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Centre for International
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Interim Report

CLOSED SHOPS:
OPENING CANADA'S LEGAL PROFESSION TO
FOREIGN-EDUCATED LAWYERS

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INTRODUCTION

Miriam El Oflir was born and raised in Casablanca, Morocco. The daughter of a Moroccan father and French-Canadian mother, she is fluent in Arabic, English and French. After graduating from Casablanca American School in 2009, she — like most of her peers — decided to go abroad for university.

In 2012, Miriam began studying law at Queen Mary University of London, a law program that *The Guardian's* 2018 University Guide ranks as the third best in the United Kingdom, and first in Greater London.¹ In the course of her studies, the British government started changing its visa requirements, making it more difficult for international students — and in particular non-Europeans like Miriam — to obtain work visas after graduating.

Miriam knew she did not want to return to Casablanca. Not only is Morocco a civil-law jurisdiction (which her common-law education had not trained her for), she did not want to join a legal profession that is male-dominated and corrupt. “I didn’t want to prepare all night for a case only to realize it was unwinnable because the other side had been bribed,” she noted dryly.

So Miriam set her sights on Canada. A Canadian citizen by birthright, she knew she would not face any immigration hurdles. And since Canada is a predominantly common-law country,² she was confident her legal education had equipped her to practise here — in particular since she had taken a number of the Canadian law courses that Queen Mary offers to the Canadian students who study there.

When asked if she was aware of the challenges she would face becoming a lawyer in Canada, Miriam’s refrain was one the author heard repeatedly in her conversations with foreign-educated lawyers. “Not at all,” she said emphatically. She had thought that, if anything, coming from England would lend an element of prestige to her qualifications. And surely being fluent in both official languages could not hurt either. Little did Miriam know she was about to try breaking into Canada’s closed legal profession — one in which foreign credentials are treated more as a liability than as an asset.

1 See www.theguardian.com/education/ng-interactive/2017/may/16/university-guide-2018-league-table-for-law.

2 Quebec is a civil-law jurisdiction, and the rest of Canada is common law.

STARTING A DIALOGUE ABOUT CANADA'S CLOSED LEGAL SHOP

Nearly two years after immigrating to Canada, and tens of thousands of dollars poorer,³ Miriam is currently unemployed and searching for legal work. She is one of the hundreds of internationally educated lawyers who come to Canada each year with the goal of practising law. Many of these lawyers are Canadian citizens; many are new immigrants. In general, these individuals will face far more obstacles to becoming licensed and employed as lawyers than those who come up through the Canadian legal education system.

A small percentage of these foreign-educated lawyers will get there eventually — often after years of trying and considerable expense. Others will never make it. As David Ben, a French lawyer observed: “When you come here, the feeling from the NCA [National Committee on Accreditation] is that you’re not welcome: we’ll make your life so hard, we’ll either break you and you leave; or maybe you’ll pass the requirements, but it will be almost impossible to find a job.”

Like David, many of the internationally educated lawyers interviewed for this report described feeling unwanted, isolated, discouraged and depressed as they worked toward becoming licensed and gainfully employed. Clearly, there is room for Canada to improve how it integrates these talented individuals, who tend to have strong work ethics, global outlooks, diverse work experiences and mastery of multiple languages.

This report aims to start a dialogue about the key barriers foreign-educated lawyers face in Canada’s licensing and employment processes,⁴ and makes recommendations for how *unnecessary* barriers can be mitigated or dismantled. Barriers are considered unnecessary if they are not relevant to testing an individual’s professional competency, or make it unduly difficult for foreign-educated lawyers to achieve licensure or employment relative to their Canadian counterparts. These recommendations are directed at a variety of stakeholders, including provincial law societies, the NCA, law schools, fairness commissioners, legal employers, immigration officials and internationally trained lawyers themselves.

Crucially, these recommendations are not aimed at getting the legal profession to relax its high standards, either directly or indirectly. It is assumed that the public is well served by a profession that

3 Miriam enrolled in Osgoode Hall Law School’s LL.M. for internationally trained lawyers. In 2017, tuition for domestic students is \$24,132, and for international students it is \$35,500.

4 This report is national in scope, although it focuses predominantly on the provinces with common-law jurisdictions, and within that subset, focuses most on Ontario’s system, as 64 percent of all common-law licensing candidates go through Ontario’s licensing process, and 57 percent of all internationally educated lawyers became licensed in Ontario in 2015.

holds all lawyers to exacting educational, experiential and ethical requirements. And it is recognized that this commitment to high standards will mean, in some cases, that foreign-educated lawyers are not able to practise as lawyers in Canada.

However, as conversations with foreign lawyers and members of Canada's legal community made clear, many internationally educated lawyers are struggling to become accredited, not due to a lack of ability, but because they lack many of the supports that Canadian-educated lawyers enjoy. Where this is the case, the system is failing these individuals, forgoing an opportunity to increase the strength and diversity of Canada's legal profession, and impeding access to justice by Canadians who require legal services.

This report begins by discussing some of the data on disparities between Canadian and internationally educated lawyers. It then reviews the processes for becoming a lawyer in Canada — both as a student in the Canadian legal system and as a foreign entrant — and highlights the ways in which foreign lawyers face unique barriers in these processes. Finally, it makes a series of recommendations for how these barriers could be addressed.

For the purposes of this project, the author interviewed numerous foreign-educated lawyers, as well as Canadian immigration officials, immigration lawyers, regulators, employers and professors. The conversations made clear that there is work to be done in opening Canada's closed legal shop. The author would welcome insights on how this can best be achieved, as she will be preparing a final report on this topic following the 6 Degrees Citizen Space in September 2017. Please send feedback to info@6degreesto.com.

The Challenge

Canada's immigrant population is, in general, highly educated. But skilled immigrants are frequently underemployed and undercompensated. One 2011 study found that foreign education is valued

at about 70 percent of a Canadian credential, while international work experience is frequently not rewarded at all (Augustine 2015a).

Within the legal profession, hundreds of internationally trained lawyers immigrate to Canada each year, and hundreds of Canadian citizens return to Canada after obtaining law degrees abroad (Law Society of Upper Canada [LSUC] 2017).

An astonishing number of these internationally educated lawyers will never practise in Canada (Augustine 2015b). A 2010 study⁵ evaluated how well individuals' fields of study matched their occupations in Canada (what the study calls "match rates") (Zietsma 2010). Match rates were found to differ significantly between Canadian-educated and foreign-educated immigrants, and of all 15 regulated occupations that the study assessed, law was by far the worst. Only 12 percent of foreign-educated lawyers were "matched" to legal jobs, compared to an average match rate of 24 percent for all occupations, and a match rate of 84 percent for foreign-educated chiropractors.

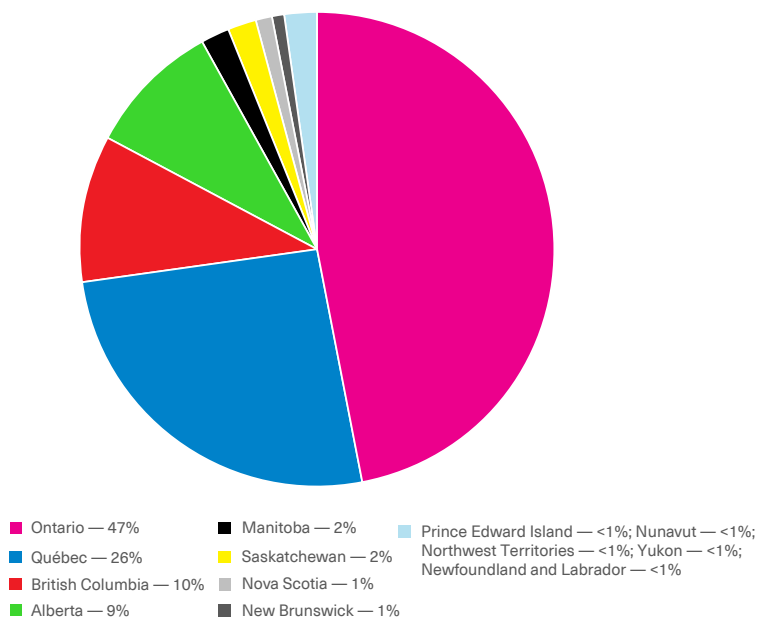
As seen in Table 2, the disparity between Canadian-educated and foreign-educated lawyers is also substantial at 57 percent. In other words, Canadian-educated lawyers are far more likely to practise as lawyers. Of course, it is significant that the match rate for Canadian-educated lawyers is only 69 percent; this likely reflects the fact that the supply of lawyers exceeds demand in some markets (Prism Economics and Analysis 2016), and the fact that many lawyers leave legal practice to work in other fields.

A 2014 study replicated the 2010 study's methodology⁶ and had similar findings (Augustine 2015b). In the five years between the first and second studies, the match rate rose slightly for foreign-educated lawyers, to 13.3 percent nationally, and 14.3 percent in Ontario.

5 The study looked at 2006 census data.

6 This study used data from the 2011 National Household Survey.

Figure 1: Annual Proportion of Licensing Candidates in Canada



Source: LSUC (2017, 56). Reprinted with permission.

Table 1: Canadian Professions with the Least Disparity in Employment Match Rates, 2006

Profession	Canadian born and educated		Internationally educated		Gap (in percentage points)
	Total	Employed in profession of training	Total	Employed in profession of training	
Engineers	167,260	42%	157,930	19%	23
Nurses	78,880	73%	13,150	56%	17
Occupational therapists	9,345	82%	560	65%	17
Chiropractors	5,745	87%	345	84%	3
Total study population	937,050	62%	284,080	24%	38

Source: Office of the Fairness Commissioner (OFC) (2013, 33).

Table 2: Canadian Professions with the Greatest Disparity in Employment Match Rates, 2006.

Profession	Canadian born and educated		Internationally educated		Gap (in percentage points)
	Total	Employed in profession of training	Total	Employed in profession of training	
Veterinary medicine	6,580	83%	2,225	29%	54
Optometry	2,760	95%	340	38%	57
Law	82,615	69%	11,295	12%	57
Total study population	937,050	62%	284,080	24%	38

Source: Ibid., 34.

THE LICENSING PROCESS IN CANADA

While this report focuses on the obstacles foreign lawyers face in the Canadian legal system, it is necessary to understand the pathway to law within Canada in order to appreciate the challenges foreign-educated lawyers face in context.

It is also important to acknowledge that Canadian law students must invest substantial time, money and effort into becoming qualified lawyers. In every province, candidates must complete a law degree, bar admissions course and an experiential component. Most of these processes are competitive and costly,⁷ and, increasingly, Canadian law graduates are by no means assured of good jobs.⁸ In Ontario, for instance, the supply of lawyers already outstrips demand, and this imbalance is projected to increase significantly in the coming decade. By 2025, the number of law graduates in the province is expected to exceed new practising positions by 16,800 (Prism Economics and Analysis 2016).

Education

From start to finish, the process for becoming a lawyer in Canada's common-law provinces takes at least seven years, counting the three years of undergraduate studies that are a prerequisite for admission into most Canadian law schools⁹; the three years of law school; the months of study that go into bar courses and exams; and the experiential

component, which runs between eight and 12 months.

Applicants to law school are generally required to demonstrate strong academic performance in their undergraduate courses. Additionally, almost all of Canada's 19 common-law programs require applicants to submit a Law School Admission Test (LSAT) score, and to have performed competitively on it. The average LSAT score of students at most law schools is very strong, ranging from a 74th percentile class average at some schools to a 93rd percentile class average at others.¹⁰

Quebec is a civil-law jurisdiction, so students receive a different legal education, but the process for licensure is largely the same as in the common-law provinces. In Quebec, students must complete a three-year civil-law degree at one of the province's five law schools, or at the University of Ottawa; write a licensing exam; and complete six months of legal training.

7 The average cost of a three-year law degree in Canada is now \$34,285, and that figure can be considerably higher depending on the program one attends. Students graduating from the University of Toronto or Osgoode law faculties, for example, can easily have more than \$100,000 in student debt.

8 Currently, approximately 3,000 students graduate from Canada's 20 law schools each year. A 2016 study commissioned by the Higher Education Quality Council of Ontario projected dire labour trends for the law profession, estimating that by 2026, there will be 1.6 lawyers for every legal job (Prism Economics and Analysis 2016).

9 Or at least 90 credit hours at a university, which is equivalent to three years of full-time study. In many provinces, most undergraduate programs involve four years of study. Many law school applicants have also completed master's degrees. See OFC (2010).

10 See www.oxfordseminars.ca/LSAT/lsat_profiles.php.

Bar Admissions Course and Exams

Every province requires law candidates to complete a bar admissions course. While the subject matter is consistent across the provinces, the length and format varies by province (OFC 2010). In Quebec, the course runs for four weeks; in British Columbia, it runs for 10 weeks; in many provinces, it runs the full length of the articling term (discussed below). In Ontario, British Columbia and Quebec, applicants must also pass formal licensing examinations; in the other provinces, the evaluations are staggered and included in the bar admission course (ibid.).

Ontario and British Columbia require candidates to write both barrister and solicitor licensing exams. In Ontario, each exam costs \$750¹¹ to write (which is frequently paid for by a student's articling employer), and must be completed within seven hours. Ontario's bar exams are open book and multiple choice, and comprehensively test the minimum requirements expected of both barristers and solicitors in the profession.¹² Candidates are permitted to write the exams up to three times (or four, in exceptional circumstances).

In Ontario and British Columbia, many law students study full time for their exams for many weeks. Law candidates are often accommodated in this process by employers who are willing to defer their employees' start dates until after the date of the bar exams, in order to provide them with adequate time to study.

Experiential Requirement

Articling

During law school, the vast majority of Canadian law students line up articling positions, which are professional internships in which articling students

work under the supervision of licensed lawyers. The required length of articling varies between the provinces, from six months in Quebec to 12 months in Alberta.

Within Canada's largest cities, legal employers will often recruit law students from Canadian law schools during their second or third year of law school. This recruitment process is known as the On-Campus Interview (OCI), in reference to the fact that law firms and other legal employers send recruiters to campuses (or nearby convention centres) to meet with numerous students over a couple of days. They will then invite the ones they are particularly impressed by to their offices for more in-depth job interviews.

Depending on the size of the employer and its workplace needs, employers will often extend summer job offers to a number of law students. These summer positions typically lead to salaried articling positions for these students after their third year of law school. The OCI recruitment process is highly regimented,¹³ and greatly facilitates Canadian law students' entrance into the legal job market.

Law Practice Program

In 2014, Ontario's LSUC rolled out a pilot Law Practice Program (LPP), which is an eight-month alternative to the articling process in Ontario.¹⁴ The LPP was designed to enable law candidates who are unable to line up articling positions to fulfill the law society's experiential requirement for licensure.¹⁵

The LPP is divided into two parts: four months of virtual training, conducted through either Ryerson University (for English students) or the University of Ottawa (for French students) and a four-month work placement. In its first year, there were approximately 230 students in the LPP, almost all of whom received

11 See www.lsuc.on.ca/licensingprocess.aspx?id=2147489426.

12 Test takers must demonstrate proficiency in hundreds of individual competencies that professional regulators have determined to be most critical and frequently performed in Canadian legal practice.

13 OCIs are overseen by law schools' career development offices.

14 See www.lsuc.on.ca/licensingprocess.aspx?id=2147497057.

15 Law students at Lakehead University, in Thunder Bay, Ontario, are able to fulfill the law society's experiential requirement through a combination of in-course training and work placements.

work placements (typically with sole practitioners or small firms). In the second year, all students received placements. In both years, just over two-thirds of the placements were paid positions (usually very low wages). Students in the LPP can apply to many employers, but are required to accept the first work placement offer they receive.

In September 2016, LSUC's Professional Development and Competence Committee recommended that the LPP be discontinued after its third year (LSUC 2016). The committee expressed concerns about the program's financial sustainability, its role in creating a two-tier system where LPP graduates are regarded as second-tier, and its inability to adequately prepare LPP students for independent practice. In response to a large number of submissions opposing the program's discontinuation, the committee passed a motion in November 2016 approving a continuation of the LPP for the 2017-2018 and 2018-2019 licensing years.¹⁶ If the program is not further extended, it will be discontinued at the end of April 2019.

Professional Practice

After law candidates have completed the legal education, bar admissions and experiential requirements mandated by their provincial law society, they are eligible to be called to their province's legal bar. As qualified lawyers, they are free to open their own legal practices, although most new lawyers choose to work for employers in the private or public sectors.

If a student impressed his or her employer during articling, the employer may extend a permanent job offer to the individual at the end of the articling term. If an employer does not hire an articling student back, it may nonetheless assist the person with finding alternative employment, by providing references or by connecting the student with professional contacts.

¹⁶ See www.lsuc.on.ca/licensingprocess.aspx?id=2147497057.

Within Canada's largest cities, legal employers will often recruit law students from Canadian law schools during their second or third year of law school.

THE LICENSING PROCESS FOR INTERNATIONALLY EDUCATED LAWYERS

Given the high educational and experiential standards Canadian-educated lawyers must meet, it is appropriate — indeed necessary — for internationally educated lawyers to meet these exacting requirements as well.

It would create an unfair double standard if foreign lawyers could qualify as Canadian lawyers by meeting less rigorous standards elsewhere. The reputation of the legal profession and the interests of the public could also suffer as well. It is therefore appropriate for the provinces' law societies to establish standards for internationally educated lawyers that ensure these candidates have the competence to practise as lawyers in accordance with Canadian standards.

Each year, there are between 4,000 and 5,000 candidates completing the licensing process in Canada. Internationally educated lawyers make up roughly one-quarter to one-third of this cohort, and their number has been increasing over the past five years.

Exam Requirements

The Federation of Law Societies of Canada's NCA assesses foreign-educated lawyers to determine if they have a thorough understanding of Canadian law, equivalent to that of a graduate of a Canadian common-law degree program. Once an applicant is determined to have such knowledge, the NCA

issues the applicant a Certificate of Qualification. Each year, the NCA issues approximately 1,150 certificates, approximately half of which are to Canadian citizens who went abroad for their legal education.

The NCA assesses each applicant on a case-by-case basis, and considers factors such as the type of legal system in place where the person was educated (i.e., common law, civil law, hybrid); the nature of the school's law program; the subject areas studied; the candidate's academic performance; and the nature of the person's legal experience.¹⁷

The NCA can require an applicant to do one of three things: pass NCA exams; take prescribed courses at a Canadian law school; or complete a Canadian law degree.¹⁸ At a minimum, all applicants must pass five exams that test core Canadian legal subjects.¹⁹ But the NCA may require an applicant to take up to 16 exams.²⁰

The NCA exams are similar to the ones administered in Canadian law schools (presenting exam takers with lengthy fictional scenarios that include many legal issues for analysis). Candidates are expected

¹⁷ See <http://flsc.ca/national-committee-on-accreditation-nca/applying-to-the-nca/how-we-assess-your-file/>.

¹⁸ Ibid.

¹⁹ These are: Foundations of Canadian Law, Canadian Professional Responsibility, Constitutional Law, Administrative Law and Criminal Law.

²⁰ The additional exams are: Torts, Contract Law, Property Law, Business Organizations, Commercial Law, Civil Procedure, Taxation, Remedies, Family Law, Evidence, and Trusts. See NCA (2017).

to self-study, and are responsible for obtaining their own course material.²¹ Some Canadian law schools offer support courses or programs for NCA subjects.²² Each exam costs \$340 to write. The five mandatory exams are offered four times a year in major Canadian cities; the exams for the other courses are offered twice a year.

While students are free to fulfill their NCA requirements independently, they can also apply to one of the legal master's programs offered at a handful of Canadian law faculties. These programs are primarily designed to enable foreign-educated lawyers to fulfill their NCA exam requirements, and to provide them with a network to access the job market. The programs are very expensive, and space in them is limited:

- York University's Osgoode Hall Law School offers the Canadian Common LL.M., which can be completed over one or two years, either full time, part time or by distance. In 2017, tuition for the program was \$24,000 for Canadians and \$35,500 for international students.
- The University of Toronto's Faculty of Law offers a Global Professional Master of Laws (GPLLM),²³ which runs for 12 months. Students must attend evening classes, as well as Saturday classes every other week. Tuition for the program is \$35,500 for Canadians and \$56,000 for international students.
- The University of British Columbia's Allard School of Law offers the Master of Laws (Common Law) Program, which is a one-year, full-time, course-based program (with a two-year, part-time option). Students must complete a minimum of 30 credits of coursework; the cost is \$850 per credit for Canadians and \$1,000 per credit for international students.

Bar Exams

Like Canadian-trained lawyers, foreign-educated lawyers must also pass their province's bar admissions course and exams. In Ontario and British Columbia, this means passing the seven-hour barrister and solicitor licensing exams. Foreign-educated lawyers are much less likely to pass the Ontario bar exams on their first write than Ontario-educated lawyers (see Table 3).

The percentage of students who pass also varies considerably based on the jurisdiction from which the entrants are coming.

There are a number of possible explanations for why internationally educated lawyers are, on average, less likely to pass these exams:

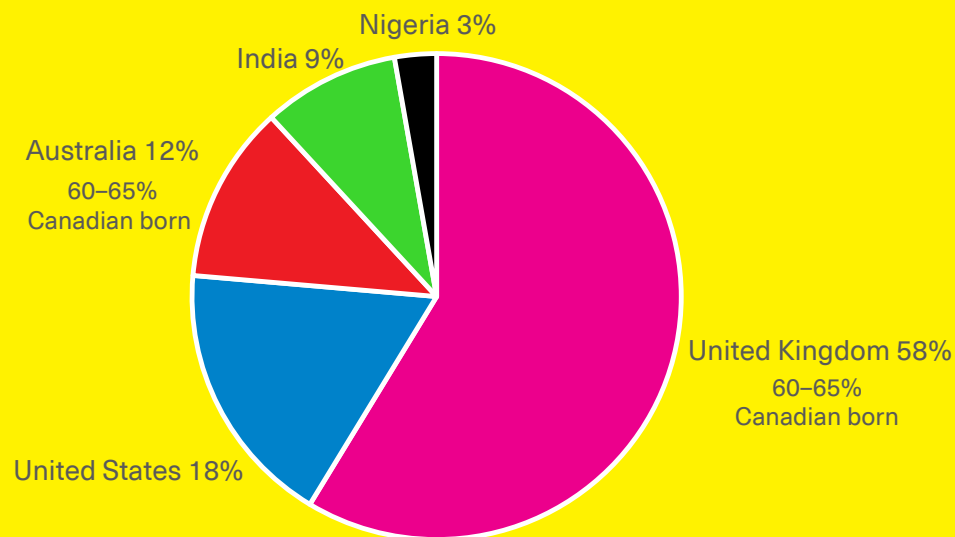
- **Education:** Quebec-educated lawyers, or lawyers from civil-law jurisdictions, have not been educated in the Canadian common-law system, and may struggle especially with the exams. It is notable, for instance, that the number of Quebec exam takers who pass the bar on their first attempt is roughly 50 percent, which is well below the percent of students who pass on their first attempt when educated in foreign jurisdictions with common-law systems comparable to Canada's — namely, the United Kingdom, the United States and Australia.
- **Study time:** In Ontario, law students typically devote many weeks to studying for their licensing exams. Their employers will often accommodate their schedules by asking students to start work after their exam dates. Foreign lawyers operate outside of this "schedule." Many work full- or part-time jobs while trying to study and many cannot afford to take time off work.
- **Exam indexes:** In Ontario, law students often approach exam preparation collectively and strategically. They form study groups, and divvy up responsibility among themselves for

²¹ The NCA outlines this information in syllabi.

²² See <http://flsc.ca/national-committee-on-accreditation-nca/meeting-the-assigned-requirements/completing-nca-exams/>.

²³ The GPLLM is also open to professionals who do not wish to become licensed to practise law, but who want to obtain a professional graduate-level legal education in the Canadian common-law tradition.

Figure 2: Top Five Countries of Training for Internationally Trained Applicants



Source: LSUC (2017, 20). Reprinted with permission.

creating detailed exam indexes. These indexes are valuable resources during the exams, enabling students to quickly locate the correct answer to questions in their voluminous bar materials. Foreign lawyers frequently study in isolation. Some purchase exam indexes online from strangers, with little assurance as to their quality. Others write the exams without detailed indexes. Some endeavour to prepare their own indexes, thereby devoting less time to learning the material.

- **Language:** For many immigrant and Quebec exam-takers, English is not their first language. The exams test reading and comprehension abilities. It would be very difficult to perform well on the exams within the allotted time without complete fluency in English.

- **Aptitude:** Some foreign-educated lawyers may lack the aptitude to pass these exams. Many foreign-educated lawyers are Canadian citizens who went abroad for their legal studies (see Figure 2). Presumably, many of these students were unable to gain admission to Canadian law schools, which require applicants to demonstrate strong academic and LSAT records. It stands to reason that some of these students — as well as immigrants coming from jurisdictions with laxer admission standards to their legal programs — may lack the aptitude to succeed on these exams.

Experiential Requirement

Internationally educated lawyers must fulfill an experiential requirement, unless they can qualify for a complete or partial exemption based on their previous work experience.²⁴

²⁴ In Ontario, Alberta and Quebec, internationally trained applicants can be exempted from this requirement if they have sufficient professional experience. In British Columbia and Manitoba, applicants can have the articling term reduced by as much as one-half if they demonstrate equivalent experience. See OFC (2010).

**Figure 3:
Applicants by
Education Path**



Source: LSUC (2017, 18). Reprinted with permission.

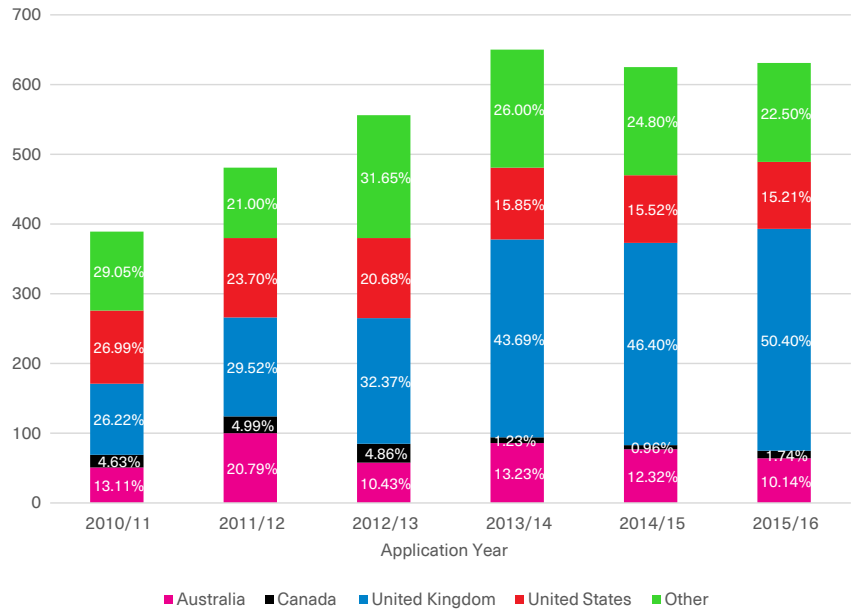
Foreign entrants often struggle to line up articling positions. There are a number of reasons for this. They are either unable or ineligible to participate in summer or articling recruitment processes. Employers often favour Canadian applicants because they are familiar with the quality of their legal credentials, and are confident they understand Canadian law. Foreign students are also less likely to meet prospective employers and form professional contacts.

Ontario's LPP enables internationally educated lawyers to satisfy the experiential component if they cannot secure articling positions. Many are taking this path: approximately 50 percent of the students in the LPP are foreign educated. Ontario is currently the only province to offer this kind of alternative to articling, which could create its own challenges if it disproportionately incentivizes foreign lawyers to seek licensure in Ontario, when the labour market does not warrant increased demand for legal services.

Presence in Canada

None of the provinces require individuals to be citizens or permanent residents of Canada in order to qualify as lawyers in their jurisdictions (OFC 2010). Many of the licensure steps can be completed outside of Canada, including submitting an application to the NCA, registering with a law society for the licensing process and, in some cases, completing one's articles. Candidates must, however, be physically present for certain functions, such as writing the NCA exams and licensing exams and, in some provinces, attending a province's call to the bar ceremony.

Figure 4: Country of Training for Internationally Trained Applicants



Source: LSUC (2017, 19). Reprinted with permission.

Table 3: Three-year Aggregate Licensing Examination Results by Country of Training for Internationally Trained Applicants — First Attempts

	Barrister examination	Solicitor examination
Australia	3-YRS	3-YRS
Number of candidates	220	213
Number passing	146	141
Percent passing	66.36%	66.20%
Canada (Quebec civil-law degree)	3-YRS	3-YRS
Number of candidates	31	28
Number passing	16	12
Percent passing	51.61%	42.86%
United Kingdom	3-YRS	3-YRS
Number of candidates	788	770
Number passing	403	425
Percent passing	51.14%	55.19%
Other international	3-YRS	3-YRS
Number of candidates	408	393
Number passing	139	171
Percent passing	34.07%	43.51%
United States	3-YRS	3-YRS
Number of candidates	268	269
Number passing	197	187
Percent passing	73.51%	69.52%

Source: LSUC (2017, 30). Reprinted with permission.

RECOMMENDATIONS

The purpose of the licensing process — for both Canadian and foreign-educated candidates — should be to ensure professional competency. The process should not penalize foreign-trained candidates simply because they are coming from a foreign jurisdiction.

While most of the requirements applicable to international candidates are, on their surface, equivalent to the standards imposed on Canadian-educated lawyers, foreign lawyers can be uniquely disadvantaged by them in various ways. They lack clarity about the licensure process: what will be demanded of them, what it will cost and how long it will take. They lack institutional and social support when preparing for exams, which use examination methods that are often unfamiliar to foreign students. They operate outside of the campus hiring processes that facilitate Canadian law students' entry into the legal market. They face skeptical prospective employers, while also often lacking the learned social behaviours one needs to impress them. They are often working full-time, low-paying jobs while trying to meet all of these exacting, expensive requirements.

This section makes a series of recommendations for how unnecessary barriers to licensure and employment for foreign lawyers could be mitigated or removed. The recommendations are organized around the different stages of immigration, licensure and employment. Since many of the challenges can be best understood from the vantage point of lawyers in the system, this section shares some individuals' experiences, and their recommendations for how the process can be improved.

Transparency around Immigration, Licensure, LL.M. Programs

Nakul Kohli is a 29-year old Indian citizen and permanent resident of Canada. He studied business and law for five years at Symbiosis Law School, one of India's top-ranked, integrated law programs. After graduating, he worked as in-house counsel at a mining company for several years, before deciding to immigrate to Canada to join his sister, who was studying dentistry at the University of Western Ontario.

Prior to moving, Nakul spoke to a couple of people in the legal profession, as well as representatives of Osgoode's LL.M. for foreign lawyers (in which he enrolled). No one informed him about the NCA exams, licensing exams or articling requirements, he said, or the fact that almost all of the job opportunities for foreign lawyers are outside of the legal profession.

This is indeed where Nakul finds himself now. He works in transfer pricing at international accounting firm PwC. Fortunately, he really likes the job, and wasted little time pursuing legal work after starting his LL.M. — he realized he wanted to work in transfer pricing, and would almost certainly be unable to secure an articling position.

When asked about the value of Osgoode's LL.M. to his career, he said it definitely helped him line up law-related internships, which ultimately led to his current employment. But, he also noted that students who hoped to get articling positions through the LL.M. tended to be disappointed.

Recommendations:

- **Increase labour market awareness.** The government should require foreign-educated immigrants to read and certify their understanding of a labour market report discussing current and projected labour market trends for their respective professions.²⁵ The government could provide both national and province-specific reports,²⁶ to ensure immigrants are making educated decisions about where to settle within Canada. Immigrants should be required to certify that they have read and understood these reports before they immigrate, said Gerrit Nieuwoudt, a former director of policy at Canada's Office of the Minister of Citizenship and Immigration.
- **Improve NCA transparency.** The NCA should provide candidates with an estimated timeline for obtaining a Certificate of Qualification, which the NCA could provide after conducting a preliminary assessment of a candidate's file. Numerous NCA candidates expressed frustration with the opacity of the NCA's "case-by-case" approach, which leaves candidates uncertain about the number of NCA exams they will be required to write and the total amount that these exams will cost them.
- **Publish pathways reports.** Every law society should publish a "pathway" report, which sets out the law society's process, individual and aggregate estimated costs, and expected timeline for achieving licensure. Some law societies already publish pathways documents, but these often fail to disclose pertinent information (such as timeline and aggregate costs). Law societies should also have phone conversations with registrants. Nakul noted, "Immigrants need to be prepared to sustain themselves without professional work for two to three years."
- **Disclose LL.M. job prospects.** Law faculties that offer LL.M. degree programs for foreign-educated lawyers should be more transparent about the

types of jobs students are likely to secure.²⁷ "Osgoode says everyone finds a job," Nakul noted, "but they don't tell you what type: some people work for free, some people have to work at small firms and some people don't work in law." Given the price tag of these programs, disclosure about job prospects seems especially warranted.

- **Improve settlement services.** The federal and provincial governments should mandate immigration settlement service providers to work with foreign-educated immigrants to ensure they are familiar with labour market conditions and licensure and language requirements, and to assist them with satisfying as many of these requirements as possible prior to immigrating.

NCA Process

David Ben obtained his civil-law degree in France's competitive legal system, and practised for almost 10 years in Paris and London before coming to Canada in 2011. He completed the University of Toronto's LL.M. program, which, at that time, did not help foreign lawyers fulfill their NCA requirements. Despite completing advanced contract and tort law courses in that program, and having extensive work experience with international law firms, David is still working toward obtaining his law license in Canada today (he did return to the United Kingdom for a couple years after completing his LL.M.).

Now, David splits his time between driving for Uber and studying for the nine NCA exams he is required to write, which will set him back roughly \$3,500. Notwithstanding that he's a University of Toronto alumni, he is not allowed to sign out any of the faculty's books to study, and he cannot afford to purchase the pricy textbooks himself. "There is no financial support or help to prepare," he said. "There is nothing to help foreign lawyers; there is a Facebook group...and the people on Facebook are trying to sell you their notes."

²⁵ The requirement for immigrants to certify understanding of labour conditions was one of the most common recommendations made by foreign-educated lawyers, immigration policy advisers, immigration lawyers and law professors.

²⁶ See, for example, Prism Economics and Analysis (2016).

²⁷ Almost every lawyer who went through an LL.M. program for foreign lawyers made this comment.

Nakul agreed. “The exams here are much different than the ones in India,” he noted. “I failed the first two exams; after I finally sat down with someone who’d written them, I was able to pass. [The fact-pattern testing method] was just a different approach to writing and thinking through the questions.”

Recommendations:

- **Offer NCA preparatory materials.** The NCA should provide affordable and electronically accessible study materials to NCA candidates once they register for course exams. The NCA should provide the materials and course instruction online,²⁸ to enable candidates to begin learning the materials prior to immigrating.
- **Provide NCA exam support.** The NCA should publish examples of model NCA exam answers, and should offer exam-writing tips through online videos. Canadian law students learn how to write the fact-based law exams with guidance from their professors, access to model precedents and the benefit of study groups. The NCA could also host an online forum on its website that NCA candidates could use to communicate and make arrangements to study in person.
- **Offer micro-loans.** The federal and provincial governments should offer micro-loans to eligible foreign-educated immigrants to enable them to move expeditiously through the licensing process. Loans should be scalable to the aggregate costs of licensure for an immigrant’s profession, enabling individuals to cover the costs of study materials, preparatory courses, exam fees, licensure fees and living costs during study periods.²⁹ The \$5,000 bursaries available to international professionals through the Ontario Bridging Participant Assistance Program is a good example of this kind of bridge financing, although \$5,000 would not be adequate to cover the total costs of the legal licensure process.

While aggregate costs will vary based on the number of NCA exams a candidate is required to write, the person’s method of preparation, the articling program/LPP fees and the number of times a candidate must write the licensing exams, the costs can easily range between \$7,500 and \$10,000.³⁰

NCA Exams

Howard Anglin grew up in Victoria, BC. After completing his undergraduate degree at McGill University, he moved to New York to study law at New York University, one of the top law schools in the United States. After graduating, he practised for eight years at firms in New York, London and Washington, and clerked for one year at the Ninth Circuit Court of Appeal, a position that is about as prestigious as landing a coveted Supreme Court of Canada clerkship in Canada.

Notwithstanding that he was educated in a common-law program and has extensive work experience in the world’s top common-law jurisdictions, when Howard returned to Canada in 2011, he was required to write the NCA’s five mandatory exams. Studying for these exams was like taking full law courses, he noted, while also working full time.

Recommendations:

- **Reconsider the mandatory exam minimum.** The Federation of Law Societies should reduce the number of mandatory NCA exams it requires eligible applicants to write, and/or should exempt applicants from all or some of the mandatory exams on a case-by-case basis. Candidates from leading common-law jurisdictions or law schools, for example, might be exempted from the requirement to write the contract law exam, since this area of law is similar to UK and US contract law. Or, candidates who took Canadian law courses at foreign law schools (some Australian and UK law schools frequently offer these) might

²⁸ NCA candidates also have the option of enrolling in Osgoode’s NCA online exam preparation courses.

²⁹ See <http://ort.fairnesscommissioner.ca/report.php?qid=25&year=2014>.

³⁰ See <http://www.lsuc.on.ca/licensingprocess.aspx?id=2147489426>.

Studying for these exams was like taking full law courses, he noted, while also working full time.

qualify for exemptions from applicable NCA exams on a case-by-case basis. “I thought that the NCA requirements were a little too much,” said Ethan Pollock, a graduate of Queen Mary law school: “The criminal law requirement was just a repetition of most of what I learned in London.”

- **Eliminate unnecessary NCA exams.** The Federation of Law Societies and fairness commissioners should consider why the NCA can mandate candidates to write exams that are not mandatory in Canadian law schools, including Business Organizations, Commercial Law, Civil Procedure, Taxation, Remedies, Family Law, Evidence and Trusts. Candidates should have the option of taking courses in these subject areas if they think it would be helpful to their practice here, but should not be required to take courses that are not mandatory for Canadian law students.

Licensing Exams

Raj Badami³¹ is an Indian citizen and a Canadian permanent resident. He did his law degree at Guru Nanak Dev University, in Punjab, India, and worked for several years as a litigator on criminal and civil cases before immigrating to Canada. He enrolled in a two-year legal office assistant training program at Centennial College in Toronto to learn the basics of Canadian law. After obtaining his diploma, he landed a four-month, unpaid internship at a law firm.

A year or so later, Raj started working toward becoming a licensed lawyer. He passed all the NCA exams without difficulty, and qualified for an exemption from the articling requirement on account of his work experience back home. The bar exams were trickier though. “I failed the first time,” he admitted, “I was working full-time as a legal assistant; it was hard to find the time to study.” He was also only making \$15 per hour as an assistant, so it was a strain to register for the exams again.

But after some reflection, he decided to write them one more time. “How long am I going to work as a legal assistant,” he thought, “when I’m trained as a

31 Name has been changed at the interviewee’s request.

lawyer?” He passed the second time around, and his employer hired him on as a lawyer shortly thereafter.

Recommendations:

- **Offer exam preparatory courses.** The Ontario and BC law societies should offer optional licensing exam preparation courses, either directly or through an endorsed third-party provider. These courses should be optional, but open to Canadian and internationally educated lawyers. The courses would help to ensure exam-takers actually understand the materials that the law societies deem core to competency, and would also provide students with a supportive study community.
- **Publish exam indexes.** The LSUC should provide all registrants with detailed licensing exam indexes, which could be brought into the licensing exams. This would ensure exams test students’ understanding of the materials, and not their ability to prepare excellent exam indexes. Currently, success on Ontario’s licensing exams depends to a great extent on the quality of the exam indexes students are able to create. Canadian law students are able to prepare these indexes in large study groups, while foreign lawyers must either prepare for them on their own, go without them or buy them from strangers.
- **Waive exam fees.** The Ontario and BC law societies should waive — or provide a structured payment plan for — licensing exam fees for candidates who can demonstrate serious financial need. In Ontario, it costs \$1,500 to write the solicitor and barrister exams, and \$2,800 for the articling program/LPP fee. In British Columbia, it costs \$2,890 to register for the full bar admissions program, which includes the fees for the licensing exams. Canadian law students frequently have these fees paid for by their employers. Foreign lawyers are far less likely to line up articling positions, and far less likely to have these fees covered. The inability to cover

these costs could delay or prevent some foreign lawyers from completing the licensing process.

- **Ensure English proficiency.** The NCA, law societies and immigrant settlement agencies should inform foreign-educated lawyers as early as possible in the immigration process that English proficiency is essential to success in the licensure process, and should publish language test scores that guide immigrants on the level of proficiency they need to achieve.

Experiential Requirement

Salma Malik³² is a Pakistan citizen and permanent resident of Canada. She attended law school at Punjab University and practiced for eight years in her father’s law firm before moving to Canada a few years ago to do her LL.M. at Osgoode. She decided she wanted to stay in Canada, so she completed her NCA exams and — on the advice of some lawyers — decided to article (rather than applying for an exemption) to get some Canadian legal experience.

Osgoode’s LL.M. program did not help her line up an articling position, and she was unable to find a placement on her own. “Networking is really important in Canada in terms of employment opportunities,” Salma noted. “In Pakistan, it’s a segregated society: men and women are not on equal footing, so I was lacking the social skills when it came to networking.” She said she’s become a lot better at it, but still finds she does not socialize with others as easily as Canadians seem to.

Salma ended up enrolling in Ryerson’s LPP program in August 2015. Through it, she landed a four-month work placement at a real estate law firm in Mississauga that paid just above minimum wage. It was not her first choice, she admitted, but she was happy to work somewhere.

32 Name has been changed at the interviewee’s request.

Recommendations:

- **Open legal associations.** Legal associations should provide discounted membership fees for law students, NCA candidates, articling students and LPP participants. As mentioned above, Salma recognized the importance of networking, but said “I was financially constrained to join groups like the OBA that require paid memberships.” For law students at least, she suggested, these associations should provide opportunities to make connections with the legal community.
- **Offer professional mentorship.** Provincial bar associations and/or law societies should offer mentorship programs that partner licensed Canadian lawyers with foreign-educated ones. Miriam El Ofir applied three times to be matched with a mentor through a number of law associations, but was never paired with anyone. The responsibilities of mentors would not need to be onerous, she noted. “We just need someone who we can approach with questions, and who can help us access a professional network.”
- **Expand articling alternatives.** The LPP program should be continued in Ontario in light of its important role in ensuring foreign-educated lawyers are able to achieve licensure. Law societies in other jurisdictions should consider offering alternatives to articling as well, or potentially partnering with Ontario’s LPP providers — Ryerson University and the University of Ottawa — and having these universities provide the LPP to out-of-province law candidates. This approach would realize economies of scale, and would mitigate the risk of foreign-educated lawyers choosing to practise in Ontario on account of the LPP articling alternative (rather than labour market demands).

Entering the Job Market

Matthew Fleming is a partner in the Toronto office of Dentons LLP, a global law firm. A few years ago, Dentons partnered with the Toronto Region Immigrant Economic Council Mentorship Program, which helps immigrant professionals find employment. Matthew, along with a number of other lawyers and staff members at the firm, started volunteering with the program.

About once a year, Matthew mentors a foreign lawyer, usually meeting with the person every week or two for approximately four months. Matthew helps these lawyers with their resumes, making sure they conform to Canadian employers’ expectations. He also helps mentees draw out their expertise and present their foreign experience in the best possible light.

Prior to job interviews, he will do mock interviews with mentees (and will rope his colleagues in for help as well). His goal is to get foreign lawyers prepared for the types of questions lawyers are likely to be asked in Canadian interviews.

As part of its commitment to diversity, Dentons also tries to hire one foreign lawyer each year into its articling program. For a global firm, it makes good business sense to do so, given that foreign lawyers often have impressive international work experience, and are fluent in multiple languages.

Recommendations:

- **Provide job advice.** Law firms and legal employers should partner with employment agencies, law associations or settlement service organizations to help mentor foreign lawyers, in particular to help them emphasize their prior work experience on their resumes and in interviews. “We want people with experience,” said Chris McKenna, the recruitment officer at Bennett Jones LLP. “It helps if someone’s worked at a firm or company with a recognizable name. If that hasn’t been someone’s experience, applicants need to figure out how to differentiate themselves.”

- **Equalize application opportunities.** Firms should encourage or require job applicants to apply through an online common portal that is accessible to applicants outside of the summer or articling student recruitment processes. Some Toronto law firms, for example, have started to require candidates to apply through VI Portal. These kinds of portals not only make it easier for candidates to submit applications, they can “also level the application field,” said Shannon Leo, a recruitment officer at Cassels Brock LLP.

Quasi-legal Roles

Stephen Green is one of the founding partners of an immigration law firm in Toronto. Like most law firms, his firm employs paralegals that are trained to assist lawyers with legal tasks, such as appearing before small claims courts, provincial boards and agencies on certain matters.

Stephen also employs a woman with a law degree from Israel who is not licensed to practise law in Ontario. The absurdity of being able to send his paralegals off to court but not this trained lawyer is not lost on him. “The legal industry needs to take a look at the paralegal industry’s regulations,” he said. There may be opportunities to enable foreign-educated lawyers to qualify as paralegals.

Recommendations:

- **Track non-licensed lawyers.** Law societies should track the labour market outcomes of lawyers who do not end up in law, to inform policy making. National household and labour force surveys tend to be too general to provide this information; regulatory bodies’ administrative data and membership surveys likely provide the best opportunity to gain insight into the market status of these “lost” lawyers. Understanding the types of employment opportunities that non-licensed, foreign-educated lawyers pursue could be used to inform government and regulator policy making.

“Networking is really important in Canada in terms of employment opportunities.”

“The legal industry needs to take a look at the paralegal industry’s regulations,” he said. There may be opportunities to enable foreign-educated lawyers to qualify as paralegals.

- **Fast-track pathways to quasi-legal qualifications.** Professional regulators³³ and fairness commissioners should consider whether a “fast track” could be created for foreign-educated lawyers to become licensed paralegals or qualified legal office assistants. According to immigration lawyer Chantal Desloges, it would be nice if there were quasi-legal careers where foreign-educated lawyers could be involved as a paralegal or consultant, to ensure these “people can get their foot in the door and see how the practice of law differs [in Canada].”

Access to Justice

After completing Ryerson’s LPP program in April 2016, Salma Malik was called to the bar in Ontario, and by September 2016, had been hired as an associate in a small firm in Elliot Lake, a town of 11,000 people in northern Ontario. Salma had not expected to work in northern Ontario, but when she had not heard back from the Mississauga-based real estate law firms she had applied to, she decided she could not afford to wait around any longer.

A year into her position, Salma spoke enthusiastically about the job. The community is laid back, she says, and the people are very nice. She’s also gained a wide range of practice experience. In addition to handling real estate and estate matters, she is now also doing legal aid work, acting as duty counsel and accepting cases from Ontario’s Office of the Children’s Lawyer. “So far it’s been a wonderful experience,” she said.

Salma wants to return to Toronto eventually for personal reasons. When she does, she will be capable of serving a far broader range of clients than she would have if she had joined a firm in the Toronto area right after being called to the bar.

For years, Canada’s legal profession has been wrestling with how to improve access to justice for Canadians who have modest legal needs in areas such as family, immigration, real estate, estates,

³³ Since 2007, the LSUC has been the regulator of the paralegal profession in Ontario.

criminal and civil law. Salma's experience provides one solution: lawyers can learn to meet these needs, if they are given the opportunities to do so.

Recommendations:

- **Train lawyers to run law firms.** Canadian law schools or law societies should offer intensive seminars or short legal clinics that instruct interested law students and foreign lawyers on how to run their own law practices, bring in legal work (including through legal aid or other government service providers) and perform basic legal tasks commonly required in small legal practices.
- **Consider unconventional job opportunities.** Foreign lawyers who are keen to practise law should consider accepting legal opportunities in less conventionally desirable markets, at least as a way of getting experience and building professional contacts.

Fairness Commissioners

In 2006, Ontario became the first jurisdiction in the world to pass fair access legislation,³⁴ which aims to narrow the gap in licensing and employment outcomes between Canadian and foreign-educated professionals. The legislation led to the creation of the OFC, which is mandated with ensuring everyone who is qualified to practise in a regulated profession or trade in Ontario can get a licence to practise.

The OFC encourages regulators to identify "acceptable alternatives" for meeting licensing requirements. It also conducts biennial assessments of each regulator, reviewing their registration practices, making recommendations and monitoring implementation (Augustine 2015a). The OFC is governed by two key principles:

- all requirements for licensing should be relevant and necessary to the practice of a profession; and
- competencies are more important than credentials.

Manitoba,³⁵ Nova Scotia³⁶ and Quebec³⁷ have all passed fair access laws and appointed fairness commissioners as well.

Fair access legislation and commissioners appear to be having a positive impact. Ontario experienced sizeable growth in internationally educated license holders in the five years following the implementation of its fair access legislation, as well as slightly improved match rates for immigrant professionals (Augustine 2015b).

Recommendations:

- **Extend fairness commissioners' reach.** The large provinces that currently do not have a fairness commissioner — British Columbia, Alberta and Saskatchewan — should consider creating similar offices. The Atlantic provinces might benefit from having a fairness commissioner that is responsible for overseeing the entire region.
- **Expand the fairness mandate.** Provincial governments should consider expanding the mandate of fairness commissioners to look beyond licensing barriers to employment barriers as well. A 2014 study revealed that the OFC may have been responsible for the increase in licensing rates for internationally trained lawyers, but that this did not necessarily translate into higher employment rates, which suggests that merely breaking down barriers at the licensure stage may not be enough to level the playing field.

³⁴ The Fair Access to Regulated Professions and Compulsory Trades Act, 2006, requires regulators to ensure that their registration practices are transparent, objective, impartial and fair.

³⁵ Manitoba's fairness commissioner began work in 2008.

³⁶ Nova Scotia's review officer began work in 2012.

³⁷ Quebec's complaints commissioner began work in 2010.

CONCLUDING REMARKS

As Gervan Fearon, the dean of the G. Raymond Chang School of Continuing Education at Ryerson University, noted in 2013: “If we were talking about running a major Canadian corporation or Canadian agency, or...running some of our elite programs in Canada, not for a second would we ask, “Where is that person from?” We would ask, “Can this person make the best contribution to the organization, to society?” And, in some sense, that should be the same language that we apply to our internationally educated professionals in Canada.”³⁸

Currently, Canada’s legal system is not structured to ensure all competent lawyers — regardless of their jurisdiction of training — are able to make their best contribution to Canadian organizations and society. To far too great an extent, Canadian licensing and employment processes present obstacles to foreign individuals practising as lawyers, whether it is by layering on hefty licensure fees while turning a blind eye to the financial constraints they face, or offering them expensive educational programs without disclosing their slim odds of landing legal jobs through them, or ignoring the difficulties they face passing exams when they are offered little guidance on how to succeed on them.

Of course Canada must ensure its licensing and hiring processes verify that lawyers from Canada and abroad are competent. No one is suggesting otherwise. But a profession that is committed to ideals like justice and equality should not be comfortable with so-called entry processes that really function as walls — walls that make it difficult for talented outsiders to get in.

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³⁸ See www.fairnesscommissioner.ca/index_en.php?page=highlight/protection_or_protectionism.

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ACRONYMS AND ABBREVIATIONS

ICC	Institute for Canadian Citizenship
LPP	Law Practice Program
LSAT	Law School Admission Test
LSUC	Law Society of Upper Canada
NCA	National Committee on Accreditation
OCI	On-Campus Interview
OFC	Office of the Fairness Commissioner

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