

# National Admission Standards Project



Assessing Candidates to  
Ensure They Meet the  
National Standard:  
A Proposal for Moving  
Forward

National Admission  
Standards Project  
Steering Committee

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Prepared by the National Admission Standards Project Steering Committee:

Don Thompson, Law Society of Alberta, Chair  
Marie-Claude Bélanger-Richard, Past President, Federation of Law Societies of Canada  
Allan Fineblit, Thompson Dorfman Sweatman LLP (formerly Law Society of Manitoba)  
Jeff Hirsch, Vice President and President-elect, Federation of Law Societies of Canada  
Robert Lapper, Law Society of Upper Canada  
Tim McGee, Law Society of British Columbia  
Diana Miles, Law Society of Upper Canada  
Laurie Pawlitza, Council Member, Federation of Law Societies of Canada  
Darrel Pink, Nova Scotia Barristers' Society  
Bernard Synnott, Barreau du Québec  
Alan Treleaven, Law Society of British Columbia  
Lise Tremblay, Barreau du Québec  
Jonathan Herman, Federation of Law Societies of Canada

Support to the Steering Committee is provided by:  
Frederica Wilson, Senior Director, Regulatory and Public Affairs, and  
Stephanie Spiers, Director, Regulatory Affairs and project manager

## INTRODUCTION

Law societies across Canada have been working collaboratively to develop national admission standards since 2009. The primary driver for national admission standards is mobility.

Legal professionals can now move from one jurisdiction to another with relative ease and this makes differences in admission practices difficult to defend as being in the public interest. Enhanced mobility has propelled the need for greater consistency in admission practices across Canada.

In 2013, law societies adopted the National Competency Profile, which describes the competencies required of new lawyers and Quebec notaries. Law societies must now decide how best to assess whether applicants have demonstrated that they possess these competencies. This proposal sets out a plan for a national assessment regime that:

- recognizes the primacy of law societies' public protection mandate;
- adopts assessment best practices used by many other professions in Canada; and
- follows practical and realistic strategies from both a time and cost perspective.

This proposal provides a vision and structure for moving forward with the development and implementation of a national assessment regime. The assessment plan is practical; it will occur in phases and at a cost that is consistent with what most law societies spend on assessment now. The assessment regime envisaged involves written examinations in an online context and assessment of applicants in the experiential (articling) phase. Skills are the focus of assessment.

Our work has reached a critical juncture. Law societies are being asked to make a decision by the end of 2015 to commit to the direction for moving forward outlined in this proposal. We recognize that the timing will ultimately depend on when law societies are ready to move ahead.

As we take the next step toward implementing a national assessment regime, we will have to maintain flexibility. Our destination is a defensible national assessment program that is alive to the practical realities facing law societies; aligns with best practices, and fulfills our duty to protect the public interest. The proposal provides a road map for the journey. We expect that some adjustments will need to be made along the way as we learn from each step in the process and navigate the best route forward together.

## Proposal Overview

1. This proposal describes the exciting next step in the National Admission Standards project – how to move forward with the assessment of the competencies in the National Competency Profile. The National Competency Profile lists the knowledge and skills that candidates must possess, and the tasks that they must be able to perform upon entry to the profession. Law Societies are being asked to decide how they will participate in this next phase of the project.
2. Having identified the necessary competencies, we are now focussing on how to assess whether applicants can demonstrate that they possess those competencies. We know there are two other important pieces of the admissions puzzle: professional training (e.g. bar admission programs) and experiential learning (e.g. articling and the Law Practice Program in Ontario). Articling is included in this proposal. A national approach to professional training, on the other hand, has been reserved for a later stage of our work to ensure that the project maintains momentum and that the necessary time and resources can be dedicated to a national dialogue on training.
3. The proposed assessment regime will focus on skills. The knowledge competencies in the National Competency Profile will provide the context for all assessment activities. Candidates will not be directly tested on those knowledge competencies in the National Competency Profile that are also included in the common law degree national requirement. The proposed national assessment is designed to be national in application, and to address the competencies of lawyers no matter where they practise in Canada. Law societies wanting to address local law or other specific issues can add a local assessment for their candidates.
4. This document is written specifically for law society leaders and other law society stakeholders with an interest in legal professional education. It is intended to provide the necessary information to assist law societies in determining whether they will participate in the national assessment regime. We expect that further dialogue is needed with individual law societies to work through the issues raised in the proposal.
5. We will meet with law societies throughout the fall of 2015 to discuss the proposal. Law societies are being asked to sign on to the proposal following this period of engagement and internal review in each jurisdiction. Our goal is to move forward by the end of 2015. We recognize that timing will depend on when law societies are ready to proceed.
6. This proposal is a pivotal step in our collaborative effort to develop National Admission Standards. It provides a strategy for building on law societies' long history and strong foundation in the preparation and assessment of candidates in order to achieve greater consistency, efficiency, accountability, and overall quality in how candidates are assessed for admission to practice law in Canada.



## Why change how law societies assess candidates?

7. Presently, each law society has its own procedures for assessing candidates for admission to practice. A snapshot of admission practices across Canada is available at **Appendix 1**. Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions and this has generated increased reflection about what law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility makes different regulatory practices difficult to justify as being in the public interest.

8. Although considerable differences exist in how law societies train, prepare and assess candidates, there are also many similarities. With agreement on the entry level competencies described in the National Competency Profile, a harmonized assessment of the competencies will serve as a vehicle for bridging the different education and training practices that exist among law societies. This will give law societies greater confidence in the competence of their lawyers regardless of where they were admitted. Canadian consumers will also have enhanced confidence in the ability of lawyers to provide competent and ethical legal services.

9. A national assessment strategy will also take advantage of the latest theory and practice in assessment of competence at entry to practice. Training and assessment methodology and technology have evolved dramatically since many law societies developed their current bar admission courses. A national assessment would enable all law societies to benefit from the latest tools and best practices, many of which are employed by other professions in Canada.

10. Dramatic changes in legal education and training in Canada are taking place. Significant numbers of students now enter law society admission programs with a law degree from outside Canada. In 2014, Lakehead University adopted an Integrated Practice Curriculum (“IPC”) in which practice skills are integrated into the curriculum. In September, 2015, the University of Calgary will launch its new curriculum designed to offer students more opportunities to develop performance, deepen their competence and to be engaged in their learning, breaking down the separation between academic inquiry and practice. These new models of legal education may provide an indication of the law school curriculum of the future.

11. Preparation for professional practice occurs on a continuum and the law school academic phase and law society practical preparation phase are closely interconnected. The move to a nationally consistent, defensible competency assessment framework will facilitate the coordination and alignment of all facets of lawyer education and preparation, including the process for approving common law degree programs, and the assessment of internationally trained candidates through the National Committee on Accreditation (“NCA”). This alignment is critical to the regulator’s duty to protect the public.

12. The transition to a national assessment regime will:

- I. Deliver an appropriate degree of consistency between jurisdictions given the mobility of the legal profession.

- II. Align different facets of lawyer education and preparation, including the Canadian common law degree approval process and the NCA.
- III. Enhance the confidence in and accountability of assessments by employing best practices and drawing on the latest testing practices, resources and tools.
- IV. Improve the efficiency of assessment by pooling expertise and avoiding duplication of effort across the country.
- V. Ensure fairness for candidates through a standardized assessment.
- VI. Assist law societies to meet their public interest mandate through consistent, defensible and high standards for admission to the legal profession.
- VII. Ensure that candidates have demonstrated the required knowledge and skills for admission to the legal profession.

## **The Proposal**

13. The Federation met with law societies in 2014 to discuss options for assessing the competencies in the National Competency Profile. The meetings revealed a broad consensus amongst the law societies that there is value in a defensible and nationally harmonized assessment regime.

14. The Steering Committee has identified a number of outcomes, or psychometric qualities, which must flow from a national assessment regime if all participants and stakeholders are to have confidence in its strength, quality and reliability. The assessment program should result in outcomes that are:

- Valid: it will assess what it says it does;
- Consistent: other assessors would make the same or comparable judgements on the basis of the same evidence;
- Fair: the assessment will allow all candidates to demonstrate their competence;
- Relevant: the assessment reflects real life scenarios and situations;
- Defensible: the assessment follows testing best practices, including the above principles.

15. The National Competency Profile will be used as the starting point for developing an assessment regime that is valid, consistent, fair, relevant and defensible. Before assessment methods can be chosen and specific assessment tools can be designed, the information (or evidence) that demonstrates a candidate is competent in relation to a given competency must first be identified. The process of identifying the evidence and developing an assessment program from the competencies in the National Competency Profile involves numerous steps.

16. It begins with describing what an applicant will be required to demonstrate in relation to each competency. This listing is then translated into discrete statements of performance. The survey data obtained to derive the profile, and the ratings of importance and frequency are then used to refine and define how the statements will be prioritized and organized for testing. This process helps determine the relative proportion that each competency area should represent in the assessment. This is known as the “blueprinting” process.

17. The blueprinting process began after law societies adopted the [National Competency Profile](#). This early work led to the development of options for assessment. The process will continue and will require further work with psychometricians and input from law societies, which will in turn guide the ultimate outcome or final assessment product. It is not possible to know what that outcome might be before the development process is completed. While we can describe the kinds of assessments that might be used, the final decisions will be based on the results of the blueprinting work.

18. With these limitations in mind, the Steering Committee has prepared a proposal that provides a vision and structure for moving forward with the development of a national qualifying assessment system for admission to the legal profession in Canada. The Steering Committee asked one of its members with the appropriate expertise, Diana Miles, to prepare a work-up of how the assessment regime might play out. The resulting Business and Implementation Plan (“Business Plan”) expands on the proposal and provides a model of what the assessment regime might look like in operation, including the specific assessment methods and tools. The Business Plan is intended to serve as a starting point for a collaborative discussion about the details of the national assessment regime among jurisdictions that commit to this proposal.

19. The Business Plan provides background on the purpose and objectives to be achieved, the reasons for undertaking each step of the development process, and the operational tasks that must be completed. The plan goes into extensive detail on all of these elements in an effort to provide a clearer understanding of what will be involved and the complexities of developing a national assessment system. It also provides more detail on a possible governance structure and funding. The Business Plan is available at **Appendix 2**.

20. The proposed assessment regime occurs in three core phases that build upon each other and that are phased in over time. In Phase One, candidates will demonstrate the ability to learn and apply practical legal knowledge and procedure. In Phase Two, candidates will apply skills to complete more complex legal work. The focus in Phases One and Two is on the assessment of skills and tasks in the context of substantive and procedural law – the knowledge competencies. The knowledge competencies contained in the common law degree national requirement would not be retested. It is proposed that Phases One and Two would rely exclusively on computer-based testing through designated testing facilities across the country.

21. Law societies told us that experiential training is an important component of preparation for legal practice. The proposed assessment regime acknowledges the central role of articling and its alternatives in Ontario, the Law Practice Program and the IPC through Lakehead University. Phase Three of the assessment regime will introduce performance measures for articling students. Law societies would continue to set the rules and general requirements of articling in their respective jurisdictions. Training and tools would be provided to articling principals to be able to assess students in a consistent manner. Phase Three would help to clarify training expectations through assessing and documenting students' achievement of specified learning outcomes.

22. A further two phases, Phase Four and Phase Five, will provide for coordination and alignment of the national qualifying assessment regime, the process for approving common law degree programs, and the National Committee on Accreditation.

23. The Business Plan elaborates an operational model of each phase in order to work through the policy and practical considerations involved. The table below provides a summary of what each phase might entail for illustration purposes. The left column lists what would be assessed in Phases One through Three. The right column lists the specific assessment methods and tools that might be used to accomplish each phase, and the rationale for their use.



## A SNAPSHOT OF WHAT THE ASSESSMENT REGIME MIGHT INCLUDE:

WHAT IS ASSESSED	ASSESSMENT METHOD & RATIONALE
<b>PHASE ONE</b>	
The focus is on assessing skills and the application of knowledge in a knowledge-based context. Cognitive and analytical reasoning and response, factual analysis, legal analysis and reasoning, problem solving, and identification and resolution of ethical dilemmas are assessed.	Assessment may include single multiple choice questions (“MCQ”) and case-based MCQs completed online. MCQs permit the examination of a wide range of content very efficiently and are highly reliable, objective and fair. MCQs provide an anchor for the assessment methods proposed for Phases Two and Three, which provide more in-depth assessment of select competencies (but less breadth of coverage).
<b>PHASE TWO</b>	
The focus is on assessing skills and tasks in a knowledge-based context. Phase Two introduces more complex skills and tasks including ability in problem solving and decision making; the identification and resolution of ethical dilemmas; legal research; written communication; client communication, and the organization and management of legal issues and tasks.	Test items may include questions requiring long answers using information supports provided online (e.g. facts, case law), through to skills assessment requiring task completion, e.g., drafting an opinion, affidavit, pleading, or case analysis. With the addition of interactive, audiovisual components, simulated practice scenarios will be used in which test takers must apply critical and analytical thinking skills. For example, candidates may view a series of short videos of a lawyer interviewing a client or undertaking a negotiation. They may be asked to analyze the performance of the lawyer and discuss how competencies or standards for the practice of law have or have not been demonstrated.
<b>PHASE THREE</b>	
The focus is on demonstrated experience in the workplace (articling) or alternative environment. Phase Three involves application of the skills and tasks outlined in Phases One and Two, and includes the ability to complete assigned tasks, engage in productive interaction and team work, exhibit improvement, develop personal growth strategies, and engage in self-reflection and feedback.	This phase may involve enhancements to articling and its alternatives, beginning with the creation of a framework of competencies that must be demonstrated and a set of performance criteria and ratings supporting the assessment of skills and tasks. By specifying learning outcomes based on standardized performance reporting, a degree of validity and defensibility is achieved. Needed flexibility is also maintained, given the diversity of workplace experiences common to articling.

### *Adding to the National Assessment*

24. The Proposal recognizes that some law societies may see the need for a separate assessment reflecting content considered relevant to its jurisdiction alone. Should a law society consider it necessary, it may choose to add (or keep) a local law exam. However, modifications to the national assessment to accommodate local content will not be possible.

### *Candidate Preparation*

25. The assessment regime will integrate preparation materials and test simulation opportunities designed to assist candidates to be successful on the assessment. Preparation of test takers is considered critical for the validity of the examinations. Providing examinees with sample tests that mirror the test-taking environment will ensure that the testing format is not a factor in performance.

26. The proposed assessment regime does not address existing in-class instruction or formal training programs. It is anticipated that law societies will continue with their existing bar admission instruction courses and that they will adapt them to the National Competency Profile as they see fit.

### *Ongoing Evaluation of the Assessment Regime*

27. The Business Plan provides for ongoing evaluation to ensure that the assessment regime is meeting its objectives and continues to be viable and current.

### **Other Assessment Models**

28. The proposed assessment regime is the result of extensive consultations with law societies, the research and technical work carried out with our consultant ProExam and a team of advisors from the law societies (the Technical Advisory Committee), and input from the Steering Committee. It is a best estimate of the operational and policy dimensions of a future assessment regime based on our research about law societies' ability to support the project financially and otherwise. Some assumptions were necessary in order to provide an operational model. Assumptions will be tested with law societies as we meet to discuss the proposal.

29. From the outset, discussions with law societies about how the National Competency Profile will be assessed have included the possibility of performance-based assessment. Preliminary consideration has been given to whether Objective Structured Clinical Examinations ("OSCE") or OSCE-style assessment should form part of the national assessment program. OSCEs are commonly used in the health professions to assess candidates at entry to practice. They consist of a circuit of short stations in which candidates are examined on a particular task (e.g. examining a patient) with one or more examiners and typically an actor or real patient.

30. Developing and implementing an OSCE program across the country is resource intensive and would present significant challenges. Given the high cost and impracticality of OSCEs, and the ability to effectively test skills and tasks through other means (as outlined in Phases Two and Three), the Steering Committee is not proposing OSCE-style assessment.

31. The Proposal recognizes that face-to-face, performance-based assessment has deep roots in the culture of many bar admission programs, and that further consideration of this issue may be required as we delve into the details of the plan. One option for law societies is to add an OSCE-style performance-based assessment of candidates for high priority skills such as advocacy, interviewing and dispute-resolution in the context of Phase Three.

### **Who will be involved in the development of Phases One through Three?**

32. The following groups will be involved in the development process:

- Practitioner subject matter experts from across the country
- Law society expert staff
- Psychometricians and other expert external providers (e.g. video production support)

33. Law society staff with the appropriate expertise will be asked to contribute their time and knowledge on the understanding that a formula will be developed to compensate law societies for such in-kind contributions.

34. Management costs for Phase One assume that one or more experienced law society administrators will be seconded into required roles to allow the development process to leverage existing knowledge and skill, avoid extensive staff training and begin development on a timely basis. The Proposal relies heavily on the extensive experience and resources of the law societies and leverages existing tools and expertise, including exam banks, reference materials and advances in online assessment.

35. An experienced, interim management and staff team is contemplated for Phase One. Toward the end of the Phase One development period, and with the benefit of greater insight into the national processes, a full-time staff complement will be hired and office space and other operational infrastructure will be established to sustain the new national assessment regime.

### **Transition Planning**

36. Participation in the national assessment regime will require significant change to our existing business practices. Understandably, law societies are eager to hear the details about the transition plan. What will the move to a national assessment regime mean for current bar admission programs? The national assessment regime is designed to replace existing testing practices. Changes to existing teaching programs are not part of this proposal: law societies will

have to assess the impact of the national assessment program on their current bar courses, staffing, budget and overall operations.

37. Each law society's transition plan is an important aspect of the overall plan. Ultimately, each jurisdiction will determine how best to design and manage the transition process. We contemplate working with each law society to develop a transition plan tailored to its unique circumstances and responsive to local needs.

## **Funding and Costs**

38. The estimated costs of the new assessment regime are divided into development costs and operating costs for the ongoing administration once the program is implemented. The projected capital development cost for creating Phases One, Two and Three, net of taxes, is approximately \$2.8 million.

39. Start-up funding will be needed to begin development of the assessment tools proposed. The Federation will contribute to the start-up development costs from its surplus fund. Funding options for the development stage, which may include a cost-sharing formula, a repayable loan, or other possible models, will be explored in greater depth with law societies.

40. The projected annual operating cost for administering the new assessment regime is approximately \$1,725 per candidate, based on the participation of 3800 candidates. This includes candidates of all law societies except the Barreau du Québec and the Chambre des notaires du Québec. The per-candidate cost is dependent on the number of law societies that ultimately participate in the assessment regime. The cost of \$1,725 per candidate equates to an annual operating budget of \$6.5 million, which we expect will be largely paid for by student fees.

41. This fee covers the cost of assessment only. Our analysis is that this is close to what individual programs across the country are now spending on assessment, although most programs bundle assessment in with other costs. How this will line up with current fees for bar admission programs that include both training and assessment will be worked out in consultation with each law society during transition planning. Our goal is an assessment regime that will be cost neutral and that may also bring cost savings to local bar programs in the long term.

42. The Barreau du Québec has a sophisticated and psychometrically defensible system to assess the competencies of future lawyers that is recognized as highly reliable. The Barreau du Québec supports the need for a National Competency Profile for future lawyers in order to protect the public, and views the national assessment as one of several possible measures that can be taken to ensure consistent application of the Competency Profile. In the circumstances, including the necessity of ensuring assessment of candidates meets the requirements of Quebec's statutes and regulations, the Barreau has decided not to participate in the national assessment regime.

43. The Chambre des notaires du Quebec has not yet adopted the National Competency Profile. The Chambre has not been in a position to fully participate in national admission standards due to its significant education-related reform in connection with Bill No. 17, *An Act to amend the Act respecting the Barreau du Québec, the Notaries Act and the Professional Code*. Given that the Chambre's new training program has just begun and that it must also ensure that assessment of applicants meets the requirements of Quebec's statutes and regulations, the Chambre will not participate in the project at this time.

## Governance Structure

44. Phase One will require significant dedicated resources in a short time. This requires that the senior law society managers involved in developing Phase One be able to make decisions without the confines of a complex committee structure, yet with the appropriate oversight and policy direction from an oversight committee.

45. An interim governance model for Phase One might include modifications to the composition of the National Admission Standards Project Steering Committee, which oversees all aspects of the project. The exact model will be agreed upon with input from participating law societies. In the meantime, work on developing a permanent governance structure will begin. The permanent governance body should be independent and skills based. It would oversee the ongoing administration of the assessment regime once Phase One is ready to be implemented.

## Looking Forward

46. Collectively, law societies have made a considerable investment in national admission standards through the development of the National Competency Profile and identification of assessment options. We are at a crucial stage of the project. Law societies are being asked to make a decision to commit to the direction for moving forward outlined in this proposal, and illustrated in more detail in the Business Plan. We want to build on the momentum and good will to move the project forward, while acknowledging that each law society will have to carefully consider the plan before deciding if they will participate.

47. Canada's legal regulators have been engaged in an incremental and open process of review and policy development in relation to the creation of National Admission Standards since 2009. The past steps in the National Admission Standards project are available at **Appendix 3**.

48. This project provides an opportunity to rethink how we prepare candidates for practice and to look ahead to the next generation of legal professionals. What does the state of the art in assessment tell us about how skills are acquired and assessed? What are the needs of tomorrow's candidates? These questions will be explored in our discussions with law societies.

## Next Steps

49. Given the nature of this project, including both the financial requirements and the significant local changes it will create for some law societies, we are asking law societies to make a firm commitment to move forward with this proposal. The exact nature of the assessment tools and details of the program require further blueprinting work and involvement from law societies. At each stage of the process there will be opportunities for input so that law societies are comfortable with the plan as the project progresses.

50. It will be up to each law society to decide whether they are ready to commit to the proposed plan, and it may be that not all law societies will be ready to move forward at the same time. This is the case, for example, with the Barreau and the Chambre. Law societies that commit at the outset will have the opportunity to be involved in the development process. Some law societies may decide to take a wait and watch approach, and join at a later stage of implementation.

51. At this time, we anticipate moving forward with those jurisdictions that are ready to commit to the proposal. Law societies that are not in a position to sign on to the proposal may wish to align their bar admission programs to the National Competency Profile as some law societies have already begun to do.

52. We anticipate holding meetings (both in person and electronically, as appropriate) with law societies throughout the summer and fall to discuss this proposal and answer questions.

53. The meetings with law societies will give us a better sense of the time law societies need to reach a decision on participation. We are hopeful that we can meet an end-of-year timeframe. The ultimate timeline will be driven by law societies. A general timetable for the technical work required to develop the assessment program follows. It is premised on a start date of early 2016:

<b>2016 - 2018</b>	Phase One is developed between 2016 and 2018, including the examination pilot test, and implementation of the first assessment.
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<b>2018 - 2020</b>	Phases Two and Three are developed between 2018 and 2020.
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## Conclusion

54. Law societies are being asked to share their resources and leverage their extensive knowledge in the preparation and assessment of candidates in order to develop a national assessment regime. The goal of the new assessment regime is to improve law societies' collective ability to protect the public interest.

55. The mobility of legal professionals in Canada has been the main driver for more consistent admission practices. Significant changes affecting law society admission processes


may also signal that the time is ripe to re-evaluate admission practices through a national lens and along the continuum of lawyer preparation, from law school through to articling. These changes include the marked increase in the number of internationally-trained applicants in recent years; the advent of new programs emphasizing practice skills at several Canadian law schools, and changes to experiential training requirements in Ontario. Creating a national assessment program will provide an opportunity for greater coherence in the preparation of future lawyers while also achieving greater consistency, efficiency, accountability, and overall quality in how candidates are assessed for admission to practice law in Canada.





# Admission Landscape



- 
- BC, Que, NB – In-class Training, Skills Assessment, Written Test
  - AB, Sask, Man – In-class & Online Training, Online Assessment, Skills Assessment, Written Test
  - Ontario – Written Test
  - NS/PEI – In-class & Online Training, Online Assessment, Skills Assessment, Written Test (plus local test in PEI)
  - NFLD & Lab – In-class Training, Written Test
  - The North -- Bar Admission Course elsewhere, plus local test





## **APPENDIX 2**

# **National Law Practice Qualifying Assessment Business and Implementation Plan**

**National Admission Standards Project Steering Committee**

**August 2015**

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## Executive Summary

This business and implementation plan provides a vision and structure to move forward with the development of a national law practice qualifying assessment system for admission to the legal profession in Canada. The plan of implementation begins with the National Admission Standards Competency Profile as approved by the members of the Federation of Law Societies of Canada ("Federation"). The Competency Profile will be used as the starting point for further development and implementation activities.

The plan also assumes that candidates who have completed a law degree from an accredited Canadian law school or received a Certificate of Qualification from the National Committee on Accreditation have been exposed to and assessed on sufficient substantive law information and analysis so that:

- a) Candidates need not be tested on the "why" of the legal system, or what may be referred to as "foundational law concepts" at the point of admission to practice;
- b) Candidate assessment will focus on proficiency related to determining what and how law should be applied in varied practising circumstances and must include sufficient and appropriate practice and procedural contexts to ensure that assessment activities address reasonable expectations of knowledge, skill, ability, attitude and judgment in a law practice environment at entry to the profession.

### Qualifying Assessment Requirements

A skilled team of developers, working on behalf of the participating members of the Federation and what will eventually become a newly established independent assessment agency will be tasked with the responsibility of developing the plan for and implementing a progressive and defensible assessment regime for law practice. The qualifying assessment regime will be developed in phases and will include the following components.

#### ***Phase 1: National Law Practice Qualifying Examination***

In this assessment component, the following assessment outcomes will be addressed:

- Ability to learn and apply practical legal knowledge and procedure by demonstrating ability in cognitive and analytical reasoning and response, factual analysis, legal analysis, reasoning, problem solving, identification and resolution of ethical dilemmas.

## ***Phase 2: National Law Practice Qualifying Examination – Skills and Tasks***

In this assessment component, the following assessment outcomes will be addressed:

- Application of skill to complete complex multi-dimensional legal work by demonstrating ability in problem solving, aptitude and decision making, identification and resolution of ethical dilemmas, legal research, written communication, client communication, organization and management of legal issues and tasks.

## ***Phase 3: National Law Practice Qualifying Experiential Learning Requirement***

In this assessment component, the following assessment outcomes will be addressed:

- Demonstrated experience in the legal workplace or alternative environments applying the skills and abilities outlined in phases 1 and 2 including the ability to complete assigned tasks, engage in productive interaction and team work, exhibit iterative improvement, develop personal growth strategies, engage in self-reflection and feedback activities.

In addition to the three components of assessment set out above, a further two phases of redevelopment related to pre-admission activities are recommended. Although the details of the development of these additional phases are outside of the scope of this plan, they are foundational components in the continuum of legal learning and should be a part of the change management dialogue to ensure that the overall national qualifying process is moving proactively toward defensibility in all aspects of the assessment regime.

Further validation on the scope and application of the competencies for entry level legal professional practice will occur during implementation of phases 1, 2 and 3 of the plan. This will assist in defining the need for and extent of the oversight, criteria and accreditation activities related to law degree accreditation and equivalencies testing for internationally trained law candidates. The following phases of development should then be addressed.

## ***Phase 4: Canadian Law Degree Approval***

In this learning and assessment component, the following training and assessment outcomes should be addressed:

- Demonstrated achievement in the instruction and assessment of foundational legal knowledge, including the provision of supports and resources necessary to ensure a comprehensive and progressive curriculum of legal learning.

## ***Phase 5: Accreditation for Internationally Trained Law Candidates***

In this assessment component, the following assessment outcomes will be addressed:

- Knowledge and ability at equivalence to the level of competency required at completion of a comprehensive law school curriculum, with an emphasis on foundational law competencies and also expanded to include competencies directly related to achieving success in the national law practice qualifying assessment process and the actual practice of law.

### **Plan of Implementation**

The development process for establishing the national law practice qualifying assessment regime set out in phases 1, 2 and 3 of the plan is scheduled to commence as soon as practicable and will continue for four years. In the first two years of the development, phase 1 will be completed. In year three and four, phases 2 and 3, the skills and tasks assessment and the experiential training requirements, will be completed contiguously.

The work that must be completed in phase 1 of this implementation plan is critical to all components of the development process. Without a robust and exacting development process in phase 1, the components of the national process will not be achievable. Projected costs are more significant in phase 1 as the development process lays down all of the ground work to ensure standardized, consistent, fair and defensible assessment processes.

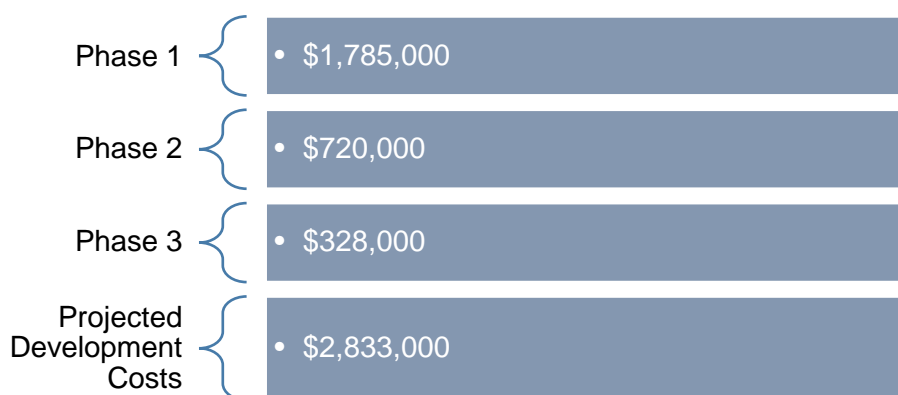
### **Process of Development**

The business and implementation plan provides information on how a defensible system of licensure is developed. It provides background on the purpose and objectives to be achieved, the reasons for undertaking each step of the development process, and the actual operational tasks that must be completed. The plan goes into extensive detail on all of these elements, in an effort to provide a clearer understanding of why each step must be taken and the complexities of such a development.

### **Cost Projections**

The estimated costs for each phase of the plan are based on actual experiences with similar systems of development and operations. At this early stage in the planning, it is not possible to determine if cost savings may be achieved through economies of scale or leveraging of existing admission assessment content. Where it was reasonable to make such assumptions, those have been made. Otherwise, the cost analysis assumes a significant level of grassroots development will be required to achieve the level of defensibility necessary to support internationally accepted standards of licensure.

The projected costs for the development phases set out in this plan, with all costs calculated net of taxes, are:



## Governance

The discussion of governance for the model of oversight that will be employed to support the operations of a new national assessment system has been left to the end of the report. The choice of governance structure will be informed by the extent of the ongoing development and operational activities outlined in this plan.

## Business and Implementation Plan Overview

### Purpose of National Law Practice Qualifying Assessment Process

Assessment in the context of law practice admission is a high stakes activity. Such an assessment system should support the legal regulatory mandate to protect the public interest by assuring competence at entry to the profession. It should also be acceptable to the profession as relevant and defensible, and should be acceptable to the test takers as a process that is valid, fair, and consistent.

An assessment system for professional licensure must take into account what is assessed, how it is assessed, and the assessment's usefulness in fostering ongoing learning. By the time candidates for admission to the legal profession apply for licensing to respective law societies across Canada, they have engaged in a lengthy and high quality academic experience. They have been exposed to significant legal issues and applications and, in some cases, practical legal experiences either through law school courses or on-the-job opportunities.

Candidates arrive at the law practice admission gate knowing why the law has been developed and applied. For admission to the profession, the law societies that regulate entry are obligated to assure that each candidate has the requisite knowledge, skill and ability to understand what and how legal concepts should be applied to competently serve clients.

In addition to the need to protect the public by denying entry to the profession to those candidates who are not able to overcome entry level competency deficiencies, the desired outcomes of a high stakes qualifying assessment regime include:

- Fostering learning
- Inspiring confidence in the candidate
- Enhancing the candidate's understanding of their strengths and weaknesses
- Enhancing the candidate's ability to self-monitor and drive personal improvement and ongoing learning and skills development.

Competence is an inferred quality. In the legal profession it builds upon a foundation of basic legal skills, legal knowledge, and ethical development. It includes a cognitive component – acquiring and using knowledge to solve real life legal problems; an integrative function – using information and learning in legal reasoning activities; and a relational function – communicating effectively with clients and colleagues.

Professional competence is also developmental, impermanent and context-dependent. It follows that a qualifying assessment process for lawyers is a point-in-time assessment only and it should be developed and applied with the objective of gaining reasonable assurance that a candidate for admission is capable of providing competent legal services at entry to the profession.

Implementing a valid, fair and defensible national law practice qualifying assessment regime will assist law societies to obtain that reasonable assurance.

## Objectives of Development Process

The critical objective of a national qualifying assessment system is to achieve a level of uniformity in the application of testing criteria to all admission candidates. To support the assessments in phase 1, 2 and 3, significant additional psychometric development is required to clarify and enhance the competency profile work that has already been conducted. The additional work will have to be completed in phase 1 to support continuity of outcomes in the assessment process as a whole. This ensures alignment between all competencies and test formats throughout the entirety of the national process.

The focus of the national assessment regime will be on assuring entry level comprehension and analytical ability related predominantly to skills competencies. Knowledge, ability and judgment in the application of skills can be effectively and validly assessed in a written format and is being tested in this manner in numerous professional environments in Canada and internationally. However, it is not possible to undertake such testing of skills competencies without placing the assessment questions in context.

Learning can be greatly enhanced by summative assessment, but only when that assessment is relevant to the learner. Relevance is most reliably achieved when the assessment reflects real life scenarios and situations within which the learner is required to apply their knowledge or skill. Therefore, a key premise of the national qualifying assessment regime will be that knowledge and enabling skills and abilities will only be effectively assessed through the use of context-specific situations.

## Scope of the Development Process

The focus of phase 1 will be on skills and tasks competencies assessed by integrating them into knowledge-based issues that have strong cross-representation in participating jurisdictions and that support the achievement of practising law competencies, specifically.

Most Canadian law societies currently engage in admission testing that is supported by robust knowledge-based study or preparation materials for candidates. These materials are relatively consistent across the country, as should be expected given the similar practice competencies applied by law societies and the history of information exchange and dialogue between law society admission groups.

For purposes of defining the relevant and contextually appropriate knowledge competencies within which the skills and tasks will be assessed, law society expert staff from the participating jurisdictions will be asked to work with psychometricians to develop a framework of the core practising law competency categories and contexts.

The cross-representational competency categories will then be validated by practitioner subject matter expert work that will be undertaken to derive the assessments, as discussed later in this plan.



## Expectations of the Development Process

A word about an ongoing concern that has frustrated the timely development of a national law practice qualifying assessment system – the need for “local testing”.

At its best, a well-defined national assessment would potentially eliminate the need for testing on “local” law and issues – placing the focus on the underlying competencies achievements in the practice of law, and not on the particulars of statutory or other legal nuances. It is not unreasonable to assume that candidates who have completed a law degree and then have also successfully applied their cognitive and analytical abilities to manage the higher-level assessment processes proposed in this plan, are capable of applying themselves to the task of developing practice strategies to deal with unique jurisdictional laws and policies as they begin to apply them. Having proven mastery of entry level competencies, a candidate’s next obligation is to develop growth strategies for maintaining and enhancing competence in law practice.

If further or other proof of law practice ability is required, it would more logically come after the new entrant has selected an area of legal expertise – at which time a more directed assessment that focuses on measures of success in a specific practice area might be a consideration, in the public interest.

But it is acknowledged that proof of concept will take time. As is the case with all new national regulatory processes, the development of the qualifying assessment system will occur in stages, will be iterative and regulatory participants will have to acquire a level of comfort with the outcomes at each stage.

In the interim, participating law societies may continue to feel the need to engage their candidates in further assessment focusing specifically on the unique law and/or circumstances of serving clients in their particular jurisdiction. That need is to be respected as an additional opportunity to enhance the training of candidates.

Ideally, any law society deeming it necessary to engage in further assessment of local legal knowledge would consider availing themselves of the use of the new national law practice qualifying agency, its skills, staff and expert providers such as psychometricians. In doing so, individual law societies could begin to follow a similar path of re-development, supporting consistency in the application and testing of competencies across the country regardless of the form that any additional testing may take.

## Schedule of Development Process

Based on the development activities outlined in this plan, the following general timetable of events is anticipated.

### National Law Practice Qualifying Examination

#### Phase 1

- **2016 to 2018**
- Phase 1 Development Begins: January 2016
- Blueprinting and Content Development: January 2016 to August 2016
- Item/Test Question Development: August 2016 to June 2017
- Development/Organization of Testing Platform (online): July 2016 to June, 2017
- Examination pilot test: August 2017 to September 2017
- Completion of first test form: September 2017 to October 2017
- Qualifying Assessment Part 1 begins: 2018

### National Law Practice Qualifying Examination – Skills and Tasks

#### Phase 2

- **2018 to 2020**
- Phase 2 Development Begins: January 2018
- Content/Test Question Development: January 2018 to September 2018
- Production of Content: October 2018 to June 2019
- Completion of Test Form: July 2019 to October 2019
- Qualifying Assessment Part 2 begins: 2010

## National Law Practice Qualifying Experiential Learning Requirement

### Phase 3

- **2018 to 2020**
- Phase 3 Development Begins: January 2018
- Performance Measures and Resource Development: January 2018 to January 2019
- Completion of Performance Assessment Guidelines and Forms: February 2019 to December 2019
- Qualifying Assessment Experiential Training Performance Assessment Begins: 2020

### The Plan

With this as the background for the national law practice qualifying assessment process, the business and implementation plan that follows will provide the explanation of and particulars for the development process, supports and costs.

# **PHASE 1**

## **National Law Practice Qualifying Assessment Project Development Plan**

### **National Law Practice Qualifying Examination**

In the development of the phase 1 qualifying examination, focus will be on the following components:

- A. Defining the scope of the examination
- B. Development of examination content
- C. Format of the examination
- D. Assuring validity of the examination

#### **A. Defining the Scope of the Examination**

The first step to building a technically sound and legally defensible licensure examination is the completion of a practice analysis. The practice analysis provides a way to evaluate the knowledge, skills and tasks required of lawyers entering the profession. It determines the feasibility and resources required for assessment, and also supports the development of an assessment blueprint documenting the content, length, time allotment and other requirements of the examination.

Key to the development of any competency profile derived from such a practice analysis and used for assessment in licensure is to ensure that the competencies to be assessed by the test are those that:

- Have the most direct impact on public protection
- Influence effective and ethical practice
- Can be measured reliably and validly by the assessment format used by the examination.

Under the oversight of the Federation's National Admission Standards Steering Group, the first step in this practice analysis has been completed. The national competency profile articulates the knowledge, skills and tasks required of entry level lawyers.

However, the current competency profile sets out the general competencies required for entry only at the highest competency category level. Those categories have yet to be distilled to set out the specific demonstration of knowledge and skill required in each. Attaining this level of clarity will require further meetings of subject matter experts to define the scope of achievements in each of the categories. A lack of clarity in these categories could result in the inadvertent expansion of the scope of the assessments outside of the boundaries of entry level competency, and cause developers and subject matter experts to struggle with the determination of how to most accurately assess the required level of achievement.

From this additional competency definition activity, an assessment blueprint will begin to form setting out the particulars of the assessment – breadth and depth. An assessment blueprint is essentially the key specifications document that will be used to develop and administer all national assessments. Specifications of the blueprint will be applied to every examination or other test format and will ensure consistency and fairness in all assessment outcomes. The framework for a blueprint applicable to a national law practice qualifying examination is attached to this plan as Addendum A.

Once the competencies have been revisited by subject matter experts and distilled into targeted requirements of achievement, test questions will be developed. The parameters in the blueprint form the basis for content validity and legal defensibility of the assessment tool and its test items.

## **B. Development of Examination Content**

The development of the phase 1 national law practice examination will include the following steps:

- i) Define knowledge and skills eligible for assessment
- ii) Determine structure of assessment
- iii) Define the examinable content
- iv) Develop test items/questions
- v) Pilot test questions
- vi) Construct the official test form
- vii) Develop feedback mechanisms for test takers.

- i) Define the knowledge and skills eligible for assessment

The starting point for defining the scope of the phase 1 examination begins with the existing competency profile. A process of further development will result in a lengthier and more robust listing of the expected demonstrated knowledge, skill and task activities expected in the practice repertoire of candidates seeking admission to the legal profession.

This review of the competencies and their breakdown into more discrete and manageable statements of achievement will be supported by psychometricians who will facilitate subject matter expert legal practitioners through the process.

The subject matter experts will draft a set of statements that clarify the knowledge, skills and tasks required for entry level lawyers under each category set out in the competency profile. The supporting survey data obtained to derive the profile, and the ratings of relevance, importance and frequency, will assist this group to clarify, refine and then define how the statements will be prioritized and organized for testing. They will also determine the relative proportion that each competency area should represent on the examination. This is known as the “blueprinting” process.

ii) Determine structure of the assessments

For purposes of this process, the blueprint will be developed for the assessment of all components of the national system to ensure consistency in approach. Some skills and tasks may not be capable of assessment in the phase 1 examination and will become the primary focus of phase 2. The phase 1 examination is likely to be comprised of multiple choice, single question and case-based multiple question formats.

Multiple choice testing offers the opportunity for breadth of coverage of subject areas which cannot be duplicated using only essay questions or performance tests. Multiple choice can also be scored objectively and fairly, and the results are capable of being scaled to ensure adjustments for difficulty. This assures comparability between test administrations and consistent applications of difficulty as between tests and candidates regardless of the test taken.

As the first stage of assessment in a new national system of assessment, multiple choice testing will provide an anchor for other more subjective skills testing and assessment.

iii) Define examinable content

Using the completed blueprint, the examinable content will be mapped against the competency requirements. The first step in this process will be to review the pre-existing and robust reference materials currently used by the law societies, leveraging the wealth of high quality law admission content and assessment work. Experienced law society admission staff will assist to establish the practising categories and develop a set of limited, but critical, cross-representational competencies for each. These will form the contexts and background for the entire assessment process.

The second step will then refine the existing, and/or develop new, reference materials to match the competencies requirements that will be set out in the profile and blueprint. The materials will be the source of study for all candidates. They should hold within them all relevant information or referrals to such information as is necessary for the test taker to prepare to be successful on the examination. Practitioner subject matter experts chosen for their breadth and depth of knowledge and skill in the relevant competency category will be selected to assist with that content matching process.

iv) Develop test items/questions

Using the blueprint and the reference materials, test question or “item” development will begin. Item writers will require specific training on the art of writing test questions. Lawyers will be recruited to draft test questions. Each question is created with the assistance of psychometricians to confirm the match to specifications, accuracy, and relevance.

In the development of multiple choice test questions, the distractors (incorrect answers) provided in the selection of possible answers are equally important as and often far more onerous to develop than the correct answer. All multiple choice options may be correct, but only one choice will be optimal in the circumstances and context of the question. On average, a high quality multiple choice item development process will see only 25 to 30 draft test questions produced in a full day of item development by a team of six to eight subject matter experts.

Following further assessment of the questions, perhaps 20 of those will be judged adequate to support the assessment process without having to be significantly rewritten. Questions will also be reviewed by staff developers and psychometricians for editorial quality to ensure they meet test development guidelines for the construction of questions, for example, avoiding cultural or other biases in the creation of the item.

Once formed, questions will go to item assessors who are a different group of subject matter expert practitioners. They will review for accuracy, relevance, match to specifications and other criteria. Item assessors may choose to approve, propose revisions for, or reject a test question. Proposed revisions will be returned and reconsidered by item writers, revised if necessary, and sent out to other item assessors for confirmation. A rejected item will be returned to item writers for reconstruction.

Before commencing the administration of the very first national law practice examination, a minimum number of items will be required for the databank. The number of initial items will be determined by the blueprint which will set out the length of the examination based on the need to assure assessment of the competencies in proportion to their importance and frequency.

As an example, a full day or six to seven hour examination, taken in two parts of approximately three or more hours each, is likely to require 200 to 250 test questions. To ensure that the examination item bank has effectively covered all competencies, and taking into account the need to hold more than one administration of the examination in any given year, it is likely that the initial item databank will require a minimum of approximately 750 operational items.

*How will the test items be developed for the first administration of the examination?*

In order to formulate the first national qualifying examination in accordance with the schedule of development set out in this plan, it is proposed that the development process should look to the participating law societies for contributions, saving on time and cost by leveraging existing test question content and databanks.

Participating law societies with applicable test item content will be requested to submit items relevant to the competencies that have been validated through the blueprinting process. Experienced law society staff will review their item banks with the assistance of a framework developed by psychometricians and with a view to matching questions as closely as possible to the new competency profile and blueprint.

The test items that align with the competencies profile will be submitted for further analysis on an anonymous basis. The items will be put through the review processes without attribution to ensure an objective review of applicability. Only the most aligned items will be accepted for purposes of the examination system, regardless of origin, and will then be revised as necessary by item writers to meet the specifications.

v) Pilot test questions

Pilot testing the law practice examination questions is an important requirement in the development process and complements all of the subject matter expert reviews that have already been completed to this point.

Using newly licensed lawyers from across Canada (fewer than two years of practice), a pilot examination will be formed and administered in an environment that as closely as possible resembles a true examination administration. The results of the pretest will be analyzed with specific reference to:

- Item difficulty – did the percentage of candidates expected to get the answer right, actually get the answer right?
- Distribution of responses – are there any areas of the test that performed better or worse than other areas of the test?
- Item to test correlation – how did the performance on each question compare to the performance on other questions?

Questions that do not achieve the performance specifications set out in the blueprint will go back for review to item writers to determine if they will be deleted, or revised and accepted for future use.

In addition, pilot tester commentary on the format and experience of the test will assist to inform policies and administration improvements in preparation for the first formal examination.

Test item development is an ongoing process and will be regularly scheduled throughout each year. All test items developed following the first official administration of the examination will be pretested by being included as “experimental” items in each test. Items that are experimental are items that have not yet been pretested. A certain percentage of questions in each examination administration will be experimental and will not be included in the final calculation of the candidate scores. Instead, the results of the responses to each question will be assessed and analyzed by psychometricians and subject matter experts and if the question performed adequately, will be made “operational” and become a permanent part of the item bank for use in future examinations.

vi) Construct official test form

The construction, or particulars, of the examination will have been set out in the blueprint. The first test form, and all test forms thereafter, will be organized to meet the blueprint specifications on a variety of dimensions. The goal is to have test versions that are comparable to each other. They must be fair to all candidates, regardless of which version of the test is taken.

Content specifications for the examination describe how many questions of each type will be included. This includes the format of the questions – single or case-based multiple question – and the distribution of the questions, or percentage of questions in each competency category.

Once the test is formed, it is again reviewed based on a variety of criteria by the psychometricians and an appointed subject matter expert advisory group, in preparation for



formal test administration. This process of assessing the test form will occur before every sitting of every examination that is held.

Following administration of the examination, it will be scored and put through a psychometric analysis. The results will be returned to the appointed advisory group for review.

Once the advisory group and psychometricians are satisfied that all questions fairly and accurately assess for entry level competence, the examination will be finalized and candidates will receive their results.

vii) Develop feedback mechanisms for test takers

Candidates who fail the examination must receive input and direction on their areas of weakness. A profile of their results, as compared to the rest of the test taking group, will be provided to support their iterative improvement in anticipation of rewriting the examination. The results profile information and format must also be determined and derived during the development process.

### **C. Format of the Assessments**

Implementing a robust national law practice qualifying assessment system that will serve thousands of candidates every year will require a significant shift in thinking about the modalities to be used for the testing environment.

Given the size of the cohort and the need to ensure multiple test taking opportunities and geographic locations for test takers, it is highly recommended that the national assessment system be enabled through computer based testing (“CBT”).

CBT has many practical advantages and it also has the ability to facilitate enhanced validity for assessments. It has been shown to be generally popular with examination takers and efficient for delivery and marking. It is ideal for a large number of test takers, with benefits including greater efficiency, lower costs, provision of a level playing field (standardization), delivery convenience and flexibility, without compromising examination integrity.

CBT can be delivered anywhere via a secure computer network and is increasingly invigilated at commercial computer-based assessment centres located across the country. These test centres are usually some distance from the test source, but invariably closer to the test taker to provide greater convenience, flexibility and ease of scheduling. Test centres have closely monitored testing rooms with partitioned cubicles and use audio and video surveillance.

In-person invigilation continues to be an accepted requirement for assessments that are high-stakes and summative in nature. The national law practice qualifying assessment is such a high stakes effort. It is anticipated that any CBT environment used to support law practice testing will apply stringent security and administrative policies including robust invigilation. The benefit of CBT enabled systems is that test taking activities, facilities, and provision of invigilation and security can be outsourced to providers of such high stakes services, decreasing overall costs for participants – regulators and candidates alike.

## CBT Process

The law practice assessment process will utilize an external provider of CBT systems. That provider will support registration and scheduling for individual assessments, delivery of the assessment, transfer of scores, and candidate management as required.

Based on a review of potential CBT providers, it is anticipated that this will allow candidate access to real-time scheduling on a 24/7 basis, provide an online test site and appointment locator, appointment confirmations and rescheduling. These services will allow participating law societies to reduce their administration costs by outsourcing what can be a very labour intensive process of managing candidate examination registration and processing.

The CBT provider will be required to have a robust system for and broad experience in the provision of accommodation for candidates requiring specialized assessment supports and services. Their approach to test accommodation must increase accessibility and create a high quality testing experience for candidates. The CBT provider will be expected to have significant experience in the application of adaptive systems to support self-service access and create consistency in the authorization, notification, delivery and tracking of testing accommodations.

Finally, the CBT provider must be fully able to provide all facets of their examination, including invigilation, scheduling and support services in both English and French.

Given the large cohort of candidates moving through the processes, windows of opportunity will be scheduled for the taking of assessment(s). Although still to be determined through the blueprinting process, it is likely that there will be one to two week windows of opportunity, three times per year. During those periods, candidates may schedule themselves directly with the CBT provider for their assessment in accordance with their personal scheduling needs. As there will be candidates writing the same examination throughout each window, albeit in different versions, it will be critical to ensure strict and high quality security services are enabled for the assessment processes.

In addition to essential test services, a variety of security measures are highly recommended to ensure that the assessment process is not compromised. Standardized security measures that can be provided by the CBT service may include fingerprint collection and comparison or palm printing identification, wand and emptying of pockets, surveillance as required, diligent proctoring of the testing room at all times, monitoring and reporting of suspicious behaviour. Services should also include dedicated hardware and software, data encryption throughout the testing lifecycle, encrypted virtual private network connections, and intrusion protection systems during testing sessions.

It is also recommended that the law practice assessment process consider engaging an external provider of specialized fraud and audit services to conduct forensic data review during all assessment cycles. Such a service would reach out into the internet and monitor online exchanges for test content dissemination, and other security breaches. Such services may also be able to locate and advise on the individual who may be engaging in a breach of the

confidentiality of the examination. This is an important risk mitigation tool supporting the efficacy and defensibility of the testing system, and may provide information on a candidate's professionalism and future governability.

#### **D. Assuring Validity of the Examination**

To ensure that the assessment system is fair in its application, there must be an alignment between learning and testing. An assessment is most reliable when the format of the examination is not a factor in performance. This means that test takers should have had prior exposure to, and preferably actual experience with, the test format.

For this reason, practice tests will be developed and provided for use by candidates in their preparation activities. These supports will be offered in the same format and through the same modality as the official assessment, providing candidates with an opportunity to experience the testing platform and learn how to navigate the system prior to the test.

In addition, the newly defined competency profile with all competency achievement statements and expectations will be publicly available so that candidates may fully understand the extent of the anticipated testing in advance of registering for admission to the profession.

It is recommended that the new law practice qualifying assessment agency engage in the active provision of assessment preparatory supports for candidates. The preparatory activities would be directly aligned with the actual content, items and modalities of the national assessment making the use of the preparatory package directly supportive of candidate success on the test. This is unlike “bar admission prep” courses that have developed in Canada and market themselves as support systems to prepare for law societies’ current examinations. A review of those third party preparatory courses shows a lack of alignment and applicability to the actual examinations – providing limited or no benefit to the test taker for an often high cost of time and money.

The preparatory package that is offered by the national assessment agency would be computer enabled and supported through the same CBT provider platform. It would utilize test questions that are actually derived during the item writing activities, and would support enhanced learning of the content and the actual test taking environment.

In the case of the phase 1 multiple choice testing, the preparatory package will allow candidates access to the CBT system that will be used in their actual assessment, providing the opportunity to engage with the software and systems as they answer practice test questions. It is recommended that there would be no additional cost to candidates for this access, as it is a natural extension of the testing platform and included in the development specifications. For the phase 2 case-based skills testing, a comprehensive package of preparatory supports that would serve both as a practice test and a formative learning opportunity might be offered as part of the assessment package or as a value-added support for a nominal fee.

## Phase 1 Development Costs

### Assumptions for Development of Phase 1

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 1 written test will be multiple choice and approximately 6 to 7 hours in length
- Assessment will be supported by computer-based testing
- Psychometricians will be placed on retainer for all relevant ongoing competency profile, blueprint and item development and redevelopment
- Subject matter expert (“SME”) practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

### Development Process and Costs

1

- Confirm scope of competencies for assessment

Psychometrician and law society SME review of competency achievements in law practice contexts.

- 5 to 8 law society (staff) SMEs
- Minimum 2 day meeting
- Psychometricians – 4 day prep + 2 days facilitation
- Cost \$15,000

2

- Refine competency framework and clarify competencies for blueprinting and test item writing

Practitioner SME teams, from across the participating jurisdictions, working with Psychometricians and staff to clarify competency achievement, by category.

- 12 practitioner SMEs x 2 key competency categories (advocacy and transactional)
- 2 sessions of 4 full days each
- SME honorarium of \$250 each
- Psychometricians – 2 days prep + 8 days facilitation
- Cost \$75,000

3

- Develop content specifications for assessment reference materials and derive content

Given the wealth of high quality reference materials available in law societies, and general consensus on scope of competencies that will be achieved in step 2, content will be developed and validated through group work with law society/staff SMEs and practitioner SMEs.

- Law society SMEs
- Assumes a minimum of 20 practitioner SMEs
- Honorarium to practitioner SMEs revise existing and/or develop new content to support the testing of the underlying competencies
- Honorarium = \$2000 per practitioner SME
- Cost \$40,000

4

- Validation of competencies

External SME teams working with Psychometricians and staff to ensure that the competencies are progressive, practical and relevant to today's entry level lawyer practitioner market.

- 8 practitioner SMEs x 2 key competency categories (advocacy and transactional)
- 1 session of 2 days each
- Honorarium of \$250 per day
- Psychometricians – 1 day prep + 4 days facilitation
- Cost \$20,000

5

- Map competencies to reference materials

Law Society SMEs and a select group of SME practitioners review all competencies and content to ensure appropriate coverage in accordance with profile and blueprint.

- 3 – 5 Law Society SMEs
- 5 practitioner SMEs x 2 key competency categories
- 1 session of 2 days each
- Honorarium of \$250 per day
- Psychometricians – 2 days prep + 4 days facilitation
- Cost \$20,000

6

- Finalize competencies and test specifications for the assessment process

Same group as in step 2 will come back together to do a final review of the competencies and will assess the scope and depth of testing, refining the blueprint and finalizing the criteria for administration of each assessment.

- 12 SMEs x 2 key competency categories (advocacy and transactional)
- 1 session of 2 days each
- Honorarium of \$250 per day
- Psychometricians – 2 days prep + 4 days facilitation
- Cost \$24,000

7

- Develop test items: Leverage existing content

Item, or question, development will begin once the blueprinting is finalized and will include:

- a) Receipt and review of all items from participating law societies and mapping to the blueprinted competencies
  - b) Revision of currently existing databank items from various jurisdictions to support the new competency profile.
- Minimum of 8 SMEs x 2 key competency categories (advocacy and transactional)
  - 2 sessions per category of 3 days each
  - Honorarium of \$500 per day
  - Psychometricians – 2 days prep + 12 days facilitation
  - Cost \$85,000

8

- Develop test items: Create new test items

Practitioner SME development of originating items to ensure sufficient items available to adequately test every competency category and articulated practice achievements.

- 8 SMEs x 2 competency categories (advocacy and transactional)
- 3 sessions per category of 3 days each
- Honorarium of \$500 per day
- Psychometricians – 6 days prep + 18 days facilitation
- Cost \$135,000

9

- Conduct pilot test

Psychometricians will derive a test format approximating the anticipated standardized test, based on the blueprint. The pilot is the opportunity to measure test results against blueprint metrics, such as length, difficulty, validity of items. The test taker group will be randomly selected lawyers, newly called to the bar.

- 50 to 100 test takers
- Honorarium of \$250 per test taker
- Psychometricians – derive pilot test, complete analysis of results and reporting
- Cost \$35,000

10

- Form Advisory Groups and Approve First Test Form for Administration

At this point in the process, it is advisable that the oversight entity be constituted. Membership on the Advisory Groups/skills-based committees should be established and participants should receive training to provide ongoing analysis of assessments and setting of scores. They will train and then process the first examination form. For purposes of the first assessment administration only, the following will apply:

- 10 SMEs per Advisor group, 2 competency categories (advocacy and transactional)
- 1 session per category for 3 days each
- Honorarium of \$500 per day
- Psychometricians – 4 days prep + 6 days facilitation
- Cost \$56,000

Costs for phase 1 related to development of content and test items by subject matter expert practitioners and providers, for the period from early 2016 through to and including the completion and approval of the first examination form for test administration in early 2018, are projected at \$505,000.

There are also associated costs for SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 1.1* on the following page for all projected costs.

Table 1.1

Activity	Cost
<i>Development Process</i>	
Confirm scope of competencies for assessment	15,000
Refine competency framework and clarify competencies for blueprinting and test item writing	75,000
Develop content specifications for assessment reference materials and derive content	40,000
Validation of competencies	20,000
Map competencies to reference materials	20,000
Finalize competencies and test specifications for the assessment process	24,000
Develop test items: Leverage existing test items	85,000
Develop test items: Create new test items	135,000
Conduct pilot testing	35,000
Form Advisory Groups/Approve first test form	56,000
	<b>\$ 505,000</b>
<i>Additional Associated Costs</i>	
SME travel, meals and accommodation expenses	200,000
Facilities rental and catering for meetings	80,000
	<b>\$ 280,000</b>
<b>Total</b>	<b>\$ 785,000</b>



## Phase 1 Management and Operations Costs

To advance planning for the implementation of a high quality national law practice qualifying assessment regime as set out in this plan, it will be necessary to appoint an experienced management and staff team.

At a minimum, it is anticipated that the personnel supports and operational supports set out in *Table 1.2* will be required. Expenditures are spread across the full development cycle for phase 1, or two full years from early 2016 to early 2018. In 2018, an oversight agency will have been established with full-time staff and operational controls. See Governance discussion.

Management costs for phase 1 assume that one or more experienced law society administrators will be seconded into required roles. This will allow the national development process to leverage existing knowledge and skill, avoid extensive staff training, and begin development on a timelier basis. It also avoids full-time employment agreement commitments in advance of establishing a viable system of national assessments.

Operational costs for phase 1 assume that the seconded, contracted or employed staff will be able to work virtually, in many instances, and that seconded staff will be invited to continue to work out of their offices in their respective law societies. For this reason, the projected costs for seconded staff will likely be provided to the law societies as a contribution toward the salary of those individuals, in recognition for the law society's willingness to allow the secondment.

Toward the end of the phase 1 development period, and with the benefit of greater insight into the national processes, a full-time staff complement will be hired and office space and other operational infrastructure will be established to sustain the new national law practice qualifying assessment services.

*Table 1.2* sets out the project costs for management and operations for the phase 1 development.

Table 1.2

Expense Category	Cost (two years)
<i>Management and Staffing</i>	
Interim Executive Director (secondment – contribution to the home jurisdiction)	200,000
<ul style="list-style-type: none"> <li>Hands-on leadership in the development including oversight of all components of the process through to implementation of phase 1</li> </ul>	
Team Leader – Psychometrics (secondment – contribution to home jurisdiction)	150,000
<ul style="list-style-type: none"> <li>Senior manager with experience in the development of competency regimes and test items, adult learning designation preferred</li> </ul>	
Coordinator x 2 (secondments if possible, otherwise term contracts)	200,000
Provision for Additional Staff (contract or secondment)	100,000
	<b>\$ 650,000</b>
<i>Operations</i>	
Technology Development	200,000
<ul style="list-style-type: none"> <li>Retainers to develop programming, systems and tracking, assessment results, secure/encrypted information exchange</li> </ul>	
Office Expenses	150,000
<ul style="list-style-type: none"> <li>Telephony/technology use contributions to home jurisdictions, courier, print production, translation, staff travel, other</li> </ul>	
	<b>\$ 350,000</b>
<b>Total</b>	<b>\$ 1,000,000</b>

## Phase 1 Development Costs and Funding Model

Total costs including all phase 1 examination development, management and staffing will be approximately \$1,800,000 across a two-year period that commences in early 2016. Assuming that the costs will be spread across the entirety of 2018, providing law societies with additional time to plan for monetary commitments, the estimated phase 1 development and operational cost commitment will be:



### Funding Model

The availability of sufficient funding for the development of the new national law practice qualifying assessment process will be critical in achieving completion of a high quality, psychometrically sound, and acceptable test system. It is important that ample funding be readily available to meet scheduling and quality targets.

There are a variety of options for financing the development process by law societies. Two potential models are set out here, but with limited detail. *Further exploration of options for the funding model should be undertaken with the assistance of a financial advisor.*

Included in the options could be a request for contributions from each participating law society that is derived based on a cost sharing model that may consider the number of full-time equivalent members, the number of candidates registered in the jurisdiction, or another agreed formula. Contributions would be placed into a fund from which monies will be drawn as required.

The cost sharing formula is likely to require modification to acknowledge the contributions of participating law societies to the provision of foundational content that will be used in the system.

It is generally accepted in the licensure arena that the cost of deriving just one multiple-choice examination question is in the range of \$5000 to \$6000. Managers of the development process will be required to track the usage of content received from law societies. This contribution by individual law societies may greatly reduce both the development and ongoing operational costs of the new system and that value should be attributed accordingly. Until development begins and the activities set out in phase 1, activities 1 through 7 of this plan (pages 21 – 23) are completed, it is not possible to estimate the value of these potential contributions.

It is feasible that a system of funding that includes a repayable loan model could be established. Participating law societies might contribute to the financing of the development process, or an

independent loan arranged with a financial institution, and the new assessment agency will be required to achieve a modest annual income used to pay down the loan over time.

In such a funding model, any income should only be derived from ancillary revenue sources. New candidates into the admission system should not pay for original development costs which are an investment in the future of competency assessment for the Canadian legal profession generally. Opportunities for income may come from revenues generated from the preparatory supports that will be provided for phase 2 of the assessment process, or a percentage of revenues generated from the payment of the assessment fees for rewriting the examinations.

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## **PHASE 2**

### **National Law Practice Qualifying Assessment Project Development Plan**

#### **National Law Practice Qualifying Examination – Skills and Tasks**

In phase 2 of the project, development will begin on an enhanced online assessment that includes interactive components. Candidates will complete test items requiring constructed responses.

A constructed response may range from questions requiring long answers using information supports provided online, through to skills assessment using task completion. With the addition of audiovisual components, simulated practice scenarios will also be incorporated to enhance the opportunity for test takers to apply critical and analytical thinking skills, make judgments and draw conclusions – higher level competencies that form an integral part of an entry level lawyer's repertoire.

The skills based segment of the assessment regime will require extensive examination infrastructure. The development process will hope to avail itself of existing content developed by participating law societies and then refine and expand as necessary in accordance with the new competency profile and blueprint.

Without predetermining the outcomes of the blueprinting process, and based on existing skills and tasks competency requirements in participating law societies and the current competency profile, it is quite feasible to suggest the following outline as a sample full-day assessment developed in phase 2 of this plan:

- Test Component 1: candidates for assessment are provided with a statement of facts and access to legal databases or static legal information (both relevant and irrelevant in the circumstances) and are required to draft an opinion letter for the client or memorandum to a senior partner – 60 minutes
- Test Component 2: candidates for assessment are provided with a statement of facts, client interview information or abbreviated transcripts, and are required to draft an affidavit or a short pleading – 90 minutes
- Test Component 3: candidates for assessment are provided with two or three ethical scenarios and access to relevant online documentation and are required to draft an analysis of the situations – 60 minutes
- Test Component 4: candidates for assessment view a series of three short videos of a lawyer interviewing a client, undertaking a negotiation, or other examples of professional interactions, and are required to analyze the performance and discuss how competencies/standards for the practice of law have or have not been demonstrated – 90 - 120 minutes

In the same manner as the blueprint that was developed during phase 1 is then applied to the phase 1 assessment questions, the blueprint will be applied to the development of cases and questions for phase 2 testing.

Phase 2 will also require additional test items to be developed to ensure an accumulation of content prior to launching the assessment. It is recommended that a minimum development of three completed segments for every one assessment be produced in advance of the first iteration of the phase 2 examination. In essence, accumulating the equivalent of a minimum of one full year of test items prior to implementation.

The development will include practitioner subject matter expert assistance with case development, script development and validation along with expert external providers to support video production support. Psychometric supports will be required to ensure that the achievement of the outcomes aligns appropriately with the competency profile and that test versions meet the expectations of the blueprint.

In addition to developing the first iteration of the phase 2 examination content, significant work must be completed on the development of scoring rubrics for those examination components. Constructed response and task completion questions will be manually scored by legal practitioners. This will require the development of training plans and formal training sessions for a significant number of practitioner assessors who will be requested to assist in the scoring activities. It will also require psychometric support to align all of the scoring rubric requirements with the competency profile and blueprint, ensuring validity and fairness in their application.

In the phase 2 national law practice qualifying examination creation, the focus will be on the same components of development as in phase 1:

- A. Defining the scope of the examination
- B. Development of examination content
- C. Format of the examination
- D. Assuring validity of the examination

### **A. Defining the Scope of the Examination**

The preliminary practice analysis for the skills and tasks examination components was completed under the oversight of the National Admission Standards Steering Group. The skills and tasks categories will be further distilled to set out the specific demonstration of competency required in each. The new competency profile and the blueprint derived in phase 1 will complete all of this work, including a review by subject matter expert practitioners to ensure that there are targeted requirements of achievement against which to develop case-based scenarios for skills testing.

## **B. Development of Examination Content**

The process of development of examination content will be very similar in nature to phase 1 activities, except that the content for phase 2 test questions will require a different level of creative application of experienced subject matter expert knowledge. The derivation of long form, case-based, questions that will meet the targeted competency requirements must be a carefully managed process including multiple levels of development, review and validation.

During this component of development, the structure of the assessment must also be defined to ensure that the skills and tasks competencies will be validly assessed. The structure of phase 2 testing will require increased candidate interactivity with the test modality if it is going to reliably assess skills and tasks competencies.

The examinable content will be mapped against the competency requirements and will be developed by practitioner subject matter experts chosen for their breadth and depth of experience in the application of skills in the relevant practice contexts within which the skill or task will be integrated.

Test question development in this phase will include an increased emphasis on the application of adult learning assessment techniques applied by experienced administrators or others retained for this purpose. The art of creating case-based assessment questions is as complicated and exacting as creating multiple-choice distractor options, but with the added requirement of ensuring a logical flow of expanded content through scenario building. Case question developers must be trained to assist with this work.

## **C. Format of the Assessments**

The phase 2 assessment system will rely on CBT to effectively and efficiently serve the number of candidates moving through the qualifying examinations.

A significant benefit of using a CBT environment for the national law practice qualifying examination components will be in its application to phase 2 where more interactive test forms will be integrated.

The types of assessment forms provided through CBT may be substantially enhanced through the application of multimedia. In particular, test questions may be made dynamic by adding video and audio and will allow for a broader set of critical and interpretive skills to be assessed than would be feasible using a paper-based testing method. A multimedia task may measure important elements of professional competency that more conventional assessment modalities may not.

Simulations are increasingly used for authentic formative assessments and also for summative assessments. Simulations can combine audiovisual and data resources to create realistic client situations, and the test taker can interact with the simulation by completing tasks, making judgments and observations, and drawing conclusions.

In performance-based CBT, test takers are assessed by having them perform tasks similar to what would be required “on-the-job” rather than simply asking them a series of questions about those tasks and then inferring from their answers that they know how to do those tasks.

Given the high cost of engaging in performance based testing in the legal profession – testing that approximates Objective Structured Clinical Examinations used in some of the healthcare professions – the use of innovative applications of CBT are a viable and cost effective way to assess legal skills competencies at entry to the profession.

#### **D. Assuring Validity of the Examination**

The provision of preparatory supports for candidates taking the phase 2 testing will be particularly important as it is likely that many will not have had prior exposure to skills-based testing. In most cases, candidates in the process will have just completed law school and will not have encountered this type of modularized online testing requiring the completion of tasks and the use of audiovisual enabled testing content.

Validity will be enhanced by providing the opportunity to experience the assessment format in advance of formal testing. Consideration should be given to the development of an extended preparatory package that will reflect the actual types of case scenarios and response activities that the test taker will be presented at the time of formal assessment. Developing and providing a more robust preparatory package will reduce or eliminate concerns about lack of exposure to the test content and the test taking environment which in turn will improve the defensibility of the outcomes.



## Phase 2 Development Costs

### Assumptions for Estimating Costs of Development in Phase 2

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 2 written test will be case-based, focused on skills and tasks and approximately 5 to 7 hours in length
- Assessment will be supported by CBT
- Psychometricians will be placed on retainer for all relevant ongoing competency profile, blueprint and item development and redevelopment
- Subject matter expert practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

### Case-based Skills and Tasks Content and Item Development Process and Costs

1

- Develop cases for Components 1, 2 and 3

Practitioner SMEs working with law society SMEs and the development team will derive a series of case-based scenarios that address required competencies as set out in the profile and blueprint.

- 2 practitioner SMEs per item x 3 components with multiple items, along with developer (staff) SMEs
- 3 cases for every one item required in each of the components (approximately 9 independent items, 3 case versions = 27 items)
- Average of 3 days development per item
- Honorarium of \$500 per day
- Psychometricians – 3 days prep + 3 day case review to align competencies with profile and blueprint
- Cost \$95,000

2

- Validate cases for Components 1, 2 and 3

Practitioner SMEs review, revise and validate the content of each case item to be used in the test components. Psychometrician and developer SME review thereafter and integration of further adult-learning requirements.

- Validation by 2 practitioner SMEs per each item in each component
- Average of 1 day validation per item, for 27 items
- Honorarium of \$500 per day
- Psychometricians – 3 day review to finalize validation of case competencies
- Cost \$35,000

3

- Develop content and scripts for videos in Component 4

Assumes three videos will be used in Component 4. Developer SMEs will work with practitioner SMEs to derive content and produce a supporting script to enable video creation. Practitioner SMEs will also act as quality control during video production.

- 9 videos (3 per item x 3 items in the bank) in English and French = 18 videos
- 2 Practitioner SMEs per video = 36 SMEs
- Average of 2 day development per video outline and script = 72 days
- Honorarium of \$500 per day
- Psychometricians – 9 days script validation to align competencies with profile and blueprint
- Cost \$60,000

4

- Validate content and scripts for videos in Component 4

Practitioner SMEs review, revise and validate the content of each video. Psychometrician and developer SME review thereafter and integration of further adult-learning requirements.

- 3 Practitioner SMEs to review each script, two English and one French
- 1 day to review each script
- 18 scripts - 9 each in English(2) and French(1) = 27 SMEs
- Honorarium of \$500 per day
- Psychometricians – 2 day review of overall validation results with SME developers
- Cost \$20,000

5

## • Produce Component 4 videos

Production outsourced to video production company.

- Script training of actors, including SME participation – minimum of 1 practitioner SME from above present during video shooting to ensure authenticity
- ½ to 1 day video shoot per video = 5 to 9 days of shooting
- For purposes of estimating cost, assume 1 day shoot x 18 videos (English and French) x 2 SMEs
- Honorarium of \$500 per day
- Video production by production provider: casting (actor and union fees), facilities, production requirements, editing
- Cost \$320,000

6

## • Develop of Scoring Rubrics for all Components

Case-based skills testing will require manual scoring. Key to assuring the validity of the assessment format is the reliable application of the assessment rubrics for marking.

- SME participation in development and validation of rubrics
- 4 to 6 SMEs per component = 24 SMEs
- Average of 2 days of development for each component
- Honorarium of \$500 per day
- Psychometrician facilitation – 2 days prep + 8 days facilitation
- Cost \$50,000

7

## • Validate Scoring Rubrics for all Components

Review and confirmation that rubrics align with competency requirements.

- 2 new SMES per component = 8 SMEs
- 1 day for validation per component
- Honorarium of \$500 per day
- Psychometrician facilitation – 1 day prep + 4 days
- Cost \$20,000

Costs for phase 2 related to development of content and test items by subject matter expert practitioners and providers, for the period from early 2018 through to and including the completion and approval of the first examination form for test administration in the latter half of 2019, are projected at \$600,000.

There are also associated costs for SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 2.1* below for all projected costs.

*Table 2.1*

Activity	Cost
<i>Development Process</i>	
Develop cases for Components 1, 2 and 3	95,000
Validate cases for Components 1, 2 and 3	35,000
Develop content and scripts for videos in Component 4	60,000
Validate content and scripts for videos in Component 4	20,000
Produce Component 4 videos	320,000
Develop Scoring Rubrics for all Components	50,000
Validate Scoring Rubrics for all Components	20,000
	<b>\$ 600,000</b>
<i>Additional Associated Costs</i>	
SME travel, meals and accommodation expenses	70,000
Facilities Rental and catering for meetings	50,000
	<b>\$ 120,000</b>
<b>Total</b>	<b>\$ 720,000</b>

## Phase 2 Development Costs and Funding Model

At this point in the development process, it is assumed that the new national law practice qualifying assessment agency will have been formally constituted. Ongoing operational costs including management and staffing, as distinct from assessment development costs, will have been integrated into budgeting activities and will be supported by revenues generated from phase 1 examination fees, on a cost recovery basis.

Development costs for phase 2 are comparable to phase 1 but predominantly relate to provider services for production activity as opposed to subject matter expert participation. Some activities such as script writing and video production management will be supported by existing administrators or contracted out to expert providers such as accredited adult educators, skilled in the development of case-based scenarios used in testing environments. The most significant cost will be in video production to create an accumulation of content for a full year of testing.

Funding of this segment of the development process would mirror the financing structure chosen for phase 1 development.

These decisions will be taken in 2017 in preparation for establishing the 2018 budget for the national law practice qualifying assessment system.

## **PHASE 3**

### **National Law Practice Qualifying Assessment Project Development Plan**

#### **National Law Practice Qualifying Experiential Learning Requirement**

A significant component of law admission processes for law societies is the experiential learning requirement. Articling programs or their alternatives in each jurisdiction vary somewhat in form and length, but overall the expected learning outcomes – the skills and tasks achievements – are the same.

As the requirement of the admission process that depends on support of the profession to meet its objectives, regulatory control over learning outcomes in articling is significantly more challenging. However, greater clarity in training expectations and increased focus on documenting achievement of validated learning outcomes will assist all law societies to confirm appropriate entry level skills achievement prior to admission.

#### **Redefining Experiential Learning**

For purposes of the national law practice qualifying assessments, the activity of articling or its alternatives would remain the domain of each participating law society. To validate articling or alternatives as an appropriate experiential learning activity in preparation for admission to the legal profession, law societies would move forward with an agreement to support increased accountability, and therefore increased integrity and defensibility, of this component.

The experiential learning activities of the admission process become even more important in light of the outcomes of the national competency profile. It is clear from the foundational competency development work undertaken under the oversight of the National Admission Standards Steering Group, that articling or some other form of experiential learning continues to be a foundational expectation of training for new lawyers. It is the only component capable of supporting hands-on formative learning. But it must be acknowledged that articling systems across the country lack consistency, validated performance targets, and a sufficient level of regulatory oversight and accountability to serve as a defensible component of qualifying assessment.

One method of overcoming the perceived deficiencies of current experiential training programs is to develop, and require the application of, specified learning outcomes based on standardized performance reporting. It is quite feasible to do so while still recognizing that there must be sufficient flexibility in the application of learning outcomes to accommodate a myriad of experiential opportunities – not all workplace experiences are created alike.

This plan proposes the development of a framework of standardized competencies achievements during experiential learning including a formal set of performance criteria and performance ratings supporting the assessment of those skills and tasks. In this way, regulators,

supervisors and candidates will be in a better position to meet and confirm expectations for entry level competence.

Those skills and tasks have been articulated in the competency profile and the criteria for demonstration of appropriate performance can and should be included in the competencies validation and blueprinting process that will take place during phase 1 development. This will ensure that all law practice assessment processes are aligned and delegated to the appropriate component of the law practice assessment activities.

### **Development Process for Phase 3**

In the development of the experiential component of the qualifying assessments required by law societies, focus will be on the following components:

- A. Defining the scope of experiential assessment
- B. Development of experiential assessment performance criteria and rating systems
- C. Creation of formal documentation and reporting requirements for experiential assessments

#### **A. Defining the scope of experiential assessment**

The national law practice qualifying assessment development team will be in a position, with assistance from retained psychometricians, to develop a performance assessment framework and then assist participating law societies to integrate the learning requirements into formal reporting procedures.

The objective of validating experiential learning requirements will be to move toward a standardized assessment rubric for practical experience requirements regardless of the format of the articling program or alternatives. This phase of assessment must recognize that the disparity in the size of candidate groups across the country may make complete consistency of form for experiential learning an unreasonable expectation, but that consistency in the function of the experiential assessment requirement can and should be defined and measured.

Fundamentally, the defensibility of articling programs can only be enhanced if the legal profession accepts the notion that there is a need to improve the performance achievements during that process and to more consistently evaluate candidates.

By re-validating experiential learning through a psychometric review of skills and tasks requirements, the experiential training becomes more consistent and candidate entry level competency is enhanced.

## **B. Development of experiential assessment performance criteria and rating systems**

Following the psychometric development of skills and tasks competencies achievement in a viable and defensible articling placement, a standardized set of performance criteria will be established with the assistance of practitioner subject matter experts. This process will acknowledge the tremendous diversity of professional environments within which a candidate may undertake experiential learning. It will integrate flexibility in the definition of the core skills and tasks competencies that will become the standardized expectations of achievement.

The criteria will support the creation of a performance rating system that can be applied consistently by all supervisors to assess candidate skills and tasks achievements. The criteria will be translated into appropriate competency achievement statements and a performance management process will be created to support assessments and feedback. This system of rating will utilize behaviourally anchored statements of achievement and will provide supervisors with a means and consistent prompts to score the articling candidate and provide feedback and reasons for that scoring.

Candidates for admission will participate actively in the performance rating exercises. They will improve their learning and development receiving appropriate feedback that is channeled to focus on core competencies leading to effective and ethical entry level practice.

## **C. Creation of formal documentation and reporting requirements for experiential assessment**

The final development activity in phase 3 will be to create formal and consistent reporting mechanisms for supervisors and candidates. Guidelines and resources will be provided to enhance the performance management experience.

It is often assumed that members of the profession will be less likely to support an articling placement if the reporting obligations are increased. A recent experience in Ontario appears to dispel that notion.

The work of Ontario's Articling Task Force elicited input from the profession that there was concern for the fact that articling experiences are not equivalent, calling the defensibility of articling into question. Many respondents in the consultation process indicated that the experiential learning component would benefit from greater definition. When this translated into new performance evaluation requirements, increasing the amount of time and effort that would be required to oversee an articling candidate, supervisors accepted the challenge and fulfilled all new obligations willingly and at a high level of quality.



In Ontario, significantly more onerous documentation and tracking requirements have initially been met with a 96% completion rate. Input indicates that providing supervisors with criteria and tools for use in performance review and feedback allows them to participate more meaningfully in entry level lawyer competence assurance, and they appear to be embracing this enhanced obligation.



## Phase 3 Development Costs

### Assumptions for Estimating Costs of Development in Phase 3

The following assumptions have been made to determine the development activities and estimate costs of the system of assessment that is described in this plan:

- Phase 3 competency assessment will be focused on skills and tasks achieved in an articling placement or alternative skills environment
- Assessment will be supported by performance criteria and rating systems
- Psychometricians will be retained to develop defensible criteria and behaviorally anchored rating scales
- Subject matter expert practitioners will be paid an honorarium to recognize the contribution made to supporting defensibility of law practice entry assessment
- Any law society subject matter expert participation will be in-kind
- All costs are calculated net of taxes.

### Development Process and Costs

1

- Confirm scope of experiential learning competencies assessment

Practitioner SME teams, from across participating jurisdictions, working with Psychometricians to clarify skills and tasks achievements in articling placements.

- 12 SMEs
- 1 session of 3 days
- Honorarium of \$250 per day
- Psychometricians – 2 days prep + 3 days facilitation
- Cost \$22,000

2

- Develop performance criteria and rating scales

Practitioner SMEs and Psychometricians define the performance expectations in each skill or task.

- 12 SMEs
- 2 session of 2 days
- Honorarium of \$250 per day
- Psychometricians – 1 day prep + 2 days facilitation
- Cost \$20,000

- Validate performance criteria and rating scales

Different group of practitioner SMEs and Psychometricians review, refine, and validate.

- 12 SMEs
- 1 session of 2 days
- Honorarium of \$250
- Psychometricians – 1 day prep + 2 day facilitation + 5 days final compilation into rating system
- Cost \$26,000

Costs for phase 3 related to development of performance measures and rating systems by subject matter expert practitioners and providers, for the period from early 2018 through to and including the completion and approval of the first administration of the new articling performance standards in the latter half of 2019, are projected at \$68,000.

There are also associated costs for technical development related to developing and providing the supporting reporting forms and materials in an online format for greater efficiency of use by supervisors and candidates. Other ancillary costs include SME travel, meals and accommodation expenses and for potential facilities rental and catering for meetings. See *Table 3.1* on the following page for all projected costs.

Table 2.1

Activity	Cost
<i>Development Process</i>	
Confirm scope of experiential learning competencies assessment	22,000
Develop performance criteria and rating scales	20,000
Validate performance criteria and rating scales	26,000
	<b>\$ 68,000</b>
<i>Additional Associated Costs</i>	
Technical supports for standardized forms and reporting	150,000
SME travel, meals and accommodation expenses	60,000
Facilities Rental and catering for meetings	50,000
	<b>\$ 260,000</b>
<b>Total</b>	<b>\$ 328,000</b>

### Phase 3 Development Costs and Funding Model

Phase 3 development will occur contiguously with phase 2. As these expenditures will be required during the same schedule as phase 2, the costs will be incorporated into the ongoing operational budget for the new assessment agency with decisions on funding taken in 2017 in preparation for establishing the 2018 budget of the new agency.

## **National Law Practice Qualifying Assessment Annual Operation**

Once the test formats have been developed and validated, the system will be ready to administer the admission examinations. The full day multiple choice examination is scheduled to commence after January 2018, the full day skills and tasks examination after January 2020. Annual operational costs set out in this section of the plan relate to anticipated expenditures to support all components thereafter.

The estimates of cost for the development of the process set out in the previous sections of this business and implementation plan included some investment in future development; for instance, the development of additional test questions or skills-based cases to ensure a sufficient accumulation of content and test items as the process moves forward. This will assist administrators to effectively manage the very first and next administration of assessments in the new regime, particularly in light of the rather aggressive time frames set out in this plan.

This section of the plan sets out the anticipated ongoing annual administration costs following completion of the development and implementation of phases 1, 2 and 3.

### **Assessment Development Expenditures**

The system will benefit from input of practitioner subject matter experts who will act as ongoing advisors in this effort. In particular, a highly skilled and trained group of legal practitioners will be required to work with staff and psychometricians to support a variety of validation activities, including: reviewing all versions of the examinations; confirming passing scores for all test items; validating scoring rubrics for cases; assessing examination outcomes against expected results; and generally confirming that all aspects of the competency profile and blueprint are being adequately supported in accordance with internationally accepted norms for licensure.

Item writing for the full-day multiple choice examination will be undertaken, at a minimum, three times per year, for three days per session in each competency category. This assumes there will be a sufficient accumulation of test items banked after participating law societies contribute their item content. If not, then additional item writing sessions will be required for a few years. Case development for the full-day skills and tasks examination will also be undertaken, at a minimum, three times per year, for two days per session.

Content for the supporting reference materials will require review, revision, editorial and production annually, once again by practitioner subject matter experts and supporting staff. All test items must also be 'tagged' to the materials to ensure that the assessable competencies are integrated in accordance with the blueprint requirements.

In each activity, from participation on subject matter expert advisory groups through to subject matter expert content development, exemplary practitioners will be recruited to assist. It is proposed that they will be paid an honorarium of \$500 per day.

Psychometricians will be placed on retainer to work with various subject matter expert groups as they continue to develop test questions and cases, monitor the application of the competency profile and blueprint to all aspects of the assessment system, and evolve the testing platform accordingly.

Anticipated costs related to ongoing development and psychometric defensibility is anticipated to be in the range of \$1,200,000 annually beginning in 2020.

### **Assessment Format Expenditures**

The estimated cost of providing a full-day examination through CBT, based on discussions with providers, will be in the range of \$225 per candidate. For purposes of this business plan, it is estimated that there will be approximately 3800 test takers completing the two day examination for the first time. It is further estimated that approximately 25% of test takers will be required to retake the examinations one or more times. This results in an estimated 4750 or more candidates moving through the test taking environment per year.

For 4750 candidates, the CBT provider cost for one full day of testing is estimated to be \$1,100,000 per annum.

Once the phase 2 skills-based assessment is added, the cost of CBT provision will increase to support admission testing serving 9500 or more test takers. For purposes of estimating ongoing operational expenses, and *factoring some cost reduction recognizing economies of scale* achieved through negotiation with the provider, this plan estimates annual CBT services in the range of \$1,900,000 annually.

### **Assessment Scoring Expenditures**

The phase 1 full day multiple choice examination will be scored electronically. Individual test results will be communicated via secure channels back to the national assessment agency. The appointed subject matter expert group will work with psychometricians to confirm final pass scores. The agency will then forward results to the participating law societies, also via secure channels, for integration into their respective candidate record keeping systems. As a result, significant technology and database systems development will be required to support phases 1 and 2.

The phase 2 case-based skills testing will require additional administration and costs related to scoring, including the need to have trained practitioner assessors manually score the results based on an established rubric. It may be possible to automate this scoring activity to the extent that in-person scoring sessions will not be required, saving significant time and facilities costs. The secure exchange of candidate test responses with trained practitioner assessors will be further explored, but for purposes of this plan, it is assumed to be achievable.

To assure the fairness and validity of phase 2 outcomes, significant investment must be made in the development of the scoring rubrics and the training of large numbers of qualified assessors.

To support this cost analysis, it is assumed each of the four components of the phase 2 assessment will require an average of 30 minutes to score – or two hours of assessor time to score one complete examination. This is equivalent to 9500 hours of scoring for 4750 candidates (3800 plus 25% rewrite) per year.

It is also necessary to allow for secondary scoring, in the event that a candidate receives a failed grade on the examination. All failed examinations must be evaluated by a different assessor to validate the results.

Rather than paying assessors at a daily rate, it would be more effective and economical to address the value of their contribution on a production model, by the number of examinations scored or re-evaluated. It is recommended that assessors receive \$100 for each examination scored, and \$50 for each examination re-scored.

Assuming two hours of time required to score one examination, or approximately three examinations “per day”, that would require approximately 1700 to 1900 “days” of effort during each calendar year to complete original scoring and re-scoring activities. Further assuming that assessors would be willing to commit 10 days of their time throughout the year to complete this work, the system will require at least 190 practitioners trained to support the effort.

Assessor training is a critical component of defensible licensure systems. Prior to each scoring session, a review of scoring protocols, rubrics and test samples will be required. This plan proposes that at least one-half of a day will be required from each assessor to undertake that training in advance of every scoring session. It is proposed that assessors will receive \$250 for each training session.

The anticipated costs related to phase 2 scoring activities, per annum, consisting of the provision of honoraria to practitioner assessors for training and scoring time will be in the range of \$650,000.

While it is feasible to rely on the good will of the profession and seek to have them participate as assessors free of charge, adding a value to the work emphasizes the importance of this activity in the public interest. These assessors will be guided through a valid and defensible process for vetting the competencies achievement of new candidates and should have their time and dedication to that task acknowledged. This small monetary recognition is reasonable in the circumstances, and represents a critical investment in and commitment to the profession’s acceptance of the process, by those who regulate it. It also acknowledges that subject matter expert participants are being paid for the provision of a service that is governed by the regulator, and they accept the protocols and apply them as required.

## Operational Expenditures

The national law practice qualifying assessment entity will require a highly skilled full-time staff complement. A number of the management and staff of the organization must be formally accredited and/or highly experienced adult educators with expertise in licensure and assessment.

It is anticipated that a minimum of 12 – 15 full-time staff will be required to support the ongoing administration of the assessment system outlined in this plan. Estimated salary and benefits will be in the range of \$1.5 million per year.

General program and office expenses are estimated in the range of \$1.2 million and include various categories of fixed and variable expenses required to support the system.

*Table 3.1* sets out anticipated annual expenditures for a fully operational national law practice assessment system.



## Operating Costs for Ongoing Administration

This cost projection is based on an anticipated candidate cohort of 3800, assumes full cost recovery through the application of examination fees, and is calculated net of taxes. The projected candidate fee is for the first attempt of both examination days. Additional fees for further attempts at each examination will be derived on the basis of a cost recovery model.

*Table 3.1*

Expense Category	Annual Cost (2019 and beyond)
<i>Assessment Activities</i>	
Ongoing Development of Items, Cases, Reference Materials, Review and Analysis (SME Honoraria and Psychometrician Retainers)	1,200,000
CBT Provision and Services	1,900,000
SME Assessor Scoring Honoraria	650,000
	<b>\$ 3,750,000</b>
<i>Operations</i>	
Salaries and Benefits	1,500,000
Program, and Other Consulting/Skilled Provider Contracts	200,000
Production, development, supports and services	300,000
Travel, accommodation, catering, facilities	200,000
Office Expenses, Technology Systems, Human Resources, Communications, Finance, Legal, Leasehold, other	500,000
	<b>\$ 2,700,000</b>
<i>Governance</i>	
Board, Committee, Law Society liaison	100,000
<b>Total</b>	<b>\$ 6,550,000</b>
<b>Cost per Candidate (first writing, both test days, not including taxes)</b>	<b>\$ 1,724</b>

## **Governance**

### **Interim Oversight for Development Process**

During the transition process, which is defined as the period of time and activities up to and including the completion of all aspects of phase 1 of this plan, it is proposed that interim reporting be established under the oversight of the National Admission Standards Project Steering Committee of the Federation. Consideration will be given to modifying the composition of the Steering Committee for this purpose. The governance model for the transition process will be agreed upon with input from participating law societies.

In phase 1 of the development process, it is proposed that an interim Executive Director be appointed to implement the plan, as approved. Given the aggressive timelines for development of phase 1, the Executive Director should be able to focus on the hands-on development activities without the encumbrance of a complex committee structure. Managing a significant governance implementation at the same time as deriving the foundational assessment process is likely to be detrimental to meeting scheduled milestones. An oversight committee such as the Steering Committee can provide the appropriate oversight and policy direction.

Following phase 1 development, it is recommended that the participating law societies create an independent entity for purposes of continuing the implementation and fulfilling obligations of the national law practice qualifying assessment system.

### **New Governance Entity**

The new permanent governance entity would be responsible for providing participating law societies with access to valid and defensible assessments for candidates seeking entry to the legal profession in Canada.

The new entity will require independence from the law societies to ensure that its activities and assessment processes remain consistent, fair and defensible, avoiding any suggestion of preferential treatment, bias or influence. The assessment results must stand for themselves as demonstrating the highest quality and defensibility of assessment processes, applied consistently and fairly, and supporting recognized international standards in professional licensure.

The permanent governance body should also be skills based. While further work is required to flesh out the details of the new governance entity, the intent is for participating law societies to determine how the body will be structured and constituted.

### Blueprint Purpose and Development

A competency-based blueprint serves the following purposes:

- ensures the relevance of the assessment/examination by indicating links to the competency profile for entry level lawyer professionals
- maximizes the functional equivalence of alternative versions of the examination
- provides direction for content developers when writing new items for the examinations
- facilitates evaluations of the appropriateness and effectiveness of the examination by content experts and other stakeholders.

The competency-based blueprint advances these purposes by definitively stating what is assessed, for what purpose, to what extent, with what types of items, in what contexts, to what standards and provides documentation of the processes leading to each of these decisions.

A comprehensive blueprint development identifies key assessment information including the process, content, structure, context and scoring of the examination.

The blueprint will establish all of the following specifications for use in the assessment activities:

#### Process

- a clear statement of the purpose of the examination
- a definition of the candidate target population
- the methodology employed for all key blueprint activities
- a list of the content experts involved in the blueprint development process

#### Content

- competencies related to the purpose of the examination
- entry level lawyer competency weightings (the extent to which they will be represented on the examination)
- entry level lawyer competency categories (used to organize competencies to support provision of feedback to test takers – each category must be assessed by a sufficiently high number of examination items to provide reliable results)
- cognitive domain weightings of the examination (ensures competencies are measured at different levels of cognitive ability – knowledge/comprehension, application, and critical thinking)

#### Structure

- item format of the examination
  - item presentation of the examination (individual, case, multiple response)
  - response format of the examination (selected, constructed, written, computerized)
  - examination length, duration and breaks
  - assessment aids permitted for writing the examination
- 
- percentage of 'new' content to appear on new versions of the examination

- number of experimental items to be assessed on each administration of the examination
- number of forms of the examination (versions)

#### Context

- client type specified in the examination (individual, family, population, community)
- client age and gender specified in the examination
- client legal situation specified in the examination
- client culture included in the examination

#### Scoring

- standard setting method(s) employed for the examination
- an overview of the scoring procedures of the examination
- acceptable statistical item characteristics.





## **APPENDIX 3**

### **THE NATIONAL ADMISSION STANDARDS PROJECT**

#### **BACKGROUND SUMMARY**

1. In 2009, the CEOs of the law societies and the Council of the Federation identified the need to develop national standards for admission to practice and the National Admission Standards project was launched. The project reflects an important strategic priority identified by the Council of the Federation: the development and implementation of high, consistent and transparent national standards for the regulation of the legal profession.
2. General oversight of the project is provided by a Steering Committee. The members of the committee are:  
Don Thompson, Q.C., Executive Director, Law Society of Alberta, Committee Chair  
Tim McGee, Q.C., CEO, Law Society of British Columbia  
Alan Treleaven, Director, Education and Practice, Law Society of British Columbia  
Jeff Hirsch, Thompson Dorfman Sweatman LLP, Council Vice-President and President-elect, and past president, Law Society of Manitoba  
Allan Fineblit, Q.C., Thompson Dorfman Sweatman LLP and former CEO, Law Society of Manitoba  
Laurie Pawlitza, Council member and past Treasurer, Law Society of Upper Canada  
Robert Lapper, CEO, Law Society of Upper Canada  
Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada  
Lise Tremblay, CEO, Barreau du Quebec  
Bâtonnier Bernard Synnott, former Bâtonnier, Barreau du Quebec  
Darrel Pink, Executive Director, Nova Scotia Barristers' Society  
Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick  
Jonathan Herman, Federation CEO  
Support to the Steering Committee is provided by Federation personnel as follows:  
Frederica Wilson, Senior Director, Regulatory and Public Affairs  
Stephanie Spiers, Director, Regulatory Affairs and project manager  
Daphne Keevil-Harrold, Policy Counsel
3. The first phase of the project had two goals: the development of a profile of the competencies required upon entry to the profession, and a standard for ensuring that applicants meet the requirement to be of good character. Law societies have agreed on the benchmark for entry-level competence through the National Competency Profile, which has been adopted by 13 law societies on the understanding that adoption is subject to the development and approval of a plan for implementation.

## ***Development of the National Competency Profile***

4. The Federation engaged a consultant with expertise in credentialing, Professional Examination Services (ProExam) to ensure that The National Entry-Level Competency Profile for Lawyers and Quebec Notaries ("National Competency Profile") was developed in accordance with best practices. ProExam guided work on the profile and senior admissions staff from five law societies played a critical role as members of a Technical Advisory Committee ("TAC").

5. The TAC drew from the various competency profiles in use by law societies across the country as their starting point, creating an outline that organized the competencies into substantive knowledge, skills, and tasks categories. A Competency Development Task Force comprised of 11 practitioners in their first 10 years of practice from every region in the country then fleshed out the profile. Members of the task force drafted a profile intended to reflect the tasks actually performed and the knowledge and skills actually required of general practitioners at the point of admission to the profession.

6. This draft was then reviewed by 30 practitioners identified and recruited with the assistance of law societies. The draft profile was also reviewed by a small working group of representatives of the Barreau du Québec and the Chambre des notaires du Québec to ensure that it is reflective of the nature of legal practice in Quebec.

7. In accordance with best practices, the revised draft profile was then validated through a survey of entry-level lawyers and Quebec notaries. Survey respondents were asked to rate each individual competency on two scales: how frequently they performed or used the competency; and how serious the consequences would be if an entry-level practitioner in their area of practice did not possess or was unable to perform the competency. Information was also gathered on the respondents' practice area, practice setting and year of call to the bar. The data from the survey was used to refine the competency profile to ensure that it accurately reflected the competencies required of new practitioners today.

8. The work on the National Competency Profile was carried about between 2010 and 2012. The Council of the Federation approved the National Competency Profile in 2012. Between 2012 and 2013, thirteen law societies adopted the National Competency Profile.

## ***Development of a National Good Character (suitability to practise) Standard***

9. As part of the National Admissions Standards Project, the Federation has worked on developing a common good character standard. A Working Group comprised of staff from various law societies was established to develop a draft good character standard based on the principle that the standard must be clear, consistent, fair and defensible.

10. In July 2013, the Working Group presented its preliminary views in a Consultation Report and sought input from law societies and other interested stakeholders.

11. The Working Group received responses from most law societies, as well as from the Canadian Bar Association, several law professors and law students. Responses raised both policy considerations and operational concerns. Work on the good character standard is on hold while we focus on the assessment plan, and is expected to resume in due course.

### ***Implementing National Admission Standards***

12. The second phase of the project is focused on how law societies will assess the competencies in the National Competency Profile. Identification and assessment of the competencies required of applicants, appropriately focused professional training, and experiential learning are all important elements of national admission standards.

13. The Federation engaged ProExam to identify a range of options for assessment of the competencies in the National Competency Profile. ProExam's work was informed by advice from a newly composed seven-member Technical Advisory Committee (TAC) comprised of law society senior admission staff. The TAC and ProExam worked together throughout the spring and summer of 2013.

14. In the fall of 2013, the Federation circulated a Discussion Paper and a report prepared by ProExam that reviewed a range of possible methods for assessing the competencies.

15. Meetings were held with ten law societies in 2014 to consider ProExam's report and discuss options for assessment, including the need for a high level of consistency in assessment. The feedback from law societies provided direction on areas of common agreement.

16. The National Admission Standards Project Steering Committee drew from the feedback provided by law societies in developing a proposal on assessment and a detailed Business Plan.

17. The proposal and Business Plan will be shared with law societies in the summer of 2015. The goal is to discuss the proposal with each law society in the fall and winter of 2015, so that law societies are in a position to decide whether they will sign on to the plan by early 2016, recognizing that the timing will ultimately depend on when law societies are ready to move forward.

### ***Engaging with Law Societies***

18. Throughout the project, law societies have been kept informed about progress through various means including: targeted written communiqués; the Federation e-Briefing (electronic newsletter); teleconferences with admissions staff and CEOs, in-person meetings with elected leaders, staff, CEOs and other law society volunteers, and presentations to law society groups. Reports, papers and project updates have been distributed by email and made available on the Federation intranet. Some project documents are also available on the Federation's public website.