, negotiating, and advocacy, as well as simulations and practice management.
3. In the "Virtual Law Firm," candidates work in online teams to manage multiple aspects of legal files in business law, criminal law, family law, and

real estate, interviewing simulated clients and being assessed and mentored by practice managers.

4. In the final “Capstone Assessment,” candidates demonstrate their decision-making skills and competencies in a simulated transaction, using case management and technical tools. A final written reflection on the entire program is also required.⁹¹

196. The PREP Capstone Assessment is a four-day assessment based on and carried out in the simulated law firm environment. It evaluates the primary skills inculcated and practised throughout the simulated firm experience, including:

- client interviewing,
- legal writing,
- legal drafting,
- principle-based negotiating,
- legal researching,
- managing client relationships,
- completing practice management tasks,
- making oral advocacy submissions, and
- responding to ethical issues.

197. Candidates are assessed in person by both lawyers (who play the roles of judges hearing a contested submission or observers listening to a negotiation) and lay people trained to present as clients or witnesses to be interviewed. Candidates are also required to submit written work of various kinds, such as a memo to file, a letter to a client, or a summary to a senior lawyer.

198. In the LPP operated at Metropolitan Toronto University,⁹² candidates are divided into “firms” of four to six members and work through simulated case files virtually, mentored throughout by a practicing lawyer. Candidates develop skills in ethics and professionalism, oral and written communication, legal analysis, legal research, client management, and practice management. In addition to regular weekly virtual meetings with a mentor, the candidates take simulated files from start to finish, including interviewing, drafting, researching, determining the approach,

⁹¹ <https://cpled.ca/students/cpled-prep/>

⁹² Formerly Ryerson University: <https://lpp.ryerson.ca/about/>. An LPP is also offered in French at the University of Ottawa’s French-Language Common-Law Program: <https://commonlaw.uottawa.ca/en/lawpractice>

negotiating, arguing motions and key parts of trials, and conducting business and real estate transactions.⁹³

199. For its assessment process, the LPP relies heavily upon the ongoing feedback and support offered by supervising lawyers and mentors throughout the program to help develop skills and competencies. The focus is on early and frequent interaction to help candidates see where they are doing well and where they require improvement. Assessors are looking for the “total performance” of the candidate. Overall, taking their entire body of work and presence into consideration, does this person appear ready for practice?

200. The fee for enrolment in PREP is \$6,100, approximately 40% of which is subsidized by the provincial law society if the PREP participant goes on to enrol as a lawyer in that province.⁹⁴ There is no separate fee for enrolment in the LPP, as the cost is included in the Law Society of Ontario’s overall licensing fee.⁹⁵

C. Considerations for Decision

201. Both the LPP and PREP offer an established external option by which the lawyer skills and professional skills of licensure candidates in British Columbia could be developed, applied, and evaluated. The advantages of transforming PLTC into a homegrown, full-scale skills development and assessment program are also real. This Report does not recommend either one of these options over the other; nor does it suggest that these are the only options possible.

202. Any decisions in this regard should be made based upon the Competence Framework that the Law Society eventually develops for licensure of British Columbia lawyers. The Framework ought to be the foundation of this and all other aspects of the province’s new lawyer licensing system. In this particular case, the nature and scope of the lawyer and professional skills competencies might give the Law Society some direction when deciding how best to pursue the skills development and assessment of licensure candidates.

⁹³ <https://lpp.ryerson.ca/prospective-candidates/>

⁹⁴ <https://cpled.ca/students/cpled-prep/program-cost-2/>

⁹⁵ <https://lso.ca/becoming-licensed/lawyer-licensing-process/law-practice-program?lang=en-ca>

203. For example, if B.C.'s eventual Competence Framework lines up closely with the CPLED Competence Framework that underpins PREP, or with the overall array of skills delivered by the LPP, it might make more sense to partner with one of these programs, rather than "reinventing the wheel" with a brand-new program that would take a great deal of time and money to create, test, and roll out.

204. However, should B.C.'s Competence Framework carve out a distinct profile unique to this province, then it might make more sense to transform the PLTC or develop a brand-new program customized to this province's new lawyers, rather than piggybacking on other programs designed with a very different competence profile in mind.

205. An additional point that the Law Society might wish to consider in this regard is standardization. Transforming the PLTC into a lawyer and professional skills program solely for British Columbia, while it could deliver real benefits to the provincial bar, might also increase the "patchwork" nature of licensing programs and new lawyer profiles across the country. While such a patchwork would not be so significant as to damage inter-jurisdictional mobility, it is also true that when it comes to the skills of a lawyer and the skills of a professional, there ought to be no real difference among lawyers across Canada.

206. Finally, the issue of cost cannot be disregarded. It would not be difficult for the Law Society to enquire with CPLED or with the Law Society of Ontario to estimate the likely financial aspects of partnering with either PREP or the LPP. Equally, a conversation with the Law Society of New Brunswick or with CPLED administrators might give a helpful indication of the cost of developing and operating a standalone skills program. Cost alone should never be the sole factor in these decisions, of course — the best interests of the province's legal sector and its stakeholders must always be the paramount consideration.

207. In some respects, the Law Society's choices in this regard would resemble the "build vs. buy" decision that many organizations face when evaluating how best to incorporate a necessary new feature or innovation. That decision is never an easy one, but it should always depend primarily on the organization's particular situation. That is an additional reason why the Competence Framework should play a significant role in this determination.

7. Supervised Practice

208. “Supervised Practice” refers to an opportunity for licensure candidates to further develop their competence before admission to the profession by engaging in real-life law practice situations under the supervision of a more experienced lawyer.⁹⁶ The Law Society, along with its counterparts elsewhere in Canada, mandates satisfactory completion of a period of supervised practice as a condition of law licensure.⁹⁷ A pre-admission period of supervised practice is also required in many legal professions worldwide.⁹⁸

209. In British Columbia, all licensure candidates receive supervised practice experience through the nine-month “articling term.” A candidate serves this term as a sort of apprenticed quasi-lawyer, usually in a law firm but occasionally in a court or legal department. The candidate carries out entry-level lawyer tasks and activities under the supervision of a “principal,” an experienced lawyer who takes responsibility for overseeing the candidate’s progress and who issues an approval at the conclusion of the term.

210. It is important to note that supervised practice, in and of itself, is not a licensure competence. It is an opportunity to *apply*, in a real legal workplace, all the competencies that a candidate has acquired through pre-admission education and training. Candidates use the period of supervised practice to apply their knowledge and hone their skills before achieving full licensure.

A. Rationale for the Supervised Practice Requirement

211. Why must aspiring Canadian lawyers “practise the practice of law,” so to speak, before licensure? In historical terms, the supervised practice requirement for law

⁹⁶ The period of supervised practice is almost universally referred to in Canada as “the articling term.” However, that phrase does not well describe the purpose and function of the supervised practice period. Moreover, using that phrase presupposes that an “articling term” is the sole means by which a period of supervised practice should be accomplished. Accordingly, “articling” will be used in this section only to refer to the traditional “law firm apprenticeship” model of supervised practice widely employed across Canada, whereas “period of supervised practice” will be used to refer to the overall concept of this licensing requirement.

⁹⁷ There are two exceptions to this rule, both of them in Ontario — the Integrated Practice Curricula at Bora Laskin Law School in Thunder Bay and Lincoln Alexander Law School in Toronto. Both will be addressed below.

⁹⁸ https://en.wikipedia.org/wiki/Admission_to_practice_law

licensing is something of an artifact. More than a century ago, apprenticeship to an experienced practitioner through an “articling term” was the only practical way in which an aspiring lawyer could learn their craft and acquire sufficient competence to practise law on their own.⁹⁹

212. Since then, however, Canada has seen the advent of formal legal education, the adoption of a law degree as a mandatory credential for licensing, and the development of bar admission courses to add practical training to academic instruction. Over the years, articling has gradually evolved into its current role as a kind of “competence backstop,” a real-world check on the education and training provided in law schools and bar admission programs.

213. This “competence check” is considered necessary for several reasons:

- Candidates need to apply in real situations the theoretical knowledge and practical skills acquired in law school and bar admission programs in order to truly understand how to use this knowledge and these skills effectively.
- Candidates need to spend time immersed in a legal workplace in order to grasp the realities and mechanics of law practice, business operations, and client service.
- Candidates need the guidance and support of a supervising lawyer in order to catch their mistakes, identify their shortcomings, and help continue their development into competent professionals.
- Candidates need the boost to their self-confidence that comes with proving to themselves, during their period of supervised practice, that they really can carry out lawyer tasks successfully.
- Members of the public need candidates to possess “real-world” experience serving actual clients with actual problems in order for them to have confidence in the quality and effectiveness of new lawyers.

⁹⁹ “Law School: The Story of Legal Education in British Columbia,” Professor W. Wesley Pue, University of British Columbia Faculty of Law, 1995 (<http://faculty.allard.ubc.ca/pue/historybook/school.html>)

214.If the overall rationale for requiring candidates to complete a period of supervised practice could be summed up in one sentence, it might be: “They’re not ready yet.” A law degree and a bar admission program are insufficient on their own to produce a truly competent lawyer who can reliably serve clients and run a legal business. A period of supervised practice is therefore necessary in order to “finish off” the lawyer development process.

215.This rationale reveals something interesting and important: The legal profession lacks faith in its own lawyer development process. If regulators felt that law school and bar admission programs produced practice-ready, entry-level lawyers, there would be no need for a period of supervised practice. Just as, if the profession felt that law school taught candidates everything they needed to know about being a lawyer, there would be no need for a bar admission course.

216.The underlying rationale for requiring a term of supervised practice for licensure, then, is that the traditional licensure system is inadequate. Supervised practice is necessary because law school and bar admission do not sufficiently prepare a candidate to practise law, and therefore these two requirements alone do not protect and advance the public interest in legal services.

217.The new lawyer licensing system for British Columbia proposed in this Issues Paper should go some distance towards correcting this problem and ensuring the competence of licensure candidates.

- The creation of a Competence Framework would set standards for the type and level of knowledge, skills, attributes, and experiences that constitute readiness to practise law.
- The development of a system by which candidates would acquire and demonstrate knowledge of the law would ensure candidates know the essentials of Canadian and B.C. law.
- Passage of a standalone professional responsibility and awareness program would show that candidates know their ethical obligations and understand the evolving nature of professional duties and systemic challenges.
- Completion of a lawyer and professional skills program would certify that candidates have learned the skills of law and professional practice, applied them to entry-level client situations, and demonstrated them to evaluators.

218. It is conceivable that in future, a strong, valid, and defensible competence-based lawyer licensing system could remedy the shortcomings of the traditional licensure system, thereby making the period of supervised practice a helpful but ultimately unnecessary element of bar admission.

219. Until that time, however, the mandatory period of supervised practice remains an important if not invaluable means to ensure the competence of lawyers and to protect and advance the public interest in legal services. Even if this Report's recommendations are accepted, the new licensing system it describes will take several years time to develop, implement, adjust and ultimately perfect. Supervised practice and its "competence backstop" function will be even more important during that time.

B. Challenges to Supervised Practice

220. While the period of supervised practice is an essential element of lawyer licensing in Canada, it is also clearly in trouble. Criticizing articling for its chronic shortage of positions, difficult work environments, and inadequate training and supervision is one of the legal profession's most durable pastimes. The Law Society has recently been grappling with questions related to minimum working and compensation standards for articling candidates, and other regulators face many of the same issues.

221. Other serious challenges for articling today include:

- Increasingly, there are fewer articling positions available than there are candidates seeking such positions.¹⁰⁰ Those unlucky candidates who miss out either must take unpaid or unacceptably low-paid articling positions, or must postpone or give up on their goal to become a lawyer, delaying or abandoning their investment after years of effort and tens of thousands of dollars.

¹⁰⁰ "Although the available data suggests that B.C. 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...." *Exploring the Development of Alternatives to Articling: Recommendations*, Report of the Law Society of B.C. Lawyer Development Task Force, September 2020, pp. 6-7: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LawyerDevelopmentArticling.pdf>

- Anywhere from a fifth to a third of all articling candidates, when surveyed by law societies about their experiences, report incidents of harassment, abuse, poor supervision, sexism, or racism in their workplaces.¹⁰¹ These shocking findings reflect the absence of any real system of quality control by law societies over the legal workplaces in which candidates find themselves.
- Regulators' hands-off approach to the articling term is also reflected in the absence of robust standards for the lawyers who act as articling principals, including few requirements for acting as a principal, no guidelines for different types and consistent methods of articling supervision, and modest standards for affirming a candidate's successful completion of the term.

222. The unspoken but widely acknowledged reality is that most articling terms are not closely supervised internships that further develop the practice competencies of aspiring new lawyers. Instead, they are lengthy and modestly paid job auditions by licensure candidates who hope (or in some cases, desperately need) to be hired back as associates at the conclusion of their term.

223. In addition to these widespread and often chronic shortcomings of the articling term in practice, there are also disquieting long-term trends in this area:

- Accelerating innovation in legal technology and business processes is reducing the amount of basic "entry-level" work that law firms have long assigned to articling candidates, creating a potential vacuum of assignments that a threshold-competent lawyer can carry out.
- Increasingly competitive markets for legal services are driving law firms to spend less money to produce client work; combined with the trend towards setting minimum salaries and working conditions for articling candidates, fewer law firms can be expected to offer articling positions in future.

¹⁰¹ A 2018 survey by the Law Society of Ontario found that 21 percent of respondents who had completed articling indicated they had faced comments or conduct relating to personal characteristics that were unwelcome, while 17 percent felt that they had received different or unequal treatment relating to personal characteristics: https://lsdialogue.ca/wp-content/uploads/2018/05/lawyer_licensing_consultation_paper_bookmarks-weblinks-toc.pdf. In addition, a 2019 joint survey by the law societies of Alberta, Manitoba, and Saskatchewan found that 32 percent of respondents experienced discrimination or harassment during recruitment and/or articling, as well as an inconsistent experience in the competencies learned during articling and in how prepared students felt for entry-level practice: <https://www.lawsociety.ab.ca/2019-articling-survey-results/>

- COVID-related trends towards work-from-home and hybrid offices appear set to continue after the pandemic ends, suggesting that opportunities for experienced lawyers to directly supervise the development of articling candidates will become scarcer in the future law office.¹⁰²

224. Based on all the foregoing, it must be concluded that “articling for nine months in a legal workplace” is not sustainable as the Law Society’s sole method by which licensure candidates complete a period of supervised practice before admission. The Law Society must address and remedy as many of the problems with the articling system as it can. But the Law Society must also develop new pathways by which licensure candidates can obtain supervised practice experience. And to do both of these things, it must identify the essential elements of an acceptable period of supervised practice.

225. Therefore, this report suggests that the Law Society make the following changes to the supervised practice system:

- Identify the essential elements of an acceptable supervised practice period;
- Institute reforms to the current articling experience; and
- Authorize new opportunities for licensure candidates to complete a period of supervised practice.

C. Changes to the Supervised Practice Requirement

1. Supervised Practice Criteria

226. The Law Society’s guidance to articling principals and licensure candidates currently consists of a two-page Articling Agreement and a two-page Articling Skills and Practice Checklist, each of which must be read and signed by both parties.

227. The Articling Agreement describes in broad terms the obligations of both parties during the articling term and sets out three requirements for evaluating the articling experience (midterm report, principal’s evaluation, and final documentation). The Articling Skills and Practice Checklist states that “during the Articling Term, [the candidate] shall obtain practical experience and training in” a list of ethics issues, practice management issues, lawyering skills, and practice areas.

¹⁰² “The Five-Day Workweek Is Dying,” Derek Thompson, *The Atlantic*, Feb. 23, 2022: <https://www.theatlantic.com/ideas/archive/2022/02/work-from-home-revolution/622880/>

228. This approach provides little guidance to the parties and gives the articling principal enormous leeway in the structure and execution of the articling term. The licensure candidate does not know, and cannot be expected to know, the standards of performance they must attain in order for the principal to “tick the box” next to each item on the Checklist. The candidate has little knowledge about and less agency in the successful completion of their supervised practice period.

229. It is also apparent that in order to serve as an articling principal, a lawyer need demonstrate only a willingness to do so and an absence of past misconduct. They need not possess or acquire any particular skill in managing, mentoring, supervising, or giving feedback to a legal licensure candidate. There are also no standards regarding the safety, support systems, ethical infrastructure, or general professionalism of the working environment. In short, there are hardly any criteria for determining the minimum acceptability of an articling term.

230. Addressing this problem is not simply a matter of “fixing articling,” which is a nebulous and questionable objective in any event. Instead, the Law Society must develop new methods of supervised practice beyond articling, if it wishes to sustain this requirement as part of the licensing process.

231. It is therefore necessary that baseline criteria be established that apply to *all* types of supervised practice settings, whether “articling in a law firm” or otherwise. These baseline criteria, to be effective, must ensure that the purpose of a period of supervised practice is fulfilled: giving licensure candidates the opportunity to apply to real legal service situations the competencies they have acquired throughout the licensing process.

232. The criteria must be as applicable to a law firm articling position as to myriad other supervised practice opportunities that can be envisioned today or that might present themselves in future. They must meet the twin goals of the licensing process: ensuring that newly licensed lawyers are competent practitioners, and that bar admission requirements do not constitute an unnecessary barrier to professional entry.

233. This Report suggests that the Law Society designate three criteria that any period of supervised practice — “articling term” or otherwise — must meet in order to receive the Law Society’s approval.

1. *Legal Services Provision.* The period of supervised practice must take place in a working environment that includes at least one lawyer and that provides legal services to individual, commercial, or institutional clients.

2. *Supervisor Standards.* The licensure candidate must be overseen by a lawyer with at least five years' experience who meets the Law Society's qualification standards for fulfilling the role of supervising practitioner, which are set out in more detail in the next section.

3. *Competence Checklist.* The licensure candidate must, in the judgment of the practice supervisor, have demonstrated the successful application of a required minimum number of the competencies in the Competence Framework, as described and tracked through a plan jointly developed by the candidate and supervisor.

234. The first criterion is meant to ensure that the licensure candidate gains their supervised practice experience in an environment in which legal services are delivered to real individuals or entities. The goal of supervised practice is to ensure that candidates obtain experience serving actual clients and solving their problems. A "legal environment" is not enough. Real people or real entities must receive real legal help.

235. As to the second criterion, five years seems an acceptable minimum amount of experience for a lawyer to provide supervision and feedback to a licensure candidate to a standard that meets the Law Society's expectations. However, the Law Society ought to consider approving a less experienced lawyer for this role if the lawyer can clearly demonstrate their fitness to do so.

236. As to the third criterion, the entire point of the period of supervised practice is to allow the candidate to practice the application of the competencies they have acquired throughout the lawyer licensing process. It stands to reason that the Competence Framework should be the standard against which the candidate's progress in this regard should be measured, and that the candidate should have a central role in designing their supervised practice plan.¹⁰³ The appropriate "minimum number" of demonstrated competencies is a question for Law Society personnel to determine.

¹⁰³ For further reading on this topic, see: "The CASE for standards of supervised practice in lawyer licensing," *Law21*, May 19, 2021: <https://www.law21.ca/2021/05/the-case-for-standards-of-supervised-practice-in-lawyer-licensing/>

2. A Reformed Articling System

237.If we were to apply the first of the foregoing criteria to the articling system, little would change. Virtually every articling position in British Columbia already takes place in a legal services environment (either a law firm, a legal clinic, or a law department) under the supervision of a qualified lawyer. Non-profit entities such as law school clinics or community legal centres would also qualify here. Even a “virtual” legal services provider could meet this requirement.

238.One change would be necessary, however: A court would no longer be considered an acceptable location for supervised practice. It has always been at least questionable to consider a judicial clerkship an opportunity for a licensure candidate to practise the competencies of a lawyer. Given the challenges traditionally associated with finding articling positions, it is understandable why courts have been allowed to host articling terms. But if and as the various changes set out in this section are implemented, this exception should be closed.

239.Applying the other two criteria to the present system would have broader ramifications and would necessitate two significant reforms to the articling process.

(a) Create standards for practice supervisors

240.Acting as a practice supervisor for licensure candidates is one of the Canadian legal profession’s longest-standing traditions, and one of its most honourable. It is a significant commitment for a lawyer to take on the responsibility of overseeing the first professional steps of an aspiring lawyer, in terms of both time and effort expended as well as billable opportunities forgone.

241.But a positive outcome from a supervised practice relationship has often been more of a happy accident than the result of structured guidance and advance planning by both parties or by the Law Society. The traditional nature of the practice supervisor’s role has perhaps discouraged regulators from setting many formal standards for the role or approaching it in a more systematic manner.

242.Accordingly, many practice supervisors struggle with their role to a greater or lesser extent, unsure of their responsibilities or unclear about the desired regulatory outcomes. And some supervisors, as the statistics on discrimination and harassment in articling aptly demonstrate, are simply unfit for the job.

243. By assigning the practice supervisor such a critical role in the lawyer licensing process, the Law Society is effectively outsourcing some of its regulatory oversight responsibility to the individual supervisor. It is therefore incumbent on the Law Society to also provide these supervisors with the necessary support and resources to carry out their “quasi-regulatory” function and successfully navigate the challenges of the position.

244. Accordingly, the Law Society should set qualification standards that all lawyers who wish to act as practice supervisors must satisfy.¹⁰⁴ In addition to a minimum five years in practice and a clean disciplinary record, the qualification standards should include the completion of an online training program that instructs supervisors on:

- how to oversee, mentor, and develop a lawyer licensure candidate;¹⁰⁵
- how to help ensure the personal well-being of a candidate; and
- how to identify when a candidate has successfully demonstrated the application of a required competency.

245. The Law Society might wish to consider instituting other criteria, such as assessing the legal workplace itself for minimum standards of staff support, ethical infrastructure, and a commitment to diversity. As is always the case in such situations, a balance must be struck between prescribing justified workplace standards for new lawyers and assuring a reasonable supply of workplaces willing and able to meet such standards.

246. It is acknowledged that even a minimally onerous application and training program for practice supervisors would be a heavier burden than what is now required of articling principals, and that these additional demands might well discourage some lawyers from taking on the principal role and thereby reducing the pool of available articling positions.

¹⁰⁴ The Law Society might consider whether a lawyer who has acted as a practice supervisor in the past could apply for dispensation from completing the training course, although that lawyer ought to provide other supporting evidence, such as a testimonial from a previous supervisee.

¹⁰⁵ In this regard, the Law Society is encouraged to draw upon the findings of Professor Michael McNamara in *Supervision in the Legal Profession* (2020: Palgrave Macmillan, Singapore), which provides detailed guidance on professional supervision of new lawyers: <https://www.amazon.ca/dp/B087ZXR2YQ/ref=dp-kindle-redirect?encoding=UTF8&btkr=1>

247. But it is also true that the Law Society must publicly demonstrate its commitment to ensuring licensure candidates can competently apply their knowledge and skills in a safe and well-supervised environment. Practice supervisors are effectively acting as “agents” of the Law Society; they should be assessed accordingly.

248. Equally, the Law Society should take steps to increase the amount and depth of support it provides to practice supervisors. In addition to completing the training program, supervisors should be given resources and materials to consult when they are unsure how to proceed in a given situation, as well as contact information for a dedicated “supervision professional” at the Law Society who can answer questions or provide guidance if and as needed.

(b) Revisit the duration of supervised practice

249. The duration of the supervised practice requirement differs widely across Canada, from 6 months in Québec to 9 months in British Columbia to 12 months in Prince Edward Island, with other jurisdictions somewhere along this spectrum. These durations have also been affected by the pandemic: B.C. is one of several jurisdictions that have reduced the length of the articling term by a month or two over the last couple of years. There has been no suggestion that the articling experience has been diminished by the shortened duration.¹⁰⁶

250. The two shortest periods of supervised practice in Canada can be found in Québec and Ontario. The Barreau du Québec’s École du Barreau trains candidates in a wide range of practice skills, giving the Barreau enough confidence in their competence to set the supervised practice term in Québec at six months.¹⁰⁷ Ontario’s LPP provides its candidates with a simulated law firm experience that is sufficiently robust to allow the Law Society of Ontario to set LPP candidates’ subsequent period of supervised practice at just four months (versus ten months for articling students, or eight months during the pandemic).

¹⁰⁶ In fact, in its October 28, 2021, Report to Convocation, the Professional Development and Competence Committee of the Law Society of Ontario recommended that the eight-month COVID-shortened articling term of 2020-21 be renewed for the 2021-22 articling term. “Current data collected regarding candidate competencies and experiences does not indicate any significant shortcomings in candidates’ learnings or competencies when compared to previous cycles.” <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-october28-2021-consent-agenda-motion.pdf>, p. 2. LSO Convocation accepted the Committee’s recommendation.

¹⁰⁷ <http://www.ecoledubarreau.qc.ca/fr/formation/>

251. In both these cases, the duration of supervised practice is directly affected by the nature and quality of the practical skills training that preceded it. This might suggest that the proper duration of the supervised practice period should be determined not by reference to an arbitrary number of months, but on whether and when the candidate has developed entry-level competence.

252. These examples reinforce the value of the third suggested criterion, that the licensure candidate must demonstrate to their practice supervisor the successful application of a minimum number of the competencies set out in the Competence Framework. This would be accomplished through a "Supervised Practice Plan," jointly developed and agreed by the candidate and supervisor, which would combine and replace the current Articling Agreement and Articling Skills and Practice Checklist.

253. The Supervised Practice Plan would set forth the complete list of competencies in the Competence Framework and would lay out a pathway by which the candidate could engage in activities that demonstrate a sufficient number of those competencies. The Plan would also describe the standards or measures that the supervisor would use to assess whether the candidate has successfully demonstrated the application of a given competency. The Law Society would prepare a standard Supervised Practice Plan template, and would allow each candidate and supervisor to jointly customize it for their particular situation. The supervisor would then file a copy of the customized Plan with the regulator.

254. The goal of this process would be to give the candidate and supervisor clear guidance for understanding what purpose the supervised practice period serves and how the candidate can practise the competencies they have acquired to this point in their development. Equally importantly, this process would give the practice supervisor more flexibility to assess when the candidate has achieved "readiness" for entry-level practice, and for the candidate to sign off on this assessment.

255. It is neither necessary nor realistic to expect a candidate to practise the application of every single competency in the Framework during their supervised practice period. Nor would it be wise to set a specific "minimum number" of competencies in this Report, before the contents of the Competence Framework have been decided. The ultimate test of licensure is whether the candidate is, taking all considerations into account, ready to be a lawyer. That point will be reached sooner in some supervised practice experiences and later in others; it is up to the candidate and supervisor to meet, assess, and agree on the candidate's progress towards this point.

256. To return to the issue of duration, some parameters are advisable here. If no minimum amount of time is set, the candidate and supervisor could prematurely agree to an early approval in order for the candidate to be licensed and start working and billing as a lawyer. If no maximum amount is set, the supervisor could keep the candidate in perpetual indentured servanthood, unfairly delaying their admission to the bar.

257. Accordingly, the Law Society should set minimum and maximum periods of time for a supervised practice period in a legal services environment.¹⁰⁸ This report suggests using the LPP's four months as a minimum and the standard (pre-pandemic) B.C. articling period of ten months as a maximum.

3. New Methods of Supervised Practice

258. A period of supervised practice should remain as a requirement for lawyer licensure in British Columbia. But "articling in a law firm" cannot and should not be the sole means by which candidates obtain this experience. Working in a law firm under the supervision of an experienced lawyer remains a perfectly valid means of obtaining the experience required for licensure. But this route is not available for everyone who seeks it, and it is not the best route for everyone who wishes to become a lawyer.

259. Fortunately, new methods by which licensure candidates can gain the required degree of supervised practice experience have emerged over the past several years. The Law Society should examine and approve the use of one or more of the following methods as fulfilling the supervised practice requirement for licensure.

(a) Law school clinics and externships

260. Virtually all common-law schools in Canada (including all three in British Columbia) offer a range of courses, clinics, and externships that allow students to develop and practise lawyer and professional skills in real or simulated environments. Some of these clinics and externships render course credit to the students who take them, while others are entirely voluntary. All such clinics provide the opportunity for law students to develop and apply lawyering skills to actual clients in real-world situations under supervision.

¹⁰⁸ A different approach would be applied to a period of supervised practice carried out in law school clinics and secondments, where "months of work" is not always a viable measure.

261. Law school clinical courses, clinics, and externships deliver many of the same benefits to students that articling provides to licensure candidates: the opportunity to further develop practical skills and apply legal knowledge and professional responsibility rules, while providing legal services to real clients under the supervision of an experienced lawyer. They also deliver the opportunity to provide legal help to individuals who cannot afford most lawyers' fees and otherwise would be unable to access the justice system.

262. Therefore, the Law Society should certify completion of a threshold amount of clinical and externship experience at accredited Canadian common-law schools as constituting appropriate supervised practice experience to satisfy the requirement for licensing.

263. How much clinical and externship experience in law school should constitute a qualifying amount for licensing purposes? The precise degree should be determined by the Law Society in consultation with clinic and externship directors and legal professional development experts. A useful source of guidance in this regard could be proposed changes to lawyer licensing in the state of Oregon.

264. Currently, no American state requires a licensing candidate to complete a period of supervised practice in order to obtain a law license; a candidate need only graduate from law school and pass a bar exam. However, owing to growing dissatisfaction in Oregon (and other states) regarding the fairness and efficacy of the bar exam as a licensing tool, alternative pathways to licensure are under active consideration.

265. In June 2021, the Oregon State Board of Bar Examiners' Alternatives to the Exam Task Force published a report¹⁰⁹ calling for the authorization of two new pathways by which a candidate could obtain a law license in that state without writing a bar exam. One of those methods, interestingly, requires a candidate to complete between 1,000 and 1,500 hours (or roughly six months) of supervised legal work for an Oregon law firm — the report refers to it as the "Canadian articling model."

266. The other method, more germane to the present discussion, requires a candidate to complete, on top of 20-24 credits of foundational law school coursework (in areas such as evidence, criminal procedure, and personal income tax), 15 credits of clinical and externship work, along with a "Capstone" project to be assessed by the Board of Bar Examiners. The 15 credits of clinical and externship work must include "successful completion of no fewer than 9 credits of closely supervised clinical work

¹⁰⁹ <https://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf>

or simulation coursework, and the successful completion of up to 6 credits of externship work.”

267. In January 2022, the Oregon Task Force Report received initial “approval in concept” from the State Supreme Court, which directed the establishment of a committee that will provide more details for the development and implementation of these new pathways to licensure.¹¹⁰

268. Oregon is not British Columbia, and the American legal profession is not the Canadian legal profession, so the parameters of the Oregon proposal should not simply be replicated in this jurisdiction. But the contents and recommendations of Oregon’s Alternatives to the Exam Task Force Report are offered as a useful guide for the Law Society if and as it considers this possibility.

(b) Integrated practice curricula

269. Another potential law school-based option by which licensure candidates could obtain required supervised practice experience involves what is known as an “Integrated Practice Curriculum” (IPC). This approach is currently employed by two law schools in Ontario: Bora Laskin Law School at Lakehead University in Thunder Bay¹¹¹ and Lincoln Alexander Law School at Metropolitan Toronto University.¹¹²

270. The Integrated Practice Curricula at these two schools incorporate “supervised practice” throughout the law school experience, in regular classes and in a third-year full-semester work term. The Law Society of Ontario considers these programs to constitute qualifying supervised practice experience for licensure, such that their graduates need not complete an articling term.

271. At Bora Laskin Law School, the IPC converts the standard 90-96 credit hours of an Ontario law degree into a 108-hour program that includes practical skill-building and the application of legal principles to potential client situations. In each course, law professors work with local practitioners to create hands-on, realistic learning opportunities for students. In the third year, an unpaid four-month work placement

¹¹⁰ “Oregon moves closer to a bar exam alternative,” Karen Sloan, Reuters, Jan. 22, 2022: <https://www.reuters.com/legal/litigation/oregon-moves-closer-bar-exam-alternative-2022-01-12/>

¹¹¹ <https://www.lakeheadu.ca/programs/departments/law/curriculum/ipc>

¹¹² <https://www.ryerson.ca/law/program/integrated-practice-curriculum-ipc/>

with a local legal workplace gives students the opportunity to apply their skills to actual client problems. The law school describes its program as one in which “the theory of the law is integrated into the practice of law.”

272. At Lincoln Alexander Law School, students receive hands-on mentorship throughout their IPC degree and work with technological innovations that are redefining legal practice. The first year is a co-teaching model where faculty and practitioners combine theory with real-world experience and bring an applied-skills approach into the classroom. In the second year, IPC practicums in each semester include lecture-based learning coupled with hands-on mentorship. In third year, similarly to Bora Laskin, one semester is devoted to a 15-week professional placement, while coursework in the other semester allows students to focus on key interest areas.

273. The Law Society, of course, cannot create an Integrated Practice Curriculum itself. An individual law school would have to put forth the very considerable effort and resources necessary to develop such a program. This would be a great challenge for an existing law school: both Bora Laskin and Lincoln Alexander Law Schools instituted their IPCs when they were initially launched.

274. However, there is nothing to prevent the Law Society from entering into informal dialogue with any of B.C.’s three law schools to discuss how an IPC might help prepare candidates for law licensure in British Columbia. There is also the potential for the development of a “modified IPC” that fuses some elements from the “clinic and externship” model previously suggested with a potential revision or renewal of certain foundational law school courses.

(c) A teaching law firm

275. A “teaching law firm” takes its name from teaching hospitals, where trainee medical personnel practise medicine on real patients under the eye of experienced doctors and nurses, receiving feedback on their performance and guidance on how to improve. In a similar fashion, a teaching law firm would place licensure candidates who have completed the other stages of bar admission into a Law Society-supported law firm to serve real clients under the supervision of experienced working practitioners.

276. Licensure candidates would learn first-hand the realities of legal service: applying legal knowledge and professional responsibility principles, solving client problems, organizing and managing files, and communicating and relating with clients,

including those from different cultures and backgrounds. The applicant's practice supervisor would debrief candidates on their performance, providing support and answering questions to accelerate the candidate's development.

277. In addition, by establishing the firm as a non-profit operation geared towards serving low-income clients or those from marginalized communities, the Law Society could help to alleviate the access-to-justice problem in local communities by making legal services available at low cost or no cost. It could also expose aspiring lawyers to the challenges faced by marginalized client communities that many of them might otherwise never encounter.

278. Obviously, the costs and challenges of this option would be significant. The most successful example of a teaching law firm today is the award-winning Legal Advice Center (LAC) located at Trent Nottingham University School of Law in Great Britain, now in its sixth year.¹¹³ The LAC took several years to develop and requires significant levels of funding from the university and private donors to keep its doors open.

279. In addition, the LAC is operated and supported by a university and is located in a single community. There is no precedent for a teaching law firm that is operated by a legal regulator for the purpose of training future lawyers, and that if created in B.C., might have to operate at least in Vancouver, Victoria, and Kamloops, with attendant extra costs in office space, equipment, maintenance, and salaries for each location.¹¹⁴

280. If the Law Society wishes to pursue the establishment of a teaching law firm, it should be aware that such a firm would not be independently profitable and would require extensive and ongoing funding to maintain. This option might aptly be described as a "moon shot" — with all the risks and rewards that phrase suggests.

¹¹³ "Legal Advice Centre: Our teaching law firm," Nottingham Trent University, <https://www.ntu.ac.uk/c/legal-advice-centre>; "First 'teaching law firm' celebrates benefits to students and clients," Neil Rose, *Legal Futures*, Mar. 14, 2019: <https://www.legalfutures.co.uk/latest-news/first-teaching-law-firm-celebrates-benefits-to-students-and-clients>

¹¹⁴ The Law Society might also wish to consider, in this regard, the Everyone Legal Clinic, a public interest law incubator launching this month that plans to hire a diverse first group of 25 articling students to offer a full range of free and affordable legal services to all British Columbians: <https://www.accessprobono.ca/program/everyone-legal-clinic>.

(d) A customized period of supervised practice

281. Finally, a licensure candidate theoretically could design their own supervised practice experience, so long as it meets all of the Law Society's criteria and standards. For example, a candidate might volunteer with an online legal service that has been accepted into the Law Society's Innovation Sandbox, or with a community organization that helps homeless urban residents find basic social services, including legal help.

282. In such a situation, a candidate could prepare and submit to the Law Society a proposal that sets out the parameters of the work they would be doing, the nature of their supervision, the experiences they expect to encounter, and so forth. If the proposal meets the three criteria set out earlier in this section, then the Law Society could approve the proposal, with any additional conditions for oversight that it deems appropriate.

8. Conclusion

283. This Report has recommended what amounts to a significant restructuring of the lawyer licensing system in British Columbia. As the author of the Paper, I recognize the immensity of much of what is proposed here. At the same time, these recommendations are the natural result and logical outcome of switching the lawyer licensing system from credentials-based to competence-based. If the Law Society is prepared to undertake that switch — and I believe that is the correct course for the regulator to pursue — then the ensuing disruption would be considerable.

284. But making that switch would also, I believe, address several fundamental shortcomings and inconsistencies in the current process by which the legal profession develops and authorizes new lawyers. And it would usher in a new and better era in lawyer development in B.C., giving the Law Society a rational, valid, and defensible means by which new lawyers are admitted to the legal profession.

285. A question commonly posed to companies and organizations that are re-evaluating their traditional practices is: “If we weren’t already doing it this way, is this the way we would start doing it?” If no lawyer licensure process previously existed in British Columbia — if we were starting today, for the first time, to train people to become lawyers — would we require that candidates first complete three full years of expensive education that is only tangentially related to the competence to practise law? Would we then try to re-educate these candidates by covering in ten weeks what the education failed to adequately cover in 156? Would we then require them to spend nearly a year working as apprentices in a legal workplace under often-questionable conditions?

286. Or would we go back to first principles and ask: “What is the profile of a competent lawyer on Day One of their career? How do adults acquire and apply professional knowledge, skills, and characteristics? What does the public need to know about a person before agreeing that that person should become a lawyer?” These are the questions that should be asked and answered when designing a new and better system for the formation of lawyers.

287. This Report has aimed to ask and answer those questions, and has arrived at these recommendations. It is hereby offered to the Law Society for its consideration, its discussion, and if it thinks appropriate, its approval and implementation.

Jordan Furlong
May 10, 2022