



Experiential Training Enhancements

Professional Development and Competence Committee

November 26, 2021

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Note: Parts 1 - 3 of the Motion were approved at Nov. 26 Convocation. Part 4 of the motion was deferred to a future Convocation.

Motion

That Convocation replace the enhancements to the experiential training component of the lawyer licensing process, as approved by Convocation in December 2018, with the following measures recommended by a majority of the Professional Development & Competence Committee:

- 1) The Law Society will develop an orientation program for articling principals, work placement supervisors, and licensing candidates to facilitate effective and fair experiential training, to be encouraged rather than mandatory;
- 2) The Law Society will leverage the new Bridge to Practice platform to foster entry-level competence and skills by developing free training modules designed for candidates and new lawyers and focused on filling the identified gaps in articling placements such as practice management and client communications;
- 3) The Law Society will apply a risk-based approach to monitoring of experiential training by initiating outreach to both the candidate and the principal where placements end prematurely; and
- 4) The Law Society will adopt a best practices approach to compensation which encourages rather than requires that all experiential training placements be paid, which may be achieved by the following measures:
 - a. Continuing to require that postings on the Articling Registry be paid;
 - b. Requiring disclosure of salary of information on articles of clerkship;
 - c. Striving for more paid work placements in the Law Practice Program and Programme de Pratique du Droit; and
 - d. Collecting and reporting data on compensation ranges to allow candidates to make informed choices as they progress through the licensing process.

Executive Summary

In 2017, the Law Society of Ontario (“LSO”) engaged in a review of the lawyer licensing process with the goal of making long-term recommendations for an effective and sustainable licensing system for lawyers in Ontario. The review was extensive, spanning nearly two years and involved a Dialogue on Licensing with lawyers, licensing candidates, law students, and other stakeholders to gather a variety of perspectives. The Dialogue on

Licensing placed emphasis on assessing the efficacy of the experiential training component of the lawyer licensing process and identified the following concerns about the Articling Program:

- The Articling Program does not ensure consistent, high quality experiential training across all placements;
- Candidates are reporting harassment, discrimination, and mistreatment during articles; and
- Some articling placements do not provide adequate remuneration, creating unfair and potentially exploitative working arrangements.

In December 2018, Convocation approved recommendations to maintain multiple experiential training pathways in the licensing process, with enhancements aimed at providing greater regulatory control of the experiential training process. The enhancements consisted of mandatory minimum compensation, placement audits, and mandatory training and orientation for principals and supervisors.

The experiential training enhancements were to be in effect as of May 1, 2021. Implementation of the enhancements was underway when the COVID-19 pandemic interrupted normal operations across all sectors in March 2020. For the balance of 2020, transitioning the licensing examinations to online delivery to ensure continuity of the licensing process throughout the pandemic became a priority, and implementation of experiential training enhancements was put on hold.

Current data and feedback indicate that the concerns identified in 2017 continue to exist. The Professional Development & Competence Committee (“Committee”) recognizes that, as the regulator of principals and supervisors as well as licensing candidates, the LSO has a responsibility to address these concerns as they impact both the newest members of the legal profession and the public interest in access to competent lawyers. The Committee has reviewed and considered the 2018 recommendations in light of the ongoing economic impacts of the pandemic on the legal sector. A majority of the Committee has determined that candidates, the profession, and the public are better served by adopting a new package of experiential training enhancements that will replace the original enhancements. The new package of enhancements builds on aspects of the original enhancements but is framed around creating supports for principals, supervisors, and candidates rather than increasing regulatory requirements at a time of ongoing uncertainty. In particular, the Committee has been focussed on enhancements that better position candidates for success as they launch their legal careers, and on creating tools that will be useful to candidates, principals, and supervisors in their interactions with one another and in their own practices. However, a majority of the Committee recognizes that

improving the quality of experiential training must be balanced against the prospect of losing placements if obligations on principals and supervisors become onerous.

The new package of enhancements consists of the following measures:

1. The LSO will develop an orientation program for principals, supervisors, and candidates to facilitate effective and fair experiential training. The program will be encouraged rather than mandatory. It will aim to ready candidates for the realities of the legal workplace and will inform principals and supervisors about current best practices in mentoring and managing others.
2. The LSO will leverage the new Bridge to Practice platform to foster entry-level competence and skills through free training modules designed for candidates and new lawyers. The modules will focus on filling the identified gaps in articling placements and will address topics such as practice management and client communications that are often the basis of regulatory intervention or negligence claims.
3. The LSO will apply a risk-based approach to monitoring of experiential training by initiating outreach to both the candidate and the principal where placements end prematurely.

The cost of investing in these new enhancements is modest whereas the returns are potentially significant. The orientation program will prepare principals, supervisors, and candidates for an effective placement. The new Bridge to Practice content will equip candidates and new lawyers who are starting their practices with hands on learning opportunities in practice management and client service. Risk-based monitoring will enable the LSO to focus on remediating or removing the most problematic placements.

A majority of the Committee recommends that the LSO encourage rather than require mandatory minimum compensation for experiential training. This view is driven by a concern that this requirement will reduce the number of placements in a market where the supply of placements continues to lag significantly behind the increasing number of candidates seeking to become licensed each year, and where there is now a demonstrated preference for shorter placements as a result of the pandemic.

A majority of the Committee recommends that Convocation adopt a best practices approach to compensation in which the LSO signals to the profession that experiential training should be paid, even in the absence of a formal rule or requirement. The LSO could achieve this by:

- Continuing the policy that only paid placements be posted on the LSO's Articling Registry;
- Requiring that articling principals disclose proposed salary in the articles of clerkship that are filed with the LSO at the start of the placement;
- Working with Law Practice Program and Programme de Pratique du Droit providers to strive for more paid placements; and
- Reporting on compensation ranges for different experiential training pathways and legal employment settings to allow candidates to make informed choices as they progress through law school and the licensing process.

While a majority of the Committee supports the new package of enhancements, a minority of the Committee remains in favour of implementing the original enhancements approved by Convocation in December 2018. The minority view is that the original enhancements were the result of significant research and consultation and remain responsive to concerns about the Articling Program. The minority view is that the original enhancements were themselves a compromise and do not create onerous obligations on principals and supervisors.

Background

1. Multiple Experiential Training Pathways

The LSO has been periodically reviewing and adjusting the lawyer licensing process over the past two decades. These reviews have been necessary, in part, to respond to ongoing concerns about the efficacy of the Articling Program. Historically, these concerns centred around a lack of sufficient supply of articling placements and inconsistent quality of training in articling placements. This “articling crisis” drove a series of policy reforms over the last several years, all aimed at ensuring that the regulatory requirement for experiential training remains both defensible and effective at ensuring entry-level competence in the public interest.

As a result of these reforms, the LSO now has multiple pathways for fulfillment of the experiential training component of the lawyer licensing process: the Articling Program, as well as two newer pathways: the Law Practice Program/Programme de Pratique du Droit, and the Integrated Practice Curriculum. The new pathways have been overtly designed to provide candidates with consistent practical training and to avoid some of the deficiencies inherent in the Articling Program. All pathways are anchored to the LSO's experiential training competencies¹ through the development of practical legal skills and include a

¹ <https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/experiential-training-competencies>.

placement component to facilitate mentoring relationships with more senior lawyers and exposure to the legal work environment:

- **Articling Program** – Candidates complete a 10-month² placement with an approved articling principal to gain exposure to the experiential training competencies and develop lawyering skills. National articles, international articles, joint articles, and part-time articles are permitted. Approximately 85% of candidates pursue this pathway each year.
- **Law Practice Program (“LPP”) and Programme de Pratique du Droit (“PPD”)** – The LPP and PPD were created in 2014. The LPP and PPD are eight-month programs offered at Ryerson University (English) and the University of Ottawa (French), respectively. The PPD is particularly focussed on enabling the competent provision of legal services in French and facilitating access to justice for French speaking Ontarians. These programs consist of a four-month training course where candidates learn practical lawyering skills in a simulated law firm environment, followed by a four-month work placement with an approved supervisor. The LPP and PPD are part of the LSO’s licensing process and are completed after graduation from law school. On average, approximately 10% of candidates complete this pathway each year.
- **Integrated Practice Curriculum (“IPC”)** – The LSO has approved two new law schools on the basis of their integrated practice curricula: the Bora Laskin Faculty of Law at Lakehead University and the Lincoln Alexander School of Law at Ryerson University. The Lakehead IPC began in the fall of 2013 and the Ryerson IPC began in the fall of 2020. IPC programs integrate skills training throughout the three-year law degree program and have the added benefit of reducing the amount of time and financial investment required for licensure. Through practically oriented pedagogy, hands-on assignments, and a four-month work placement with an approved supervisor, candidates in these programs fulfill the experiential training component of the licensing process during law school and do not have to article or complete the LPP/PPD to become licensed. The Lakehead IPC admits 65 candidates per year, and the Ryerson IPC admits approximately 150 candidates per year.

Other Canadian law societies contending with similar challenges with their articling programs are now seeking to emulate some of the LSO’s experiential training innovations.

² The minimum length of articling has been reduced to eight months during the pandemic.

At least two other jurisdictions are exploring alternative pathways in their admissions processes.³

The employment outcomes of all pathways are comparable, with approximately 80-85% of candidates employed in a law related capacity one year after their call to the bar.

Notwithstanding the availability of multiple pathways, the Articling Program continues to be the dominant pathway for experiential training, and it continues to present challenges.

2. Dialogue on Licensing

The LSO's most recent review of the lawyer licensing process took place in 2017. The goal of the review was to make long-term recommendations for an effective and sustainable licensing system for lawyers in Ontario. The review was extensive, spanning nearly two years. It included a Dialogue on Licensing ("DOL"), which involved facilitated discussions with lawyers, licensing candidates, law students, and other stakeholders across the province about the realities and challenges of licensing, and a subsequent call for input on proposed options for lawyer licensing. See Tab 2.1 for "Options for Lawyer Licensing: A Consultation Paper" (May 2018).

The review and consultation centred largely on the efficacy of the two main experiential training pathways: the Articling Program and the LPP/PPD. As part of the DOL, in the spring of 2017, the LSO conducted an Articling Experience Survey ("Articling Survey")⁴ to gather information from candidates and new lawyers about a broad range of issues related to the quality and effectiveness of the articling program. Approximately 20%⁵ of respondents to the Articling Survey indicated that they had experienced discriminatory comments or conduct and/or differential treatment based on personal characteristics during their articles. Candidate feedback during the DOL and through the Articling Survey also highlighted that some articling placements do not provide adequate remuneration, exacerbating power imbalances and creating potentially exploitative working

³ The Law Society of Alberta and the Law Society of British Columbia are both reviewing their licensing processes. For more on this, see section C. Environmental Scan.

⁴ The LSO commissioned the Articling Survey from Dr. Sidiq Ali, Senior Evaluation Consultant of Research & Evaluation Consulting. The Articling Survey was aimed at lawyers who had articulated in 2014-2015 or 2015-2016, and at candidates completing their articling placements at the time of the survey (2016-2017). The Survey was sent to a total of 5,242 targets (3,396 new lawyers and 1,847 articling candidates) and had a response rate of 28.1% (1471 responses).

⁵ A total of 19% (278) respondents reported that they faced discriminatory comments or conduct and 17% (244) respondents reported unequal or differential treatment based on an enumerated ground under the *Code*.

arrangements. A number of other law societies have since conducted their own articling surveys and are encountering similar themes.⁶

Based on stakeholder feedback received during the DOL, further data obtained through focus groups, and subsequent deliberations at the Committee, in December 2018 Convocation approved recommendations to maintain multiple experiential training pathways in the licensing process, with enhancements. These enhancements were primarily aimed at providing greater regulatory control of the experiential training process to address untenable working conditions. They focussed on promoting consistent, quality placement experiences and addressing deficiencies in the experiential training environment that emerged during the DOL. The enhancements were envisioned as being applicable to both the articling and the LPP/PPD pathways and consisted of the following measures:

1. **Mandatory Minimum Compensation** – The LSO would require that all articling and LPP/PPD placements be paid a minimum compensation equivalent to statutory minimum wage to ensure that candidates are earning a living wage. This policy would support equal access to the profession regardless of economic circumstances. Exemptions would be granted based on established criteria for high quality placements that serve vulnerable populations and may not have stable sources of funding to allow for remuneration.
2. **Placement Audits** – The LSO would incorporate audits of articling principals and LPP/PPD work placement supervisors for compliance with experiential training policies and requirements into its Practice Management Review program. The scope of the audits would include confirming the payment of mandatory minimum compensation, ensuring that experiential training competencies are being supported, and assessing compliance with professional obligations to avoid harassment and discriminatory practices.
3. **Mandatory Training and Orientation** – The LSO would require all articling principals and work placement supervisors to complete training modules on topics designed to address the issues raised during the DOL. These include the duties of principals and supervisors to provide exposure to the experiential training competencies, anti-harassment and anti-discrimination obligations, and mentoring and feedback best practices.

⁶ In 2019, the Law Societies of Alberta, Manitoba, and Saskatchewan conducted a survey of articling candidates and new lawyers to better understand the training and mentoring taking place during the articling program. Key challenges disclosed by respondents included inadequate compensation, long working hours, inadequate training and mentorship, and reports of harassment and discrimination.

See Tab 2.2 for the final report, “Options for Lawyer Licensing” (December 2018) for a full description of the considerations that informed Convocation’s approach to the enhancements.

3. Onset of the Pandemic

The experiential training enhancements were to be in effect as of May 1, 2021. Implementation of the enhancements was underway when the COVID-19 pandemic interrupted normal operations across all sectors in March 2020. For the balance of 2020, transitioning the licensing examinations to online delivery to ensure continuity of the licensing process throughout the pandemic became a priority, and implementation of experiential training enhancements was put on hold.

In February 2021, the Committee approved the continuation of online examination delivery for three years, until the spring of 2024. The LSO has made several other adjustments to the licensing process to support candidates, principals, supervisors, and employers through the pandemic. These include:

- Temporarily shortening the minimum duration of articling from 10 months to eight months;
- Providing guidance to employers on best practices for remote supervision of articling and LPP/PPD candidates;
- Creating new payment plan options for licensing process fees and waiving related administrative fees;
- Shipping examination study materials to candidates free of charge; and
- Providing an administrative call to the bar option with a lower fee.

Given that nearly three years have passed since Convocation approved the enhancements in 2018 and the ongoing economic impacts of the pandemic on the legal sector, Convocation is requested to consider a new package of enhancements. A majority of the Committee believes that these enhancements are better suited to promote fair treatment and consistency in experiential training.

Current Status of Experiential Training Pathways

The current status of experiential training pathways provides a backdrop for considering a way forward on the enhancements. The LSO collects data from candidates, principals, and supervisors through a variety of instruments, including the Articling Placement Reporting

Tool⁷ (“Articling Reports”) and the Lawyer Licensure Questionnaire⁸ (“Licensure Questionnaire”). In addition, the Committee has benefitted from direct engagement with the Law Students Society of Ontario (“LSSO”) to obtain the perspectives of Ontario law students on the licensing process and the experiential training enhancements.

As the enhancements were intended to apply to the Articling Program and LPP/PPD pathways, outcomes from the IPC pathway have not been included in this section.

1. Articling Program – Quantity of Placements

As noted above, in April 2020, anticipating the potentially adverse impact of the pandemic on the supply of articling placements, the LSO approved a reduction of the minimum length of articling placements for the 2020-2021 licensing year from 10 months to eight months. In light of continued uncertainty surrounding the impacts of the pandemic on the legal sector, the eight-month minimum for articling has been extended for the 2021-2022 and 2022-2023 licensing years, preserving the ability of employers to offer nine- or 10-month placements if feasible. Similar reductions to the articling term have been permitted in other Canadian jurisdictions in response to the pandemic, including Alberta, Manitoba, Nova Scotia, and Saskatchewan.⁹

Overall, while the supply of articling positions has continued through the pandemic, there have been fewer positions. As Table 1 illustrates, there were approximately 170 fewer articling placements in 2020 than in 2019. The number of placements in 2021 appears to be returning to 2019 levels,¹⁰ however the LSO has seen an 18% increase in the number

⁷ The Articling Placement Reporting Tool collects the mandatory report filed by both articling principals and candidates regarding the level of exposure candidates have had to the experiential training competencies. Principals also use the tool to evaluate candidate performance on five key lawyering tasks: establishing the client relationship, drafting a legal opinion, representing a client in an appearance, demonstrating professional conduct, and the use of practice management systems. As of August 31, 2021, the LSO received approximately 1,330 filings for 2020-2021 articling placements.

⁸ The Lawyer Licensure Questionnaire (formerly known as the Call to the Bar Survey) is administered to all lawyer candidates before they become licensed. The questions are designed to capture candidate perceptions around the licensing process generally, the experiential training program, employment plans, and readiness to practise.

⁹ These jurisdictions have approved shortened articling terms (8 or 9 months) for 2020-2021 placements and in some cases, for 2021-2022 placements. Alberta appears to be continuing with a minimum eight-month articling term indefinitely. Saskatchewan will be considering its long-term policy regarding the length of placements in the coming months.

¹⁰ As articling placements are filed with LSO on a continuous basis, the number of 2021 placements is still evolving and will be fully ascertained in early 2022.

of lawyer candidates seeking licensure over the past five years: in 2016 there were approximately 2,300 applicants compared to approximately 2,730 applicants in 2020. There has not been a corresponding increase in the number of articling placements over the same time period. There are currently over 500 candidates who entered the licensing process within the last three years searching for articling placements.

Table 1 also indicates that there has been an increase in the number of 10-month placements in 2021 compared to 2020, when the majority of placements were eight months in length. To date, approximately 47% of 2021 placements overall have been for the traditional 10-month period. However, the number of eight-month placements continues to be significant—over 27% overall.

TABLE 1
NUMBER AND LENGTH OF ARTICLING PLACEMENTS

Length of Articling Placements	Number of Articling Placements					
	2019 Placements	% of 2019 Placements	2020 Placements	% of 2020 Placements	2021 Placements to date	% of 2021 Placements to date
8 months	66	3.1%	1,029	53.1%	564	27.3%
9 months	55	2.6%	180	9.3%	318	15.4%
10 months	1,593	75.7%	438	22.6%	966	46.7%
Other**	390	18.5%	289	12.5%	219	10.6%
TOTAL	2,104	100%	1,936	100%	2,067	100%

*2021 Articling data is current as of **November 16, 2021**. For comparison purposes, there were a total of **1,861** articling placements on file with the LSO for the same time period in 2020.

**Candidates may apply to the LSO for abridgments from the minimum articling term based on compassionate grounds or prior practice experience that aligns with the experiential training competencies. Abridgments are granted on a case-by-case basis.

As Figure 1(a), below, illustrates, shorter placements remain prevalent in sole and small firms (1-5 licensees), where 51% of placements are for eight months. Across medium firms (6-200 licensees) and large firms (200+ licensees), approximately half of placements are less than 10 months long (Figures 1(b)-(c)). These numbers suggest that while recovery in the legal sector is progressing, law firms are still feeling the economic impacts of the pandemic and tending to favour shorter placements. In contrast, the majority of articling placements in government have returned to the traditional 10-month duration.

Figure 1(a) - Articling Placements in Soles/Small Firms
(1-5 Licensees)

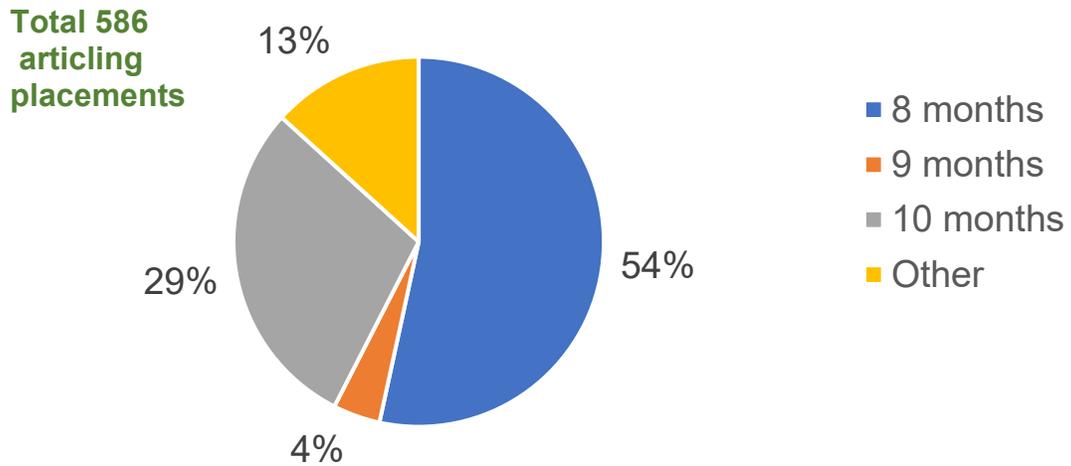


Figure 1(b) - Articling Placements in Medium Firms
(6-200 Licensees)

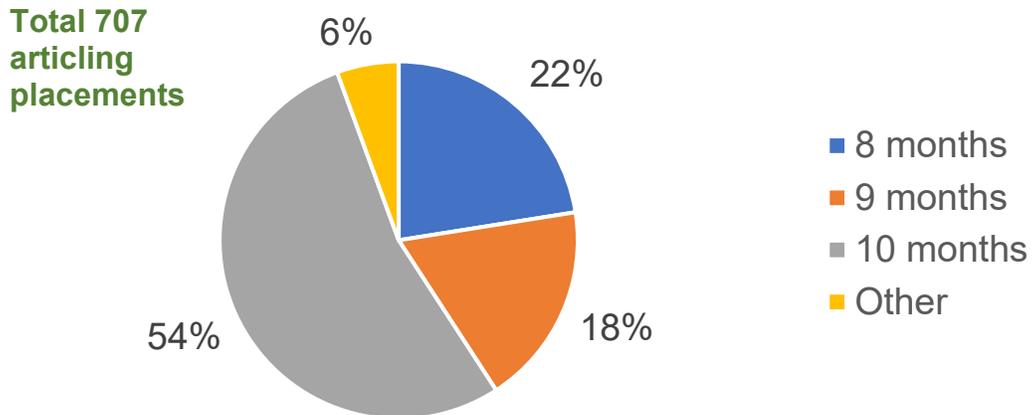


Figure 1(c) - Articling Placements in Large Law Firms (Over 200 Licensees)

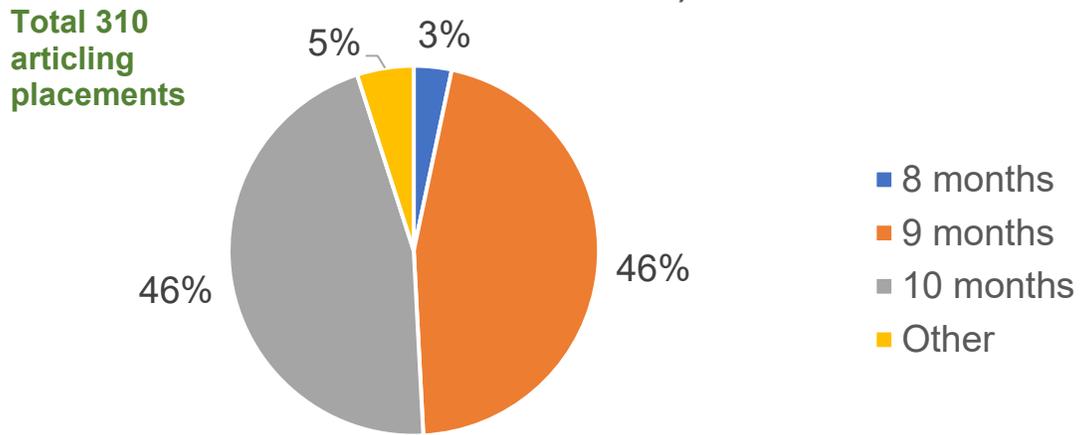
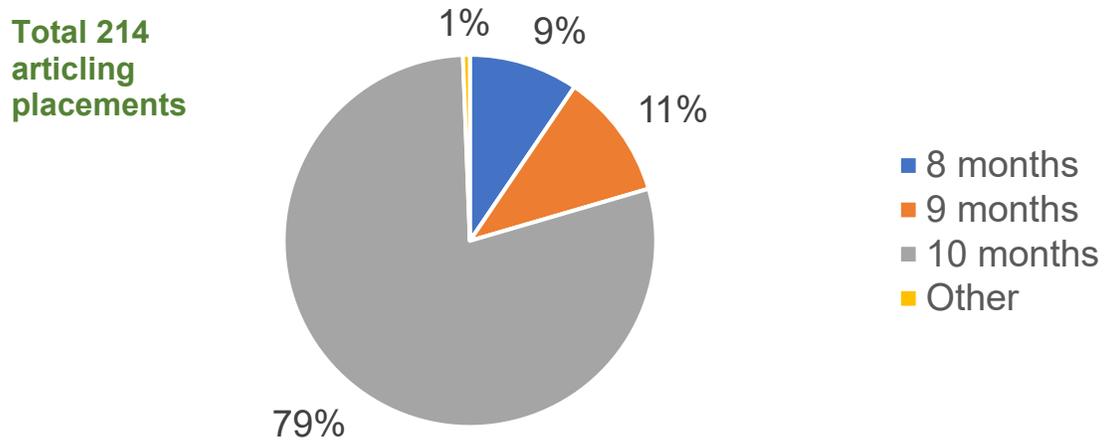


Figure 1(d) - Articling Placements in Government



The types of law firms currently participating in the Articling Program is also relevant to a consideration of the supply of placements. As has been the case in recent years, only five to six percent of private law firms in Ontario are offering articling placements. In particular, only two percent of sole practitioners and nine percent of small firms are participating in the Articling Program. Other settings for placements are government, legal clinics, and in-house legal departments. The distribution of articling placements in private law firms for 2021 thus far is set out in Table 2:

TABLE 2
DISTRIBUTION OF ARTICLING PLACEMENTS BY LAW FIRM SIZE¹¹

Firm Size Range	Law Firms with Articling Placements	Total Law Firms	% of Law Firms with Placements
Sole practitioner (1 lawyer in private practice)	175	8,785	2%
2-5 licensees in private practice	201	2,356	9%
6-10 licensees in private practice	89	363	25%
11-15 licensees in private practice	56	127	44%
16-20 licensees in private practice	30	48	63%
21-25 licensees in private practice	18	21	86%
26-50 licensees in private practice	46	62	74%
51+ licensees in private practice	36	40	90%
Total	643	11,802	5%

2. Articling Program – Quality of Articling Placements

The shift to predominately remote work has impacted the types of tasks and activities taking place in articling in some areas. Articling Reports filed by articling principals and

¹¹ “Total Law Firms” is based on the number of businesses with a business type of “Law Firm” that were designated as a primary business for a licensee in the LSO database as at September 30, 2021. “Law firms with articling placements” is based on the business designated as the articling principal’s primary business as at month-end of the start date of the articling placement. “Firm Size” is based on the number of licensees in a private practice status tied to the firm. Private Practice includes lawyers and paralegals in a Sole Practitioner (Sole Owner), Partner, Employee, or Associate status.

candidates in relation to 2020-2021 articling placements offer the following general themes:

- There was a reduced level of candidate exposure to courtroom procedures and related advocacy activities;
- There was a slight reduction in exposure to client interactions such as interviewing clients, attending client meetings, and keeping the client informed of the matter; and
- There was an increase in exposure to legal research, legal writing, and drafting related competencies

These impacts may be less of a factor for 2021-2022 placements as pandemic restrictions are gradually lifted, courts and tribunals open to in-person proceedings, and workplaces adjust to the new normal of hybrid work. See Tab 2.3 for a summary of the 2020-2021 Articling Reports.

The Licensure Questionnaire was sent to 1,405 lawyer candidates called to the bar over the summer of 2021 and had a response rate of 58% (820 responses), consisting of a majority of candidates who completed the Articling Program and a small minority who completed the LPP. Outcomes of the Licensure Questionnaire reflect the following candidate perceptions related to experiential training:

- 82% of candidates indicated that the pandemic impacted experiential training. In particular, candidates feel that their opportunities for networking, practical training, and hire back were adversely impacted;
- 68% of candidates felt that their articling or LPP/PPD placement prepared them very well or well to enter the practice of law, while ~25% felt that the placement prepared them fairly well and seven percent felt that their placement did not prepare them well to enter the practice of law;
- 86% of candidates indicated that the majority of their work during their placement (more than 50% of their work) enabled them to further develop their legal skills while 13% of candidates indicated that less than 50% of their work during their placement enabled them to develop their legal skills;
- 50% of candidates are highly satisfied with the quality and timeliness of feedback received from their principal or supervisor. Approximately 30% are only somewhat satisfied;
- Overall, 63% of candidates report feeling prepared to enter the practice of law, while 37% feel only somewhat prepared or not prepared to enter the practice.

The majority of candidate responses to the Licensing Questionnaire are aligned with benchmarks prior to the pandemic. They confirm that the nature of the Articling Program

continues to be highly variable and that quality and timeliness of principal feedback is not universal. These trends are less applicable to the LPP/PPD, in which the four-month training course provides all candidates with consistent exposure to the required competencies through assignments and formal assessment.

The Licensure Questionnaire data confirm that candidate reports of harassment and discrimination are persisting across all pathways, although percentages are lower than those reported in the 2017 Articling Survey:

- 10% of candidates (70 candidates) report experiencing harassment and/or discrimination during the recruitment process for their placement;
- 14% of candidates (100 candidates) report experiencing inappropriate comments or conduct during their placement based on an enumerated ground under the *Human Rights Code*;
- 13% of candidates (93 candidates) report experiencing differential treatment during their placement based on an enumerated ground under the *Human Rights Code*;

Table 3 indicates that a higher percentage of articling candidates are reporting these types of issues than LPP/PPD candidates in the Licensure Questionnaire.

TABLE 3

**REPORTED INCIDENCE OF HARASSMENT & DISCRIMINATION
IN PLACEMENTS BY PATHWAY**

Pathway	Discrimination/Harassment in Recruitment	Discriminatory Comments or Conduct	Differential Treatment Based on Enumerated Ground
Articling	10% (61) said Yes	15% (89) said Yes	14% (82) said Yes
LPP/PPD	9% (9) said Yes	11% (11) said Yes	11% (11) said Yes

See Tab 2.4 for a Summary of the 2021 Licensure Questionnaire Data as of August 31, 2021.

3. LPP/PPD

As a result of the pandemic, both the LPP and PPD shifted to a fully online delivery format for the training course. Work placements were also largely remote, as was the case for articling placements.

As Table 4 illustrates, the Ryerson LPP saw increased enrollment for 2020-2021 year compared to previous years. This appears to be attributable to an increase in the number of internationally trained candidates (“NCA candidates”) registering for this pathway. The move to a fully online delivery model as a result of the pandemic has facilitated participation by a broader proportion of candidates, some of whom may not be resident locally and would normally be required to travel to Toronto to attend in-person portions of the program. Enrollment in the PPD was similar to previous years.

Given their structure and effective use of digital learning platforms, the LPP and PPD have been well positioned to maintain a high-quality training experience despite the pandemic. Outcomes of the program have remained favourable, with candidates gaining consistent exposure to the experiential training competencies through a series of formative assessments taught in the context of a simulated law firm that emphasize practical lawyering skills such as client communication, legal research and writing, advocacy, and practice management. While the LPP did not experience a shortage of work placements, there were approximately 75% paid placements in the spring of 2021, which represents a 10% increase in the percentage of unpaid placements compared to 2020. In the PPD, 91%, or 10 out of 11, placements were paid, which is in keeping with benchmarks from previous years. Ultimately all candidates who successfully completed the training course were able to secure a work placement and complete the LPP and the PPD.

TABLE 4
LPP AND PPD ENROLLMENT

	2019-2020	2020-2021	2021-2022
LPP Enrollment	199	268	286
JD/LLB	91 (46%)	86 (32%)	66 (23%)
NCA	108 (54%)	182 (68%)	220 (77%)
PPD Enrollment	13	11	15
JD/LLB	11 (79%)	11 (100%)	12 (80%)
NCA	2 (21%)	0	3 (21%)

4. Remuneration and Hours Worked in Experiential Training

The LSO does not currently require information about remuneration as part of the administration of the Articling Program. Remuneration in articling has been viewed as a term of employment between the principal and candidate. In contrast, both the LPP and PPD capture remuneration of work placements as part of their program oversight.

Nevertheless, remuneration is an area of inquiry in the Licensure Questionnaire that candidates complete on a voluntary basis. Data from the Licensure Questionnaire confirms that the majority of placements continue to be paid in both articling and the LPP/PPD pathways. Respondents reported the following annual salary ranges for 2020-2021 placements:

- 46% earned more than \$60,000
- 27% earned between \$40,000 and \$60,000
- 15% earned between \$20,000 and \$40,000
- 13% earned less than \$20,000 (less than the statutory minimum wage, or unpaid)

Taking into account data from the Licensure Questionnaire along with annual reports received from Ryerson University and the University of Ottawa regarding the LPP and PPD, respectively, it is estimated that approximately 130-150 placements¹² across both pathways were paid an annual salary of less than \$20,000 (less than equivalent to the statutory minimum wage) or were unpaid. The majority of these placements are in sole practices or law firms of two to 10 lawyers. This is similar to the estimated number of nominally paid/unpaid placements in 2018, when the original enhancements were approved by Convocation.

Candidates are reporting similar hours worked as in previous years: approximately 34% of candidate respondents reported working more than 50 hours per week, 63% of candidates reported working between 35-50 hours per week, and two percent of candidates reported working less than 35 hours per week.

¹² Based on extrapolation of salary data from the Licensure Questionnaire for the articling pathway and reports from the LPP/PPD providers on the actual number of nominally paid or unpaid work placements (less than \$20,000 annually): 63 articling placements + 66 LPP placements + one PPD placement = 130 total nominally/unpaid placements. Given the response rate to the Licensure Questionnaire of 58%, a projected range of 130-150 nominally paid/unpaid placements is reasonable.

5. Hire Back Rates

While qualitative comments in the Licensure Questionnaire indicate that opportunities for hire back were negatively impacted by the pandemic, the quantitative data reported by candidates suggest that employment prospects are comparable to pre-pandemic levels. In the Licensure Questionnaire, respondents reported their plans as follows:

- 54% were hired back by their employer
- 12% will be working for another legal employer
- 21% are actively looking for other employment
- five percent are setting up their own practice
- seven percent are working outside of the law or not looking for employment

These trends compare favourably to responses from the summer of 2019, prior to the pandemic:

- 53% of candidates were hired back by their employer
- 15% of candidates will be working for another legal employer
- 24% were actively looking for other employment
- four percent were setting up their own practice
- five percent were working outside of the law or not looking for employment

The Ryerson LPP reports that as of May 2021, approximately 46% of candidates had received either an extension of their work placement beyond the standard four-month period or a permanent job offer from their work placement employer. This compares favourably with LPP hire back rates in recent years: May 2020 – 30%, May 2019 – 51%, May 2018 – 52%.

In conclusion, the current status of the experiential training pathways can be summarized as follows:

Shortage of articling placements – While the number of placements appears to be returning to pre-pandemic levels, there continues to be a shortage of articling placements compared to the number of candidates seeking to become licensed.

Shorter articling placements – Approximately 43% of articling placements are shorter than the traditional 10-month placements. Shorter placements are taking place across all firm sizes, and eight-month placements are particularly prevalent in sole and small firm settings.

Majority of placements are paid – Compensation ranges are similar to previous years, with the majority of articling and LPP placements being paid, but there continue to be approximately 130-150 nominally paid or unpaid placements.

Inconsistent training and feedback – While the majority of candidates are reporting that their placements prepared them for entry to practice, some candidates are indicating that the assigned work did not develop their skills or that they did not receive adequate or timely feedback from their principal or supervisor. These issues are more prevalent in the Articling Program than in the LPP/PPD.

Incidence of harassment, discrimination, and mistreatment – Candidate reports about harassment, discrimination, and mistreatment during recruitment and the placement are continuing.

Services for Candidates, Principals, and Supervisors

There are several services already available to candidates, principals, and supervisors engaged in the experiential training process. The services available align with the needs identified in the Licensure Questionnaire, including issues of mistreatment and sub-optimal placements. Relevant themes and benchmarks are set out below.

1. LSO Experiential Training Office

The LSO oversees the experiential training program by setting policies and procedures, administering filing and reporting requirements, and providing supports to participants. In particular, the LSO responds to 5,000-6,000 telephone inquiries specifically related to the Articling Program on an annual basis. While the majority of inquiries are administrative in nature, a portion are from participants encountering difficulties in placements.

Approximately 150 calls each year are from candidates and principals seeking guidance on challenging issues that arise in the articling context. These inquiries provide valuable insight into the problems experienced by principals and candidates in the articling process:

- Abusive behaviour by principals towards candidates (yelling, swearing, bullying);
- Disparaging remarks by principals related to ethnicity or other enumerated grounds;
- Disputes over candidate accommodation requests and time served (medical issues requiring modified work arrangements or time off);
- Candidate concerns over the scope and/or quality of training and supervision provided by the principal (not adhering to training plan, not providing adequate instructions); and
- Principal frustration with a candidate's lack of skills and/or poor performance (candidate's abilities not according with representations made during hiring process).

Each inquiry may require a series of phone calls with the candidate or principal in which LSO administrators and counsel provide guidance on options for resolving the matter. Guidance will typically include reference to the Licensing Process Policies, *Rules of Professional Conduct*, Discrimination and Harassment Counsel program, LSO complaints process, and Member Assistance Program. The LSO provides candidates with a "tip sheet" that lists these and other resources when they begin articling.

Candidates are often very distraught at the outset of their interactions with the LSO and, in most cases, do not want the LSO to approach their principals for fear of reprisals that could impact their ability to complete their articling placement and become licensed. In some instances, candidates do not even want to disclose their name or candidate identification number to the LSO, out of concern that their principal will find out about their inquiry. Candidates appreciate feeling heard and often benefit from having an objective perspective on their situation. Occasionally, candidates complain that the LSO is not doing more to "weed out" bad principals.

Principals tend to be receptive to receiving the LSO's advice on handling issues with which they may have limited experience or expertise. Like candidates, principals also benefit from objective input on their expectations of candidates during articling and guidance on performance management best practices.

The LSO has observed that in many cases, disputes arise due to a breakdown in communication between the principal and candidate. In addition, some principals are primarily focussed on their practices and meeting client demands and simply haven't allocated time or attention to creating a positive articling experience for candidates. In some instances, disputes will not be resolved or poor working conditions will not be

remediated, necessitating a termination of the articling placement by the principal or the candidate. Both principals and candidates would benefit from additional support on dealing with conflict in the context of experiential training so issues can be managed before they escalate.

2. LPP/PPD Providers

As an aspect of their program provider role, both Ryerson University and the University of Ottawa have created robust processes to support candidates and work placement supervisors during the LPP/PPD. Candidates benefit from seminars and workshops designed to help them prepare for each stage of the work placement process, including preparing the application, interviewing, and transitioning to the work placement itself.

Work placements are mediated by the provider through pre-placement checklists, education plans, work placement audits and agreements, candidate and employer check-ins during the placement, reflection journals, and performance assessments. This infrastructure facilitates consistent, positive placement experiences and ensures that supervisors and candidates understand program expectations.

Where there are issues in placements, providers are involved in managing the problem as a result of their proximity to the process. Over the eight years that the LPP/PPD has been in place, approximately four candidates per year have been removed from their placements or reported issues relating to quality of training or working conditions. As noted above, candidates in the LPP/PPD are reporting experiencing harassment and discrimination in placements in the Licensure Questionnaire, although to a lesser extent than candidates in the Articling Program.

3. Discrimination and Harassment Counsel Program

The LSO's Discrimination and Harassment Counsel ("DHC") Program provides information and assistance to anyone who may have experienced or witnessed discrimination or harassment by a lawyer, paralegal, or candidate based on an enumerated ground under the Ontario *Human Rights Code*. The DHC Program operates independently from the LSO and is a free, confidential service available to law students and licensing process candidates, as well licensees and members of the public. The DHC Program offers information, guidance, and counselling to assist callers with assessing options, including whether to file a formal complaint. The DHC may also assist complainants with informal resolution options and mediation.

As noted above, candidates who disclose circumstances that suggest potential harassment and discrimination during experiential training are referred to the DHC. Between 2008 and 2018, the DHC has received approximately seven complaints annually

from articling candidates alleging harassment and discrimination by licensees in the context of employment.¹³ This amounts to approximately 25% of complaints handled by the DHC, which is disproportionate to the number of candidates versus licensees in the legal profession at any given time.

Discussion

A. A New Package of Enhancements

The Committee has spent the past several months considering a way forward to enhance experiential training. These deliberations have taken account of the continuing impact of the pandemic on the legal sector and concerns around untenable working conditions that drove the formulation of the original enhancements.

The Committee acknowledges that the LSO has a critical role to play in enabling all participants—principals, supervisors, and candidates—to fulfill the objectives of experiential training. The LSO must respond to the deficiencies in the Articling Program that have an impact on the newest members of the legal profession. The Committee remains committed to improving the quality of articling placements and ensuring effective and fair experiential training for candidates.

Upon further consideration of the desired outcomes of the original enhancements, a majority of the Committee is of the view that they are too broad and do not fully address the specific issues that emerged during the DOL, which are continuing. For example, the Committee has noted that there are often many work providers in a legal work setting who have interactions with candidates. In fact, articling principals in larger firms are often selected for their ability to successfully manage relationships and may not be the source of complaints about inappropriate treatment of candidates. Therefore, new requirements intended to address mistreatment and harassment through additional training for principals alone may not meaningfully respond to the problem.

The Committee also discussed how the enhancements, as originally conceived, have the potential to reduce the number of articling placements at a time when the profession is recovering from the pandemic. The profession saw 170 fewer articling positions in 2020 compared to previous years, despite several measures taken by the LSO to preserve placements. While articling placement numbers seems to be returning to pre-pandemic levels, the demand for placements continues to grow each year, with an 18% increase in the number of candidates seeking to become licensed between 2016 and 2020 (as noted earlier), and over 500 candidates searching for articling placements. Adding to principal

¹³ <http://www.dhcounsel.on.ca/reports-policies.html>.

and supervisor obligations in this context may further strain the supply of articling and LPP/PPD placements.

Most importantly, the Committee has considered the enhancements through the wider lens of enabling entry-level competence, which is a critical aspect of ensuring competence and quality of service and is one of the strategic priorities for this bench term. In particular, the Committee has been focussed on enhancements that position candidates for success as they launch their legal careers, and on creating tools that will be useful to candidates, principals, and supervisors in their interactions with one another and in their own practices.

A majority of the Committee recommends that the LSO adopt a new package of experiential training enhancements that builds on aspects of the original enhancements but is framed around creating supports for principals, supervisors, and candidates rather than increasing regulatory requirements. These supportive enhancements are aimed at being responsive to the deficiencies of the Articling Program in a proportionate manner, without jeopardizing the number of articling placements:

1. The LSO will develop an orientation program for articling principals, work placement supervisors, and licensing candidates to facilitate effective and fair experiential training. The program will be encouraged rather than mandatory. It will aim to ready candidates for the realities of the legal workplace and will inform principals and supervisors about current best practices in mentoring and managing others.
2. The LSO will leverage the new Bridge to Practice platform to foster entry-level competence and skills through free training modules for candidates and new lawyers. The modules will focus on filling the identified gaps in articling placements and will address topics such as practice management and client communications that are often the basis of regulatory intervention or negligence claims.
3. The LSO will apply a risk-based approach to monitoring of experiential training by initiating outreach to both the candidate and the principal where placements end prematurely.

A minority of the Committee remains in favour of implementing the original enhancements approved by Convocation in December 2018 that were the result of significant research and consultation and remain responsive to the concerns about the Articling Program. The minority view is that the original enhancements were themselves a compromise and do not create onerous obligations on principals and supervisors.

- 1. The LSO will develop an orientation program for principals, supervisors, and candidates to facilitate effective and safe experiential training. The program will be encouraged rather than mandatory. It will aim to ready candidates for the realities of the legal workplace and will inform principals and supervisors about current best practices in mentoring and managing others.**

The Committee seeks to build on the concept of training and orientation for principals and supervisors that was part of the original enhancements, with modifications. A majority of the Committee favoured encouraging and providing incentives for principals to complete an orientation program rather than requiring it. Although the legal sector is gradually recovering from the pandemic, the Committee observed that many firms, and especially soles and smalls, will be in a challenging position as the pandemic subsides and the practice of law returns to normal. The Committee was hesitant to impose additional burdens on law firms during this time of ongoing economic uncertainty.

An orientation program would provide clarity about what is expected from principals and supervisors and should address the core obligations of principals and supervisors under the *Rules of Professional Conduct*, applicable By-laws, and Licensing Process Policies, including obligations to ensure that employment practices do not offend human rights laws and to prevent harassment and discrimination. The orientation program should offer guidance on a practical level and concrete examples of meaningful training and effective supervision and delegation. The Committee is also of the view that an orientation program should address the relational competencies that are so often the source of challenges during placements. For example, managing interpersonal conflict, demonstrating cultural competence, providing timely and effective feedback, and coaching for performance are key skills for managers in the modern workplace, and yet many lawyers who employ staff and run their own law firms do not receive formal training in these areas. It should be noted that the LSO approves approximately 600 new articling principals every year and approximately 34% of principals are essentially “new to the job” each licensing cycle. An orientation program that encapsulates best practices will be particularly useful to support these new principals but also to all principals who can apply these concepts to improve their interactions with articling candidates, other employees, colleagues, and clients.

The Committee recognizes that orientation for candidates is also integral to the success of experiential training. Candidates are, by definition, new to the profession, and operating in a law office environment will also be new to many of them. Providing information to candidates about what to expect from their articling experience will prepare them for the learning experience and help them excel in their placements. As noted earlier, LPP and PPD candidates are already receiving this type of training when they prepare for their work placements. The orientation program could also empower candidates with techniques and avenues for responding to incidents of harassment and discrimination.

Finally, an orientation program may also assist with the ongoing challenge of recruiting new articling principals and supervisors to maintain the supply of placements. Through the orientation program, the LSO could take proactive measures to promote the various options that are already available in the Articling Program, such as the possibility for joint articles with another law firm or a part-time articling placement. The orientation program could include testimonials from current principals and supervisors to offer real world perspectives on the benefits of mentoring a candidate. Given the focus of the orientation, it is likely that the program would qualify for professionalism and EDI continuing professional development (“CPD”) hours as well as the LawPRO CPD credit, which could incentivize completion. The orientation may also have value to paralegal field placement supervisors, as many of the concepts would support quality field placements and entry-level competence of new paralegals.

Recognizing the potential value of the orientation program as a resource for principals and candidates in a number of key areas, a majority of the Committee feels it is important to work towards reducing the frequency of miscommunication and misaligned expectations between participants in the experiential training process and to encourage as many principals, supervisors, and candidates to complete the orientation program as possible. The LSO will make efforts to promote and create awareness of the orientation program and to ensure it is readily accessible to participants in the experiential training process.

In contrast, a minority of the Committee holds the view that the inconsistencies and challenges in experiential training reported by candidates and the potential merits of an orientation program outlined above affirm the importance of requiring that all principals and supervisors complete the program as a prerequisite to offering a placement. The minority view is that training in the areas of appropriate supervision and feedback, as well as anti-harassment and anti-discrimination practices, is essential to ensuring the effectiveness of the experiential training program.

2. The LSO will leverage the new Bridge to Practice platform to foster entry-level competence and skills through free training modules for candidates and new lawyers. The modules will focus on filling the identified gaps in articling placements and will address topics such as practice management and client communications that are often the basis of regulatory intervention or negligence claims.

Bridge to Practice (“B2P”) is a newly launched online library of free CPD programs and content focussed on the needs of licensing candidates and newly licensed lawyers. Created in February 2021, the initiative initially aimed to assist candidates whose entry to the profession had been adversely impacted by the pandemic. B2P now houses over 30 LSO CPD programs focussed on practice management, core practice area basics, and financial management and record-keeping, as well as free content from the LPP and the

Advocates' Society. See Tab 2.5 for a Summary of the B2P Program. To date, over 3,000 new lawyers and over 2,000 articling candidates have received a link to this content, with over 2,000 downloads of content.

There was consensus at the Committee that the LSO has an opportunity to leverage the B2P platform to launch candidates into their careers with confidence. B2P is ideally situated to supplement gaps and inconsistencies in the Articling Program with guidance and materials geared specifically to those starting their legal careers. Busy articling principals may also wish to refer candidates to the B2P for resources to round out the coverage of skills and competencies that may not have been fully addressed during the placement due to the nature of the principal's practice.

While B2P is made available to all candidates and new lawyers, regardless of experiential training pathway, it is important to acknowledge that candidates who have completed the LPP/PPD will have had the benefit of a rigorous four-month training course that covers all the required competencies before they proceed to the work placement. Candidates in the LPP/PPD develop their practical legal skills through a series of file-based assignments and are then assessed on the competencies through multiple tasks and activities. Candidates must pass these assessments before they can proceed to the work placement.

The Committee views the B2P as an enhancement that fosters entry-level competence and an understanding of the importance of ongoing professional development early on in one's legal career. Currently, the platform makes use of archived CPD programs that have been created for lawyers who have been in practice. As part of the new package of enhancements, the LSO should develop training modules specifically focussed on supporting entry-level competence. This would involve covering many of the current topics featured in the B2P but tailoring them to a beginner level. Modules would be designed with the needs of the novice practitioner in mind and include materials such as reflection questions, scenarios, and precedents to facilitate application and hands-on learning. Additional topic areas for candidates and new lawyers could include:

- Networking and relationship management
- Business development and profitability
- Client service and communications
- Written and oral advocacy
- File management for barristers
- File management for solicitors
- Common professional responsibility issues
- Personal productivity in a digital world
- Health and wellness

In recent years, approximately 12% of new lawyers are beginning their careers working in sole and small firm settings and will be directly serving the public immediately after their call to the bar, yet they have received little to no education or training in the business of law. The B2P could be a vehicle for creating a baseline of knowledge and skills for lawyers practising in these settings while allowing for flexible learning formats and on demand access that is now the norm for professional development. The B2P will be launched to newly licensed paralegals in February 2022, and much of the content will be equally relevant to paralegals in private practice given that most work as sole practitioners.

By investing time and resources to developing and expanding the B2P platform, the LSO will have a mechanism for future competence initiatives, including those emerging from the Competence Task Force. Similarly, B2P could perform a remedial function for lawyers and paralegals who demonstrate practice deficiencies during a practice management review or practice audit or who are the subject of complaints that disclose competence issues.

3. The LSO will apply a risk-based approach to monitoring of experiential training by initiating outreach to both the candidate and the principal where placements end prematurely.

The original enhancements proposed increased monitoring of experiential training by performing audits of law firms to ensure compliance with principal and supervisor obligations. The audits were to be integrated into the LSO's Practice Management Review Program ("Review Program"). A closer look at this approach suggests that it may be of limited utility. Firstly, the LSO conducts approximately 500 Reviews of lawyer practices annually and is focussed on lawyers in their first eight years of practice. On average, most of the lawyers subject to Reviews have been practising for four to five years and are in sole/small settings. Given that the majority of articling principals have been practising for 10 or more years, the number of placements that would fall within the ambit of the Review Program is expected to be quite low, in the range of 10-20 placements per year. Secondly, as noted earlier, many of the issues arising in articling placements are relational in nature and may not be readily observable during a Review. Taken together, these two factors suggest that, while audits of articling placements could be integrated into Reviews, a more targeted approach to additional monitoring of placements is likely to be more effective.

As noted earlier, the LSO works collaboratively with candidates, principals, and supervisors to assist with the resolution of placement challenges where the issues are brought to the LSO's attention. Some of these placements will nonetheless end prematurely. It is estimated that approximately 200 placements per year are interrupted or terminated by the candidate or principal for a host of reasons, including but not limited to financial considerations, communication breakdown, performance issues, personal circumstances, and untenable working conditions. The LSO will not be contacted by the

candidate or principal for assistance in every instance, nor does every placement that ends prematurely involve conflict or mistreatment. In many cases the LSO will learn of the termination through inquiries or documentation received well after the placement has ended and there has been disruption to the candidate's completion of the experiential training component of the licensing process.

The Committee is of the view that the LSO should know when serious issues arise in placements and that there should be some form of regulatory intervention in these cases. However, a majority of the Committee is in favour of an approach that is proportionate to the frequency of these issues. LSO data indicates that most candidates are reporting having positive placement experiences that have prepared them for the practice of law and that conflict and mistreatment is being reported in a small proportion of placements. It is these placements that the LSO should be focussed on remediating, and if necessary, removing from the system.

Therefore, a majority of the Committee recommends that the LSO expand its monitoring efforts to proactively track placements that end prematurely and reach out to candidates and principals to learn about the underlying circumstances and provide assistance in real time. Tracking and monitoring these incidents could help the LSO identify recurring issues in certain firms and could form the basis for concrete enforcement measures such as suspending the principal's approval status or initiating an investigation. During these interactions, the LSO would also have the opportunity to support candidates and make referrals to relevant supports and services. Recognizing that the pressures on candidates during the licensing process have mental health impacts, these interactions with candidates could include a wellness check-in. The LSO may also wish to proactively integrate tips for conducting wellness check-ins into the orientation program for principals and supervisors to create a culture of open dialogue about stress management at the outset of one's career. A majority of the Committee recommends this modified approach to increased monitoring, which would allow the LSO to identify and address some problematic placements in the shorter term with a view to improving overall placement quality over the longer term.

A minority of the Committee is of the view that the LSO should be engaging in placement audits as a form of quality assurance for experiential training, as originally contemplated by the 2018 enhancements approved by Convocation. The minority view is that placement audits should be performed in conjunction with the targeted outreach outlined above to ensure that LSO obligations are being fulfilled by principals and supervisors before problems arise and is critical to addressing the ongoing challenges of the Articling Program.

B. Mandatory Minimum Compensation

Convocation is asked to consider the following perspectives on the issue of mandatory minimum compensation.

1. Majority View

A majority of the Committee feels strongly that the LSO should not move forward with the implementation of mandatory minimum compensation for experiential training. The primary concern driving this view is that this requirement will reduce the number of placements in a market where supply has not been keeping up with demand for a number of years and where this trend may be exacerbated as a result of the pandemic. A majority of the Committee is of the view that financial requirements will be perceived as a disincentive to participation in experiential training at a time where there is a demonstrated preference for shorter placements and there is continued economic uncertainty.

As noted earlier, while most experiential training placements are paid, it is estimated that every year, between 10-15% placements are paid below statutory minimum wage or unpaid. Conservatively, this translates to approximately 130-150 articling and LPP/PPD placements per year that could be lost from the system. While the original enhancements contemplated that an exemption process would need to be developed to preserve quality placements that are unpaid because of the populations they serve, some reduction in the supply of placements is nevertheless expected from implementation of mandatory minimum compensation.

The Committee observed that a mandatory minimum compensation policy creates a specific risk of losing placements in sole and small firm settings. Lawyers in these environments may be hard pressed to devote billable time towards the resource intensive endeavour of hiring and training an articling or LPP/PPD candidate. However, these settings often provide candidates with valuable opportunities to learn how to run a law firm and to have significant client contact. The majority was not in favour of implementing a policy that risks the viability of both the Articling Program and the LPP/PPD, recognizing that both pathways would be vulnerable to placement shortages. There was concern that candidates who are internationally trained and already face challenges securing articling placements would be disproportionately impacted by a shortage of placements.

2. Minority View

A minority of the Committee feels equally strongly that the LSO should follow through on its commitment to implement mandatory minimum compensation for experiential training. The LSSO has indicated that candidates and law students have been anticipating the implementation of a requirement for minimum compensation since Convocation's decision to approve the original enhancements in December 2018. A predominant concern of

candidates upon graduation from law school is the daunting task of paying off significant, six-figure debt loads. This financial burden on candidates is exacerbated by unpaid placements. The LSO is in a position to show leadership and to set a minimum standard for all placements that reduces the potential for exploitative working conditions.

A minority of the Committee further notes that the potential for unpaid placements creates financial barriers for economically marginalized groups, undermining diversity in the profession. Unpaid placements may also impact the ability of candidates to pursue careers in practice areas such as criminal law and family law, which may be less remunerative. Given that a relatively small number of placements would be at risk, the LSO should proceed with a policy mandating minimum compensation to ensure that all candidates in the licensing process are able to earn a living wage.

3. Best Practices Approach to Compensation

The pros and cons of implementing a mandatory minimum compensation policy can be summarized as follows:

Pros

- Creates a standard of fairness for all candidates
- Assists with addressing the imbalance of power between candidates and principals/supervisors
- Removes a financial barrier to entry to the legal profession

Cons

- Has the potential to create financial burdens for some employers
- Less responsive to impacts of the pandemic on the profession
- May result in a reduction in the number of placements

Notwithstanding the majority view on the issue of mandatory minimum compensation, there was a consensus at the Committee that ideally, all placements would be paid. Accordingly, the majority supports a best practices approach to compensation in which the LSO signals to the profession that experiential training should be paid, even in the absence of a formal rule or requirement. The LSO could achieve this by:

- Continuing the policy that only paid placements be posted on the LSO's articling registry;
- Requiring that articling principals disclose the proposed salary in the articles of clerkship that are filed with the LSO at the start of the placement;
- Working with LPP/PPD providers to strive for more paid placements; and

- Reporting on articling and LPP/PPD compensation ranges for different legal employment settings to allow candidates to make informed choices as they progress through law school and the licensing process.

The LSO could monitor the number of unpaid placements over a period of time to determine if this approach has had a measurable impact. These outcomes would inform future decisions about the necessity of more formal policies related to compensation or other working conditions.

C. Environmental Scan

At least two other Canadian law societies have recently been engaged in a review of their articling programs based on concern about unpaid articles, ineffective training, and reports of harassment and discrimination.

1. Law Society of Alberta

In 2019, the Law Society of Alberta (“LSA”) conducted a survey of principals, new lawyers, candidates, and others that highlighted deficiencies in articling arising from inconsistent mentoring and preparation for entry-level practice. In particular, approximately 30% of articling candidates reported experiencing harassment and discrimination. In response, the LSA has approved a mandatory training course for articling principals that will launch in 2022 and will focus on topics such as feedback and mentorship best practices, cultural competency, and supporting wellness.¹⁴ In addition, the LSA has implemented a new articling placement program to assist candidates who may be facing harassment and discrimination with exiting their placement and finding a new articling position. Minimum wage protections in employment standards legislation have been applicable to articling candidates in Alberta for over 20 years.

2. Law Society of British Columbia

The Law Society of British Columbia’s Lawyer Development Task Force has been engaged in research and policy review in response to a member resolution approved at its October 2020 Annual General Meeting directing benchers to ensure that articling wages and hours of work are aligned with employment standards legislation.¹⁵ At a recent meeting, benchers endorsed, in principle, the establishment of standards for hours of work

¹⁴ <https://www.lawsociety.ab.ca/lawyer-licensing-and-competence-report-approved/>

¹⁵ [Recommendations Concerning Remuneration and Hours of Work for Articled Students \(lawsociety.bc.ca\)](https://www.lawsociety.bc.ca/recommendations-concerning-remuneration-and-hours-of-work-for-articled-students/)

and minimum financial compensation, with details to be provided to benchers in the fall of 2022 and 2023, respectively. However, recognizing the potential for a reduction in the number of articling placements, the new standards will not be applicable until at least one alternative to articling has been established in BC, which is expected by the fall of 2023. Currently candidates can only pursue the articling route to licensure.

Resource Impacts and Timelines

The implementation of the new package of enhancements introduces program components that would need to be developed and maintained by the LSO. The new enhancements involve fewer resources than the original enhancements, which would have required administrative and IT infrastructure to monitor the fulfilment of mandatory minimum compensation for placements and completion of mandatory training and orientation for every articling principal. The proposed approach to implementation of the new package of enhancements is incremental, maximizing use of existing resources and workflows wherever possible.

1. 2022 Expenditures

The primary expenditure for 2022 would relate to the development of an orientation program for articling principals, supervisors, and candidates. The projected cost of the program is \$100,000, taking into consideration that modules would be developed for principals/supervisors and for candidates, and that in accordance with the LSO's French language policy, all modules would need to be available in English and French. It is proposed that this be funded from the LSO's \$1 million contingency, which is integrated into the 2022 budget for policy decisions that are made mid-year. As this is a developmental cost, it does not get passed on to licensing candidates.

In 2022, existing staff resources would be deployed to the continued development of the B2P, using the LSO's archived CPD content, and to planning the criteria and process for monitoring of placements.

2. 2023 Expenditures

It is anticipated that an additional full time equivalent (FTE) position will be required in the Professional Development & Competence division by 2023 to support the expansion of the B2P platform to focus on entry-level competence and to support the monitoring of challenging placements. This new FTE will be considered as part of the 2023 budgeting process and may be offset by attrition or other program changes in the organization. As an ongoing cost, the position could be absorbed by CPD revenues, funded by candidate

licensing process fees, or incorporated into the annual subsidy provided by lawyer licensees to the licensing process in order to maintain cost recovery.

3. Timelines

If the new package of enhancements and associated expenditures are approved by Convocation, it is anticipated that the orientation program and additional monitoring protocols will be in place by the spring of 2023. While work on the B2P will continue during 2022, an expanded B2P platform is expected to be fully implemented by the fall of 2023.

Program Evaluation

Although there are myriad factors that impact upon the effectiveness of experiential training that are beyond the control of the regulator, it is important that the LSO set out to gauge the success of the new package of enhancements on addressing some of the most pressing issues that are driving this initiative. The LSO will monitor relevant benchmarks once the enhancements have been fully implemented, including but not limited to the following:

- Number and nature of candidate and principal inquiries to the LSO related to challenges in the Articling Program;
- Incidence of harassment and discrimination reported by candidates in the Licensure Questionnaire;
- Quality of principal feedback reported by candidates in the Licensure Questionnaire;
- Quality of articling placements reported by candidates in the Licensure Questionnaire;
- Percentage of nominally paid/unpaid articling and LPP/PPD placements; and
- Number of DHC complaints made by articling candidates in the context of employment.

The LSO will also gather feedback from principals, supervisors, and candidates on the effectiveness of the orientation program as a preparation tool for the experiential training program. LSO management will develop a more fulsome plan for the evaluation of the program for consideration by the Committee.



May 24, 2018

Professional Development & Competence Committee Options for Lawyer Licensing: A Consultation Paper

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1. INTRODUCTION

Lawyer licensing is an integral part of the mandate of the Law Society of Ontario (LSO). Under its mandate the LSO must regulate the profession in the public interest and ensure that lawyers meet standards of learning, professional competence, and professional conduct. In November 2016, Convocation (the governing body of the LSO) asked the Professional Development & Competence Committee (Committee) to develop long-term recommendations for the licensing process. To this end, the Committee developed this paper to serve as the basis for consultation with the professions and the public on appropriate pathways to licensure.

Currently, licensing candidates are required to pass both the barrister and solicitor licensing examinations and to complete a transitional training requirement focused on teaching candidates the necessary skills, knowledge and tasks for the legal profession. Currently, two main pathways satisfy the LSO's transitional training requirements to become a lawyer – articling and the Law Practice Program (LPP), or Programme de pratique du droit (PPD).

This consultation paper sets out four possible options for consideration. Each of the options maintains the requirement to pass both the barrister and solicitor licensing examinations. Two of the options involve retaining the two current transitional training pathways, with enhancements, while two options involve making significant changes. The Committee welcomes feedback from the professions on these options, as well as other related issues. The Committee has included questions at the end of this paper intended to assist participants, although all comments are welcome.

Written comments are welcome until October 26, 2018 and may be submitted to the LSO at www.lsodialogue.ca. The submissions received will inform the Committee's recommendations to Convocation regarding the lawyer licensing process in early 2019.

2. EXECUTIVE SUMMARY

The Committee's consideration of licensing options is taking place at a time of profound disruption and transformation of the legal profession. Globalization has dramatically increased the pool of licensing candidates, while technological advances and outsourcing have reduced the need for articling students to perform routine legal tasks.¹

¹ The implementation of technology is replacing lawyers in situations in which routine or predictable matters can be resolved without a lawyer. See Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada*, August 2014, online at https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf, p. 19.

In the past decade, the number of licensing candidates has increased by 70 percent but the supply of articling positions has not kept pace. A permanent shortage of articling positions now exists. Candidate education is more varied. Over the past five years, approximately 30% of new registrants into the licensing process have been internationally-trained applicants. Law school debt levels for some candidates have escalated as well, putting increased pressure on graduates to obtain remunerative training positions. These factors can intensify the power imbalance between candidates and their employers, leading to instances of harassment, discrimination and exploitation, where candidates work for nominal or no pay. Moreover, the increasing demand for articling positions has led to marginal placements, where candidates do not receive proper training and instruction.

The LSO has attempted to mitigate the impact of articling shortages by approving the Law Practice Program/Programme de pratique du droit as an alternative pathway to licensing. However, the limited number of participants in each program suggests that these programs may not be an entirely appropriate complement to articling. At the same time, human rights and fairness legislation and the LSO's deepening commitment to equity, diversity and inclusion all impose obligations to ensure that the licensing process is fair to all candidates.

In the face of an evolving landscape and increasing pressures on the licensing process, the Committee determined that the professions and the public should be consulted about the options listed below, including the possibility of changes to the transitional training requirement of the licensing process. In each of these options the current barrister and solicitor examinations would be maintained as a requirement for licensure. The Committee is seeking feedback on the following options:

Option 1: Current Model: The current two transitional training pathways would be retained, taking into account the fact that the current model is continuously adjusted to accommodate new developments.

Option 2: Current Model with Enhancements: The current two transitional training pathways would be retained, with enhancements. These enhancements include a requirement that candidates be paid at the statutory minimum wage, audits and greater oversight of articling and work placements. Candidates would be required to pass the barrister and solicitor licensing examinations as a prerequisite to transitional training and then pass a new skills examination in order to become licensed.

Option 3: Examination-Based Licensing: Candidates would be licensed after they first complete the barrister and solicitor licensing examinations and then the new skills examination. Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a requirement of licensure. The management of regulatory risk would shift to post-call and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees

practising in a workplace of six or more lawyers would not be subject to any additional requirements. Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a new practice essentials course and would be subject to audit within their first few years of practice.

Option 4: LPP for all Candidates: All licensing candidates would be required to complete the training course component of the LPP/PPD, without the work placement component. Candidates would also be required to successfully complete the Barrister and Solicitor examinations and the new Skills Examination.

Options 1 and 2 are based on maintaining both the articling program and the LPP/PPD. Option 3 eliminates the requirement that licensees complete transitional training as part of licensure, and Option 4 requires the completion of the LPP/PPD for all candidates. Options 2, 3 and 4 involve a new, mandatory Skills Examination. In addition, Options 2 and 4 require candidates to pass the licensing examinations before moving onto the next phase of the licensing process.

The Committee asks respondents in this consultation to consider the proposed four options in accordance with the evaluative principles described below. The licensing process should:

- i.) ensure that each candidate has achieved the goals of transitional training;
- ii.) provide candidates with an opportunity to meet required standards of professional competence;
- iii.) be derived in a fair and defensible manner;
- iv.) be consistent; and
- v.) be designed to take into consideration the cost of each option to licensing candidates, and to the profession as a whole.

3. BACKGROUND

Licensure is official recognition that an individual is qualified to practice as a lawyer and is competent to do so. Licensing requirements are critical to the public interest, and to the reputation of the legal profession. The proper functioning of the profession, and its continued ability to self-regulate, are premised on ensuring that those who enter it are qualified to meet appropriate standards of professional competence and do not pose a risk to the public. This responsibility is clearly stated in s. 4.1(a) of the *Law Society Act* which provides that it is a function of the LSO to ensure that “all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide”.

The current lawyer licensing process includes the following mandatory components:

A. Articling OR

- B. The Law Practice Program (LPP) or Programme de pratique du droit (PPD), including a work placement OR
- C. The Integrated Practice Curriculum (IPC) AND
- D. Barrister and Solicitor Examinations.²

While the LSO's articling program has undergone some adjustments over time, its fundamentals have been in place over forty years. Currently, the articling program requires a candidate to work for 10 months under the supervision of an approved articling principal.³

In an effort to address concerns about transitional training while ensuring entry-level competencies, the LSO has made significant changes to the licensing process in recent years. In 2012, Convocation established a pilot project to incorporate a second pathway to licensing beginning in the 2014-2015 licensing year.⁴ Following a request for proposal process, Ryerson University was selected to provide the English language program and the University of Ottawa was selected to provide the French language program. The LPP/PPD programs consist of a 17-week training course followed by a four-month work placement.

In 2013, the LSO approved the IPC as a pathway to licensing. This program is available only at Lakehead University's Bora Laskin Faculty of Law. Students are able to fulfill the experiential training component of the licensing process through practical course work and a 15-week practice placement embedded in their third year of law school.

Since 2006, candidates have been required to write barrister and solicitor licensing examinations to test competencies required for entry-level practice. The examinations are multiple-choice, open-book examinations. Each examination is seven hours long.

As part of its review of the licensing process, the LSO conducted the Dialogue on Licensing (DOL) between April and June 2017 to provide an opportunity for input from the legal community regarding the challenges and opportunities of lawyer licensing. Reference materials were made available to participants prior to each session at a dedicated website.⁵ Further information regarding the DOL is provided in **Tab 3.1.1.1** to this paper.

² In addition, each applicant for a licence under the Act is required to be of good character. See *Law Society Act*, R.S.O. 1990, c. L.8, s. 27(3), online at <https://www.ontario.ca/laws/statute/90l08>.

³ Articling principals are required to meet certain eligibility criteria and to ensure that they have been approved by the LSO in advance of the commencement of the articling placement. See "Apply to serve as an Articling principal", online at [http://www.lso.ca/licensingprocess.aspx?id=2147498211#Apply to Serve as Articling Principal](http://www.lso.ca/licensingprocess.aspx?id=2147498211#Apply%20to%20Serve%20as%20Articling%20Principal).

⁴ Articling Task Force Final Report, October 25, 2012, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, online at <http://lso.ca/articling-task-force/>. The pilot project was originally intended to last for three years, to be extended for an additional two years if the LSO determined that there was insufficient evidence to properly evaluate the pilot project after three years.

⁵ These materials may be viewed at <http://lsodialogue.ca/>. The Committee provided an information report to Convocation in February 2017 describing this initiative.

Despite recent changes to the licensing process, challenges continue. These issues are described below.

4. CHALLENGES WITH THE LICENSING PROCESS

A. Supply of Articling Positions

While the majority of candidates fulfill their transitional training requirements through the articling program, there is an abiding concern that the articling program is not sustainable in the current environment, where an increasing number of candidates, educated domestically and internationally, seek articling positions in Ontario.

In the current articling pathway, candidates are responsible for finding their own articling placement.⁶ There is a gap between the demand for articling positions and the available opportunities. Only 10 percent of Ontario law firms currently provide articling placements. The number of graduates from Ontario law programs rose by 60% between 2007 and 2012 due to new programs and growth in the number of available spots in existing programs. The number of new law graduates approached 2500 in 2012, an increase of 1000 from 2007.⁷

Globalization has had an impact on the number of candidates. Over the past five years, approximately 30% of new registrants into the licensing process have been internationally-trained applicants who have completed the equivalency process through the National Committee on Accreditation (NCA) of the Federation of Law Societies of Canada. There has been a 250% increase in the number of applicants to the NCA over the past decade. The NCA issued over 900 Certificates of Qualification in 2016 compared to approximately 200 issued in 2006. Of the top source countries for NCA applicants seeking licensure in Ontario, 60% of NCA applicants are Canadians who have obtained their legal education abroad and are returning to Ontario for licensure.⁸

According to the LSO's data, at any given time, there are 200-500 candidates who are actively searching for articling positions. Since the commencement of the Pathways Pilot Project, there continue to be between 200-300 candidates who have not been successful in their search for an articling position by August or September each year, which is the usual start date for most articling positions. Many of the candidates who experience difficulties finding a position following graduation will ultimately obtain articling positions later on in their three-year licensing term, but may end up working in

⁶ The LSO offers several programs to assist candidates in their search for a position. The Registry, the Biographical Paragraphs Program and the Mentorship Program are described at <https://www.lsuc.on.ca/licensingprocess.aspx?id=2147498112>.

⁷ Dialogue on Licensing, Topic 2 Reference Materials: Market Dynamics and the Lawyer Profession, p. 23, online at www.lsdialogue.ca.

⁸ Dialogue on Licensing, Topic 1 Reference Materials: Licensing Process Statistics, p.22, online at www.lsdialogue.ca.

an area that does not align with their career interests or location preference, or does not meet their expectations for remuneration. These candidates may accordingly be delayed in their call to the bar and may not be licensed at the same time as their cohort.

There is evidence to suggest that candidates from equality-seeking groups face barriers in obtaining articling positions. For example, two fifths of racialized licensees who participated in a survey conducted as part of the LSO's Challenges Faced by Racialized Licensees Working Group reported that their ethnic/racial identity was the most serious barrier they faced in entering the profession.⁹ Almost half of racialized licensees "strongly" or "somewhat" agreed that they had struggled to find an articling position.¹⁰

Convocation has issued a number of reports over the years examining the issue of articling shortages.¹¹ Previous efforts by the LSO to engage encourage more law firms to provide articling placements have resulted in only nominal increases in the number of positions.

B. Viability of the LPP/PPD

The establishment of the LPP/PPD was intended to address the discrepancy between the demand for articling positions and available opportunities. When the LSO established the program, it was estimated that there would be approximately 400 candidates who would enroll in the LPP each year.¹² This estimate was based on the number of candidates who were without an articling position at the usual starting date (August or September) at the time. Enrollment in the program has been more modest than was anticipated. The table on the following page summarizes available LSO data regarding the number of candidates completing the LPP and PPD programs during four licensing years.

⁹ Stratcom Strategic Communications, Challenges Faced by Racialized Licensees: Final Report, Law Society of Upper Canada, March 11, 2014, p. VI, online at http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf.

¹⁰ Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, Consultation Paper, 2014, online at http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/racialized-licensees-consultation-paper.pdf, p. 17.

¹¹ 1972 Report of the Special Committee on Legal Education (the MacKinnon Report); the 1990 Proposals for Articling Reform (the Epstein Report); the 2005 Report of the Task Force on Employment Opportunities for Articling Students, the Licensing and Accreditation Task Force Report (2008), and the Articling Task Force Report (2012).

¹² Professional Development and Competence Committee Report to Convocation, September 22, 2016, online at http://www.lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/Convocation-September-2016-Professional-Development-and-Competence-Committee-Report.pdf, paragraph 61.

Enrollment Information for the LPP/PPD

Program	2014-15 LPP/PPD Enrollment	2015-16 LPP/PPD Enrollment	2016-17 LPP/PPD Enrollment	2017-2018 LPP/PPD Enrollment
Ryerson (English)	221	219	232	206
Ottawa (French)	17	11	21	12
Total	238	230	253	218

The PPD has had an average of 15 candidates each year.

These lower than anticipated enrollment numbers give rise to the inference that the programs may not be seen by candidates as an appropriate alternative for transitional training. As part of the introduction of the Pathways Pilot Project, Convocation approved the establishment of a formal evaluation framework of the two transitional training programs. According to the 2017 Pathways Evaluation, which analyzed data from candidates, articling principals, and LPP work placement supervisors “the LPP/PPD is still made up mostly of candidates who did not choose the LPP/PPD as their first choice for transitional, experiential training”.¹³

Some participants surveyed as part of this study referred to the fact that articling is perceived as a more traditional pathway and offers a longer period of paid employment. Other comments related to concerns about the perceived stigma of the LPP, and the possibility that candidates would be perceived as “second tier” when searching for a position post-licensure. The 2017 Pathways Evaluation suggests that these perceptions may be on the decline and that candidates are generally very satisfied with the training.¹⁴

C. Fairness in Remuneration

Some candidates are under additional pressure to find paid articling positions because they have high student debts. For the 2017-2018 academic year, tuition at Ontario law schools ranged from \$18,723.27 at Lakehead University to \$36,440.36 at the University

¹³ See the 2017 Pathways Evaluation Interim Results: Years One to Three (July 31, 2017), prepared by Dr. A. Sidiq Ali, Senior Evaluation Consultant (2017 Pathways Evaluation), online at <http://lsodialogue.ca>. Thirty-eight percent of respondents to a survey in 2014-15 conducted as part of the evaluation indicated that the LPP/PPD was their first choice for experiential training. During the second year of the program, this percentage dropped to 27% but had increased to 40% in 2016-2017 (see p. 165). It is also important to note that LPP candidates, once called to the Bar, are succeeding in obtaining employment. Within six months of being called to the bar, 75 percent of LPP candidates in the 2014-2015 licensing year were working full-time in law. Eighty percent of candidates in the 2015-16 licensing year were working full-time in law within six months of their call to the bar. See the 2017 Pathways Evaluation, p. 24.

¹⁴ *Ibid.*, p. 5.

of Toronto. The impact of students' law school debts on their ability to pay their licensing fees was a persistent theme during the 2017 DOL.¹⁵ As part of its submission to the DOL, the Law Students Society of Ontario conducted a survey of students regarding their debt. Eighty-five percent of respondents indicated that their debt was at least \$40,000 or more.¹⁶

That some articling positions entail inadequate remuneration was addressed in a survey conducted by the LSO in 2017. As part of its review of the licensing process, the LSO commissioned the Articling Experience Survey (Articling Survey) from Dr. Sidiq Ali, Senior Evaluation Consultant of Research & Evaluation Consulting (Articling Survey), to gather better information about a broad range of issues relating to the quality and effectiveness of articling placements. The Articling Survey was aimed at lawyers who had articulated in 2014-2015 or 2015-2016, and at those candidates in the process of completing their articles at the time of the survey (2016-2017 licensing year). The LSO released the results of this survey on January 25, 2018. The survey provides insights into a number of challenges, including remuneration.

The Articling Survey indicated that some candidates are poorly paid or not paid, suggesting that some employers are taking advantage of the opportunity to employ law school graduates for free, or for minimal compensation, given the need of these graduates to fulfil their transitional training requirement. Ten percent of articling candidates who responded to the survey and who had completed articling were paid less than \$20,000 during their articling term. Candidates who were not paid at all are included in this group (four percent did not receive any pay). Of those who responded to the survey who were articling at the time the survey was conducted, 10 percent were receiving a salary of less than \$20,000, and three percent were not paid at all.¹⁷

Inadequate or non-existent remuneration are also significant factors in LPP work placements. This 2017 Pathways Evaluation demonstrated that approximately 30 percent of LPP candidates have been unpaid during their work placement.¹⁸ Moreover, in comparison with articling candidates, LPP candidates were least likely to be satisfied by the remuneration they received during their work placement (in 2015-2016, 35 percent of LPP candidates said that they were "least satisfied" about their pay; this percentage had declined somewhat in 2016-2017, when 25 percent of LPP candidates indicated that they were "least satisfied" with their salaries).¹⁹

¹⁵ See for example the submission from the Law Student Society of Ontario, Topic 5: Law Student Debt, online at www.lsodialogue.ca.

¹⁶ Ibid.

¹⁷ Summary of Articling Experience Survey Results, Prepared by Dr. A. Sidiq Ali, Senior Evaluation Consultant, (Articling Survey) online at <http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>, pp. 15 and 33. Dr Ali notes that the survey cannot be considered to be statistically reliable or representative of the targeted population given that the total response rate for the survey was 28.1%. See p. 6.

¹⁸ 2017 Pathways Evaluation, *supra* note 13, p. 129.

¹⁹ Ibid., p. 128.

Lack of remuneration has been less of an issue in the PPD. During the first year of the program, 88% of PPD work placements were paid. During the second year, all of the work placements were paid. In 2016-2017, 81% of the work placements were paid. Overall, the program was able to offer paid placements to all candidates, although not always in candidates' preferred sector or location.²⁰

D. Fairness and Power Imbalance

The power imbalance inherent in articling can lead to abuses. The Articling Survey revealed that some candidates are subject to sexual harassment, as well as racial and gender discrimination:

- 18 percent of respondents who were currently articling had faced comments or conduct related to personal characteristics (age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation) that was unwelcome and 16 percent felt that they had received differential or unequal treatment due to personal characteristics.²¹
- 21 percent of respondents who had completed articling indicated that they had faced comments or conduct relating to personal characteristics that were unwelcome and 17 percent felt that they had received different or unequal treatment relating to personal characteristics.²²

The LSO has adopted a number of measures in response to the Articling Survey, which are described later in this report at page 20. The LSO does not currently have similar data for associates to allow it to determine if these statistics continue in the early years of practice. However, the question remains: does this inherent power imbalance support the suggestion that articling should be replaced by a new licensing system?

E. Consistency in Transitional Training

The nature of the articling experience depends on the individual circumstances of the candidate and the Articling principal, and therefore consistent exposure to competencies can be an issue.

The Articling Survey also indicates that transitional training may provide inconsistent outcomes. In the survey of respondents who were articling at the time the survey was conducted, over 85% said that at least 50% of the work they had completed during their articling term enabled them to develop legal skills. However, 14% of respondents said that less than half of the work helped them to develop their legal skills.²³ The Pathways

²⁰ Programme de pratique du droit, Data collected about the Programme de Pratique du droit for the Evaluation of Pathways: Years One to Three, Pathways to the Profession Pilot Project (2014-2015 to 2016-2017), *Ibid.*, p. 22.

²¹ Articling Survey, *supra* note 17, p. 38.

²² *Ibid.*, p. 20.

²³ *Ibid.*, p. 68.

Evaluation data similarly indicates that articling provides varying levels of exposure to the experiential training competencies.

The exposure of candidates to different competencies varies between articling and the LPP, as well as within each pathway. Articling candidates receive the most regular exposure to fact investigation and legal research as well as to file and practice management. They are least likely to have been exposed to transactional/advisory matters, advocacy, and negotiation.²⁴ In contrast, LPP/PPD candidates were more likely to report “tremendous” to “ample” growth in file and practice management skills and the use of law firm/legal practice management systems.²⁵

5. OTHER RELEVANT CONSIDERATIONS IN LAWYER LICENSING

A. Licensing Costs

Currently, LSO licensing fees, excluding HST, are \$4710. A large proportion of LPP/PPD participants in the 2017 Pathways Evaluation commented on the cost of the licensing process (76 percent in 2014-2015, 75 percent in 2015-2016 and 63 percent in 2016-2017).²⁶

B. Career Pathways of New Lawyers

The range of career paths followed by lawyers is increasingly diverse. As of April 2017, there were 50,673 lawyer members of the LSO.²⁷ Forty percent of these lawyers were not actively practicing law. Further, of the 34,000 lawyers who were practicing, approximately 10,000 or 30% were performing roles in government, education, businesses and other settings where they may not directly advise the public.²⁸

Correspondingly, new lawyers have a similar career trajectory. Of lawyers called to the Bar between 2013 and 2017, approximately 30% are practising in settings where they may not directly advise the public (government or in-house environments and other sectors; some newly-called lawyers are not practising at all).

This diversity raises the following question: should the licensing process recognize diversity of career paths?

C. Licensing Requirements to Respond to Regulatory Risk

Given increasing licensing costs and divergent career paths, there is an argument that training and licensing should focus on areas of greatest regulatory risk.

²⁴ 2017 Pathways Evaluation, *supra* note 13, pp. 49 and 51.

²⁵ *Ibid.*, p. 62.

²⁶ *Ibid.*, p. 129.

²⁷ The source for this statistic is LSO licensee data.

²⁸ See Dialogue on Licensing Reference Materials, Topic 2: Market Dynamics and the Lawyer Profession, p. 40, online at www.lsodialogue.ca.

It is more important than ever that new lawyers choosing to practise law possess practice management and client service skills. Although the LPP/PPD training course specifically addresses practice and client management as part of its curriculum, the information available to the Committee, both through the DOL as well as through various studies reviewing the two pathways, suggest that articling may not consistently provide candidates with training in these areas.

6. EVALUATIVE PRINCIPLES

The LSO has a statutory duty to act in the public interest and to ensure that the licensing process ensures entry-level competence. For the purposes of this consultation, the Committee recommends that each licensing option should be evaluated in relation to the extent to which it satisfies the following principles:

- a.) the five goals of transitional training, described below;
- b.) the LSO's statutory responsibility to ensure that newly-licensed lawyers are competent to practice law;
- c.) the need to ensure fairness in the licensing process;
- d.) consistency for candidates in their transitional training experience, irrespective of the nature of their transitional training experience (articling or the LPP/PPD); and
- e.) cost considerations, both for the candidates themselves as well as to the profession.

The evaluation of each option based on the evaluative principles should take into account the challenges and contextual factors outlined earlier in this report. These principles are explained below.

Evaluative Principle 1 - Transitional Training

Transitional training requirements are based on the premise that the licensing process must include transition-to-practice training in order for the LSO to fulfil its competence mandate.²⁹ In previous reports, the Committee has articulated the following five goals of transitional training:

1. application of defined practice and problem-solving skills through contextual or experiential learning;
2. consideration of practice management issues, including the business of law;
3. application of ethical and professionalism principles in professional, practical and transactional contexts;
4. socialization from student to practitioner; and
5. introduction to systemic mentoring.³⁰

²⁹ Articling Task Force Final Report, October 25, 2012, *supra* note 4, paragraph 12.

³⁰ See, for example, the Law Society of Upper Canada Articling Task Force Consultation Report, December 9, 2011, pp. 5-6, online at <http://lso.ca/articling-task-force/>. The goals of transitional training are also described in the Articling Task Force Final Report.

Evaluative Principle 2 - Competence

Section 4.1(a) of the *Law Society Act* provides that it is a function of the LSO to ensure that “all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide”.³¹

In the medical context, professional competence has been described as “the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and the community being served”. As noted by Professor Amy Salyzyn of the University of Ottawa, the phrase “legal reasoning” could be substituted for “clinical reasoning” in this definition.³²

“Competencies” are a set of defined requirements that individuals are required to possess. Competencies include skills, knowledge, and abilities. They are acquired through academic and experiential learning.

Academic Learning

The Federation of Law Societies of Canada (FLSC) National Requirement specifies the required competencies that graduates must have attained through a law school program in order to be considered for LSO licensing, both in Ontario and elsewhere in Canada. In order to obtain FLSC accreditation, Canadian law schools are required to ensure that their students demonstrate competencies in three core areas: skills, ethics and professionalism, and substantive legal knowledge. The National Requirement is summarized in an appendix at **Tab 3.1.1.2** of this paper.

For internationally-educated applicants, the NCA determines whether the applicant’s knowledge and understanding is equivalent to that of a Canadian law graduate. The NCA assessment normally requires an applicant to demonstrate competency in specific subjects, either through successfully completing an examination or attending a Canadian law school to successfully complete certain courses. Further details are provided at **Tab 3.1.1.3**.

NCA Assessments require applicants to demonstrate competence by completing examinations or courses in the following core common law subjects:

Canadian Administrative Law;

³¹ *Law Society Act*, R.S.O. 1990, c. L.8, online at <https://www.ontario.ca/laws/statute/90l08>.

³² Amy Salyzyn, “From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence”, University of Ottawa Common Law Section Working Paper Series, November 2016, p. 4, online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2858332, The definition of competence in the medical setting is discussed in Ronald Epstein and Edward Hundert, “Defining and Assessing Professional Competence” (2002) 287(2) *JAMA: The Journal of the American Medical Association* 226.

Canadian Constitutional Law;
Canadian Criminal Law;
Foundations of Canadian Law; and
Canadian Professional Responsibility.

While the areas listed above are mandatory, applicants may also be required to demonstrate competence in other core common law subjects (contracts, torts, and property law).³³ In some cases, if an applicant's law degree took less than three years to complete, the applicant may be asked to demonstrate competency in other subject areas.

The National Requirement includes three "skills competencies" (problem-solving, legal research, and oral and written legal communications). The NCA does not currently formally assess applicants' acquisition of these skills. Instead, it relies in part on candidate performance in the NCA examinations.³⁴

Candidates are responsible for preparing for the NCA examinations on their own, and for obtaining their own course material. Some Canadian law schools offer support courses or programs for NCA subjects. The examinations are fact-based, open book, and take three hours to complete.³⁵ The NCA is currently exploring a move to a competency-based assessment system.³⁶ A recent Program Review recommended that additional steps be taken to strengthen current NCA assessment and marking, and to improve the defensibility of the NCA examinations.³⁷

Testing of Competencies Through LSO Licensing Examinations

All candidates registered in the licensing process for lawyers are required to successfully complete both the barrister licensing examination and the solicitor licensing examination to become licensed to practice law.

Lawyer candidates are required to demonstrate proficiency in respect of competencies that reflect the minimum requirements of both barristers and solicitors entering the profession in the seven areas of law that are most frequently practised.³⁸ The current barrister and solicitor examinations provide a means of testing candidates' abilities in core knowledge, application and critical thinking competencies, irrespective of their educational background.

³³ See <https://flsc.ca/national-committee-on-accreditation-nca/faqs/>

³⁴ Cambridge Professional Development, Program Review on the National Committee on Accreditation for the Federation of Law Societies of Canada, May 29, 2017, online at <https://flsc.ca/wp-content/uploads/2014/10/NCA-Program-Review-Report-FINAL-May-31-2017-GenDistRED.docx.pdf>, (NCA Program Review), p. 24.

³⁵ For further information, see "Completing NCA exams", online at <https://flsc.ca/national-committee-on-accreditation-nca/meeting-the-assigned-requirements/completing-nca-exams/>.

³⁶ Federation of Law Societies of Canada, "About the NCA", online at <https://flsc.ca/national-committee-on-accreditation-nca/about-the-nca/>.

³⁷ NCA Program Review, pp. 44-45.

³⁸ See <http://lsuc.on.ca/BarristerCompetencies/> and <http://www.lsuc.on.ca/SolicitorCompetencies/>.

Candidates may attempt each examination up to three times, and are permitted a fourth attempt in exceptional circumstances.³⁹ Currently, candidates are permitted to write the examinations at any point during a three year licensing term. Further details regarding the examinations are provided at **TAB 3.1.1.4**.

The LSO's licensing examinations are internationally-recognized as high-quality, psychometrically-defensible professional qualification assessments.⁴⁰

The Committee does not propose any changes to the requirement that all licensing candidates be required to pass both the Barrister and Solicitor examinations as a requirement for licensure.

Experiential Training Competencies

The LSO has also established experiential training competencies that reflect the necessary skills, knowledge and tasks for the legal profession. These competencies are based on the FLSC's National Entry to Practice Competency Profile and have been further developed and validated by the profession. The experiential training competencies are the basis of the articling program and the LPP/PPD programs and consist of the following: ethics and professional responsibility, interviewing, fact investigation and legal research, drafting and legal writing, planning and advising, file and practice management, negotiation, advocacy, and transactional/advisory matters.⁴¹ The assessment of candidates' acquisition of competencies during the articling program and LPP/PPD has been independently reviewed by the Pathways Evaluations and the Articling Survey and are described in greater detail in an appendix to this report as **TAB 3.1.1.5**.

Evaluative Principle 3 - Fairness

Licensing processes, including transitional training for professional occupations must be derived in a valid and defensible manner. Fairness legislation (Fair Access to Regulated Professions and Compulsory Trades Act⁴²) and human rights laws require that licensing (registration) practices are consistent with the following objectives:

1. fairness;
2. objectivity;

³⁹ Information regarding Lawyer Licensing Outcomes in Ontario is available as part of the DOL Reference Materials. See the Topic 3 Reference Materials (Licensing Examinations: Assessment of Entry-Level Competence), www.lsdialogue.ca.

⁴⁰ See, for example, an article written by three U.S. law professors (Kaufman, Curcio, and Chomsky), "A Better Bar Exam – Look to Upper Canada?" (July 25, 2017, online at <https://www.lawschoolcafe.org/2017/07/25/a-better-bar-exam-look-to-upper-canada/>).

⁴¹ DOL Topic 4 Reference Materials, Transitional Training, p. 28, "Experiential Training Competencies for Candidates", online at https://lsdialogue.ca/wp-content/uploads/2017/03/DoL_Topic4_Reference_Materials_EN.pdf.

⁴² *Fair Access to Regulated Professions and Compulsory Trades Act*, 2006, S.O. 2006, c. 31, s. 6, online at <https://www.ontario.ca/laws/statute/06f31#BK7>.

3. transparency; and
4. accountability.

As part of the Fairness Commissioner's oversight of the LSO's licensing process, the LSO submits annual reports and participates in extensive assessment activities regarding its registration practices to demonstrate fulfillment of the general and specific duties enumerated in the legislation.⁴³

Evaluative Principle 4 - Consistency

In order for a mandatory transitional training requirement to be defensible, there must be some degree of uniformity in the nature of the experience for each candidate. Consistency is integral to the ability of the regulator to assure the public that new licensees have achieved entry-level competence. The degree of consistency may be measured by assessing the extent to which all candidates have been exposed to the necessary competencies and experiences, irrespective of the pathway to licensing that they choose or the transitional training opportunity that they hold.

Evaluative Principle 5 - Cost

Currently, each candidate pays a licensing fee of \$4710 (plus HST) which includes a \$2800 experiential training fee for the articling program or the LPP/PPD. Convocation has determined that all candidates should pay the same licensing fee, irrespective of pathway. Each year, Ontario lawyers contribute \$1,000,000 towards the costs of the licensing process to offset the costs resulting from the introduction of the LPP/PPD (each lawyer contributes between \$25 and \$27 towards the cost of the program). The introduction of the LPP/PPD in 2014-2015 increased licensing costs incurred by candidates from \$2910 per candidate to \$5210 per candidate, which was offset by the \$1,000,000 contribution from lawyer members, resulting in a final fee increase to \$4710.

Since the licensing process operates on a cost recovery basis which entails that candidates bear the cost of the licensure, with contributions from the profession, the Committee is of the view that each option should be evaluated with a view to the estimated financial impact.

7. OPTIONS

The Committee seeks feedback from the profession about whether or not the transitional training requirement should be altered, and, if so, how. This consultation takes the form of proposing four options for licensure, including the existing program.

⁴³ The 2016 OFC report regarding the LSO's registration practices may be accessed at http://www.fairnesscommissioner.ca/index_en.php?page=professions/law_society_of_upper_canada.

The four options can be broadly described as follows:

- Option 1: Current Model**
- Option 2: Current Model with Enhancements**
- Option 3: Examination-Based Licensing**
- Option 4: LPP for All Candidates**

Options 1 and 2 are based on maintaining both the articling program and the LPP/PPD. Option 3 eliminates the requirement that licensing candidates complete transitional training.

Option 4 requires the completion of the LPP/PPD for all candidates without the work placement component. Options 2, 3 and 4 involve a new mandatory skills examination. In addition, Options 2 and 4 require candidates to pass the licensing examinations before moving onto the next phase of the licensing process.

Option 1: Current Model

Overview

The first option is the current model of licensure, including multiple pathways for transitional training. The primary components are:

- A. Articling OR
- B. LPP/PPD, including a work placement OR
- C. Integrated Practice Curriculum
- D. Barrister and Solicitor Examinations

Evaluative Principles Analysis - Option 1

Transitional Training

The 2017 Pathways Evaluation reviewed data from surveys conducted in 2014-2015, 2015-2016 and 2016-2017 and concluded that both articling and the LPP/PPD achieve the goals of transitional training in a manner consistent with the objectives of licensing (fairness, objectivity, transparency and accountability).⁴⁴

⁴⁴ 2017 Pathways Evaluation, *supra* note 13, p. 6. Of the 1455 licensing candidates in 2014-2015, 44% responded to the survey conducted as part of this study. In 2015-16, participation was similar (44% of 1392 candidates). During the third year of the evaluation (2016-2017), only 25% of 1411 articling candidates responded to the survey. A survey was also sent to articling principals. The response rate from articling principals was also low (39% of principals in 2014-15, 29% in 2015-16, and 17% in 2016-17). The Pathways Evaluation also included a survey sent to practising new lawyers who articulated in 2014-15 and 2015-16. Participation by newly-licensed lawyers was low (30% during the first year and 10% in the second). Dr. Ali suggests that the low participation rates in the Pathways Evaluation may be related to the fact that the Articling Survey had been conducted shortly before this study began. The findings regarding acquisition of competencies for articling candidates are at pp. 48-49 of the 2017 Pathways

The evaluation concluded that both the articling program and the LPP/PPD provide candidates with an opportunity to apply defined practice and problem-solving skills through contextual or experiential learning, which is the first goal of transitional training. Candidates also have an opportunity to consider practice management issues, including the business of law, although LPP/PPD candidates are more consistently exposed to this second goal of transitional training given the specific emphasis on this topic during the LPP and PPD training courses.

Candidates in both pathways also have an opportunity to apply ethical and professionalism principles in professional, practical and transactional contexts (the third goal of transitional training). Both pathways provide an opportunity for candidates to experience socialization from student to practitioner and address the fourth component (the LPP and PPD training courses and the work placement itself offers this opportunity). Finally, articling principals and LPP/PPD mentors provide candidates with an introduction to systemic mentoring, which is the fifth goal of transitional training.

Options 1, 2 and 4, which contemplate retaining a mandatory transitional training requirement, are consistent with the practices of regulated professions in most jurisdictions around the world. Options 1 and 2 are also responsive to the views expressed by in-person participants during the DOL. Forty-one percent of respondents polled during a discussion group organized to discuss transitional training indicated that work placements during licensing, including work placements during law school, were the best option to ensure entry-level competence of new lawyers. An equal percentage selected a practical training course during licensing. Only one percent of participants indicated that transitional training should not be part of the licensing process.⁴⁵

Competence

Data reviewed by the Committee suggests that both of the current transitional training options assist candidates to achieve the required standard of competence. The 2017 Pathways Evaluation, which included data from both candidates and articling principals, concluded that the articling pathway offers candidates an opportunity to develop their skills and competencies, particularly in relation to fact investigation and legal research, and file and practice management.⁴⁶

The 2017 Pathways Evaluation also shows that both the LPP and the PPD assist candidates in achieving the competence required for licensure. Dr. Ali observes that most LPP candidates are meeting the competency development expectations on all of their assessments, and a considerable proportion of candidates are “exceeding” or

Evaluation. The study suggests that the findings should be treated with some caution, given the low response rate to the survey.

⁴⁵ Dialogue on Licensing, Topic 4: Transitional Training, Discussion Group Summary Report, online at www.lsdialogue.ca, p. 8.

⁴⁶ 2017 Pathways Evaluation, *supra* note 13, p. 49.

“exceeding/meeting” the expectations on all assessments.⁴⁷ Available data also indicates that the majority of PPD candidates reported “ample” to “tremendous” growth in all of the skills competencies areas.⁴⁸

The Articling Survey also suggests that four-fifths of respondents thought that at least 50 percent of the work they had completed during their placement enabled them to further develop their legal skills.⁴⁹

The Articling Survey also revealed that the mean satisfaction rating for candidates currently articling with respect to the work they had performed during articling was 3.69 on a scale of 0 (“highly dissatisfied”) to 5 (“highly satisfied”). Of those who had completed their articles, the average response was 3.62.⁵⁰ When asked to rate their level of satisfaction with respect to the quality of learning during their articling placement, respondents who had completed their articles provided an average rating of 3.72 on a scale of 0 to 5. Respondents who were articling at the time reported an average satisfaction rating of 3.52.⁵¹

Fairness

Articling

The results of the Articling Survey suggest that some candidates continue to experience discrimination and harassment based on irrelevant personal characteristics during their articling experience. The LSO takes these matters very seriously. Discrimination and harassment have no place in the legal professions or in the licensing process.

A series of measures have been adopted by the LSO in response to the Articling Survey, including:

- i.) engaging with law firms and legal departments in a variety of settings to share best practices to address issues regarding harassment and discrimination, including examining how best to establish mechanisms for articling candidates, lawyers, and paralegals to confidentially report instances of harassment and discrimination;
- ii.) raising awareness of LSO services and supports to assist people experiencing harassment and discrimination, including the Discrimination and Harassment Counsel and the Member Assistance Program;⁵²

⁴⁷ Ibid., pp. 71-73.

⁴⁸ Programme de pratique du droit, *supra* note 20, pp. 10-11.

⁴⁹ Articling Survey, *supra* note 17, p. 16 (respondents who had completed articling) and p. 35 (currently articling).

⁵⁰ Ibid., pp. 36 and 17.

⁵¹ Ibid., pp. 36 and 18.

⁵² Discrimination and Harassment Counsel, online at <http://www.lsuc.on.ca/discrimination-harassment-counsel/>. Member Assistance Program, online at <http://www.myassistplan.com/>.

- iii.) reviewing and amending the *Rules of Professional Conduct* (in particular Section 6.3 - Sexual Harassment - and Section 6.3.1 - Discrimination) to ensure that the *Rules* are up-to-date and reflect the latest statutory changes and case-law developments.

An additional mitigating factor to be considered in evaluating the fairness of the articling program is that discrimination and harassment are specifically prohibited under the *Rules of Professional Conduct*. Articling candidates experiencing these issues have access to assistance from the Discrimination and Harassment Counsel Program, the Articling Office and the Member Assistance Program.

With respect to barriers to licensing faced by racialized articling candidates seeking a position, the LSO has adopted various measures recommended by the Challenges Faced by Racialized Licensees Report to raise awareness in the profession as a whole about the need to eliminate unconscious bias and to ensure fairness and equity during the hiring process. The report requires that a licensee representative of a legal workplace of at least 10 licensees develop, implement and maintain a human rights/diversity policy addressing the need for fair recruitment, among other issues. Licensees will also be required to complete Continuing Professional Development hours focused on equality, diversity, and inclusion.

LPP/PPD

According to the 2017 Pathways Evaluation, the composition of candidates in the LPP/PPD is more diverse than the articling population. The existence of the LPP/PPD as an alternative to articling supports fairness by ensuring access to the profession for all candidates, including those who have faced barriers to obtaining articles for a variety of reasons. Approximately half of the candidates in the LPP are internationally educated (the largest proportion of candidates received their law degrees in the U.K., the U.S., and Australia).⁵³ Half of the internationally-educated candidates are Canadians.⁵⁴

In contrast, since the establishment of the program, none of the PPD candidates to date has been internationally-educated. The vast majority are University of Ottawa graduates, as no other Ontario law school offers a common-law degree in French. Compared to the articling program, both the LPP and the PPD have a greater proportional representation of candidates who are racialized, are francophone, indicate that they have a disability, or are over 40.⁵⁵ The following table compares the percentage of racialized candidates in each pathway.

⁵³ 2017 Pathways Evaluation, *supra* note 13, pp. 4, 95 and 97.

⁵⁴ Ryerson University, 2016-2017 LPP Final Report to the Law Society of Upper Canada, May 15, 2017, p. 2.

⁵⁵ 2017 Pathways Evaluation, *supra* note 13, p. 4.

Percentage of Racialized Candidates by Pathway – Based on Voluntary Self-Identification Data

Pathway	Year 1 2014-2015	Year 2 2015-2016	Year 3 2016-2017	Year 4 2017-2018
Articling	21%	18%	17%	22%
LPP/PPD	33%	32%	30%	36%

Another measure of fairness is the extent to which the licensing program, including the two pathways, responds to the needs of French-speaking licensing candidates. The LSO's French Language Services Policy provides that the LSO is committed to offering lawyer and paralegal licensing in French, including resources and examinations of equal quality in French and English and the option to receive the Call to the Bar certificate in either French or English.⁵⁶

The PPD is seen to have a unique role in addressing the current access to justice crisis for members of the public who seek legal services in French in Ontario.⁵⁷ The PPD work placement offers candidates the opportunity to experience a francophone work environment during the 17-week training component of the program. As a result, the PPD currently plays a special role in Ontario's legal services landscape.

The program is based on the recognition of linguistic dualism, and takes into account the particular needs and realities of the Franco-Ontarian community, particularly with respect to access to justice.⁵⁸ Almost all of the PPD candidates surveyed in the 2017 Pathways Evaluation indicated that as a result of their participation in the program, they had become aware of the unique needs and characteristics of the Franco-Ontarian legal community.⁵⁹

Participants in the DOL (both individuals as well as legal stakeholder groups) emphasized the importance of the PPD in ensuring that lawyers of the future are equipped to serve francophone clients.⁶⁰

A significant number of PPD candidates are graduates of the University of Ottawa's National (civil and common law) Program. Because common law courses are not offered until the fourth year of the program, these candidates are not in a position to

⁵⁶ Law Society of Upper Canada French Language Services Policy, January 2015, online at <http://www.lsuc.on.ca/providing-services-french/>.

⁵⁷ Letter from Allan Rock, "Linguistic Dualism and the Programme de pratique du droit", March 7, 2018, www.lsocialogue.ca.

⁵⁸ Ibid.

⁵⁹ 2017 Pathways Evaluation, *supra* note 13, p. 153.

⁶⁰ See submission of Ronald F. Caza to the DOL, July 28, 2017, online at www.lsocialogue.ca.

apply for a transitional training position until their final year. The PPD offers these candidates an opportunity to be licensed in Ontario.⁶¹

Remuneration in Articling and the LPP/PPD

There are inherent differences between the two pathways with respect to pay. While articling candidates are paid for a 10-month placement (subject to the issues regarding unpaid and poorly paid placements referred to earlier), LPP/PPD candidates are paid only for the four-month work placement. Further, as noted above, thirty percent of LPP candidates are not paid at all during their work placement. In 2016-2017, 19% of the LPP work placements were unpaid.

Consistency

Articling

The articling experience is dependent on the circumstances of the principal employing the candidate. In some cases, candidates may not receive any exposure to certain competencies because of the nature of the practice and the relationship between the principal and the candidate.

The 2017 Pathways Evaluation suggests that articling does not provide a consistent exposure to all of the LSO experiential competencies, which reflect the skills, knowledge, and tasks that are necessary for entry into the profession. During the past three years, articling candidates have received the most regular exposure to fact investigation and legal research as well as to file and practice management. Articling candidates were least likely to have been exposed to transactional/advisory matters, advocacy, and negotiation.⁶²

The Articling Survey and comments received during the DOL also suggest that there are an increasing number of marginal placements that are not delivering appropriate transitional training. Fourteen percent of respondents who were articling at the time of the Articling Survey indicated that less than half of the work they completed enabled them to further develop their legal skills.⁶³ Twenty percent of respondents who had completed their articles at the time of their participation in the survey had the same observation.⁶⁴

Unpaid and poorly paid articles, as well as unpaid LPP work placements (30% of positions are unpaid, despite Ryerson's best efforts) contribute to a lack of consistency between the pathways.

⁶¹ Alain Roussy, *Le Programme de pratique du droit à mi-parcours: une étude empirique*, *Revue de droit de l'Université d'Ottawa*, 48:1 (2017) 79, p. 59.

⁶² 2017 Pathways Evaluation, *supra* note 13, pp. 49 and 51.

⁶³ Articling Experience Survey Results, *supra* note 17, p. 35.

⁶⁴ *Ibid.*, p. 17.

LPP/PPD

Because of their structure and design, the LPP and PPD training courses offer a more consistent learning opportunity than does articling. Both training courses provide a systematic approach involving scenarios and tasks developed by lawyers with expertise in various areas of law. This training helps ensure practice readiness by providing candidates with an opportunity to perform entry-level lawyer tasks and activities during both the training course and the work placement component of the program, as well as formative and summative assessment in relation to the required competencies. Because of this structure, each candidate can be assured of reasonably consistent legal training.

Cost

Option 1, if implemented, would not have any additional cost implications for candidates who would continue to pay the same licensing fee of \$4710 (plus HST), subject to necessary increases for inflation over time, and assuming an annual member contribution to the licensing process.

Option 2: Current Model with Enhancements

Overview

Option 2 has the same basic elements as Option 1 with enhancements to address inadequate placements, including a new requirement that all candidates would have to receive at least the statutory minimum wage during transitional training wherever possible. In addition, Option 2 would involve a new mandatory skills examination to measure the achievement of the required standard of competence. Option 2 would involve completion of the following components in the order listed:

- A. Barrister and solicitor examinations, with successful completion required as a prerequisite to the commencement of transitional training;
- B. Articling or LPP/PPD, with enhancements; and
- C. New skills examination, with successful completion required before licensure.

Barrister and Solicitor Examinations

Option 2 would maintain the content and focus of the barrister and solicitor examinations. However, it would require these examinations to be successfully completed prior to the transitional training phase. These examinations test competencies that candidates are expected to have acquired while in law school; success in these examinations is necessary to ensure that candidates are ready for a practice environment. The LSO will offer two opportunities for candidates to pass the examinations before beginning their articles or the LPP/PPD. Candidates who are not successful in the examinations will be required to defer transitional training. Only

candidates able to pass the examinations will be able to occupy valuable transitional training positions.

Articling, LPP/PPD with enhancements

The proposed enhancements to the articling and work placement processes are:

1. additional measurement and monitoring to ensure that all placements meet the basic goals and objectives of transitional training;
2. random audits to confirm that placements are meeting transitional training goals;
3. a new requirement regarding remuneration of licensing candidates at the statutory minimum wage prior to approval of the articling or LPP/PPD work placement; wherever possible; and
4. the elimination of marginal placements.

Skills Examination

At the conclusion of their articling or work placement, all candidates would be required to complete a new examination to test their lawyering skills (skills examination). The skills examination could consist of written tasks, such as writing an opinion letter or memorandum, drafting an affidavit or short pleading, providing an analysis of the application of the *Rules of Professional Conduct* to a particular situation, or identifying proposed solutions to an urgent issue or question.

Evaluative Principles Analysis – Option 2

Transitional Training

Because Option 2 would involve retaining both the articling and LPP/PPD pathway, it would ensure that licensing candidates meet the goals of transitional training. The analysis of the five goals of transitional training under Option 1 should be reviewed when evaluating this option.

Competence

Option 2 requires candidates to successfully complete the barrister and solicitor examinations before transitional training begins. As noted above, this requirement would mean that only those who have attained the required competencies in law school will enter the transitional training phase.

As set out under Option 1, the evidence indicates that articling and the LPP enable candidates to acquire the necessary skills and competencies. Option 2 proposes a new mandatory skills examination before licensure to objectively evaluate this learning process. Although the licensing process currently requires candidates to demonstrate that they have acquired certain experiential training competencies during the transitional training phase, the evaluation is conducted by individual articling principals

and LPP training course and work placement assessors. The skills examination would ensure that all candidates would be subject to a common evaluation and required to demonstrate the same competencies before they are licensed.

Option 2 would include additional LSO monitoring and random audits of articling placements to ensure that they meet the goals and objectives of transitional training. These measures would respond to some of the concerns expressed by some respondents to the Articling Survey about the extent to which their articling experiences enabled them to develop their legal skills.

Fairness

The concerns noted earlier in relation to Option 1 about whether candidates from equality-seeking groups have equal access to articling positions would also apply to Option 2. Some of these concerns are currently being addressed through the LSO's equality, diversity and inclusion initiatives, and as a result of its response to the Articling Survey. The analysis under Option 1 regarding the role played by LPP/PPD in ensuring fairness in the licensing process would also apply to Option 2. The continuation of the PPD would ensure that the licensing system continues to (i) respond to the needs of French-speaking licensing candidates, and (ii) ensure that future lawyers are able to meet the public's need for competent and ethical legal services in French.

Requiring all candidates to successfully complete the Barrister and Solicitor examinations before beginning their transitional training may address some of the issues regarding the perception that the LPP/PPD is a "second-tier" pathway to licensing, since only candidates who demonstrate that they have acquired the necessary competencies in law school would be permitted to enter transitional training.

The new requirement that all licensing candidates receive the statutory minimum wage would address the lack of fairness with respect to pay, as follows:

- i.) Unpaid or poorly paid articles would no longer be permitted, which would address the exploitative nature of such arrangements and ensure a minimum standard of payment, irrespective of the nature of their placement.
- ii.) The discrepancies between the percentage of unpaid articling positions (3%) and unpaid LPP work placements (30%) would be eliminated.

Consistency

As discussed above, the requirement that all candidates pass the barrister and solicitor examinations before beginning transitional training ensures consistency among all candidates by requiring them to demonstrate that they have acquired certain competencies.

Further, the addition of LSO audits of articling and other enhancements proposed as part of Option 2 may not eliminate the issue of the inconsistent quality of articles, but will reduce the number of poor quality or marginal articling positions and ensure a more consistent experience among all candidates.

Cost

The proposed new quality assurance protocols (audits and additional measurement and monitoring) for all placements could result in a fee increase of approximately between \$125 and \$175 per candidate. The estimated cost of a final skills examination would depend on the type of examination to be implemented. A written skills examination, described earlier, could result in a cost of between \$1600 and \$2000 per candidate. These additional costs would be added to the current licensing fee which is \$4710 per candidate. The total cost, per candidate, of Option 2 would likely be in the range of \$7000 (plus HST).

Option 3: Examination-Based Licensing

Overview

Based on an analysis of regulatory risk to the public, and mindful of the sustainability of the current universal transitional training requirement, Option 3 is based on the premise that there is a need for profound change in the current licensing system. If implemented, Option 3 would involve the removal of the pre-licensure transitional training requirement for all. The acquisition of competencies would be measured through the successful completion of three examinations as the precondition to licensure (the current barrister and solicitor examinations and the new Skills Examination).

Option 3 shifts the management of regulatory risk to the post-call career path of the new licensee. Option 3 would involve completion of the following components in the order listed:

- A. Barrister and solicitor examinations, with the same content as described in Option 1 and successful completion required as a condition of licensure;
- B. Skills examination, with the content as described in Option 2 and successful completion required as a condition of licensure;
- C. Licensure, with post-call regulatory requirements dependent on the lawyer's employment situation. A Sole Practice Essentials Course would be required for lawyers entering into sole practice or practice with five or fewer lawyers.

Candidates would be licensed to practise after they successfully completed the three examinations described above. The LSO's focus would shift to post-call oversight. The requirements are described below:

- i. *Non-Practising Licensees*: Candidates who choose not to provide legal services directly to members of the public would be licensed after the examinations and would be in a non-practising membership category. As noted earlier, currently, 30 percent of newly-licensed lawyers fall into this category. Should non-practising licensees decide to practice law at some later date, they would be required to satisfy the conditions described in paragraphs ii or iii below.
- ii. *Licensees Practising in a Workplace of Six or More Lawyers*: Candidates who obtain employment as lawyers in a workplace of six or more lawyers would be licensed after the examinations with no post-call requirements. This option assumes that the transitional training for these new lawyers would be provided by their workplaces, and acknowledges that students have experiential learning opportunities in law school.
- iii. *Licensees Practising in a Sole or Small Firm Practice with Five or Fewer Lawyers*: Candidates would be licensed after the examinations and required to complete a Practice Essentials Course specifically designed for sole practitioners and members of small firms within 12-18 months of the candidate choosing this category of practice. The course could include 30 hours of online e-course content and five in-person days.

Practice Essentials Course

Subjects to be covered in this course include client service and communication, financial and practice management, and the business of running a law or legal services practice. Optional modules could be added onto the course that would focus on particular areas of practice (real estate, estates and trusts, family law, criminal law, civil litigation, and corporate-commercial law).⁶⁵ Newly licensed lawyers entering sole or small firm practice may also be subject to audit within their first few years of practice.

The practice essentials course could be a requirement for licensees who move from a workplace of six or more lawyers to a sole or small firm practice at any point in their careers.

Risk Analysis - Option 3

Option 3 has been designed to ensure that the resources allocated by the LSO to the licensing system are directed towards the areas of greatest risk.

The LSO's data demonstrates that sole practitioners continue to receive a significantly higher number and proportion of complaints while licensees practising in larger firms continue to receive a significantly fewer number and proportion of complaints.⁶⁶ As at

⁶⁵ The Practice Essentials Course could also be adapted for paralegal licensing candidates.

⁶⁶ "Larger firm" refers to lawyers practising in firms with more than 26 licensees. Law Society of Upper Canada Professional Regulation Division End-of-Year Report (31 December 2016), online at

December 31, 2016, sole practitioners constituted 35% of all lawyers in private practice, yet, this group received 51% of all complaints against lawyers in private practice in 2016. Further, lawyers practising in two-licensee firms (9% of all lawyers in private practice) received significantly more complaints (13% of all complaints received against lawyers in private practice in 2016).⁶⁷

In 2016, the highest proportion of complaints made to the LSO about lawyers (47%) involved service issues. Service issues include failure to report to a client, failure to follow client instructions, lack of communication with a client, failure to preserve client property, failure to serve a client, failure to supervise staff, failure to account to a client, failure to pay financial obligations, breach of confidentiality, and withdrawal of services.⁶⁸

The Practice Essentials Course would emphasize client service and communication, financial and practice management, and the business of running a law or legal services practice.

Seventy-five percent of law firms in Ontario are one lawyer firms. However, relatively few articling positions are available in these settings (in 2016-2017, 16.8% of available articling placements were in sole practice or in firms of between 2-5 lawyers).⁶⁹ Most of the available placements are in larger metropolitan areas and are offered by medium and large firms where candidates are not routinely exposed to the business of law and the realities of running a law practice. As a result, the majority of current available transitional training opportunities may not prepare candidates for the challenges of small firm or sole practice.

Given market realities, Option 3 focuses on regulatory risk in settings in which lawyers do not have access to colleagues and other practice supports. LSO resources would be directed to proactively addressing risk issues in a different way, by requiring lawyers in higher risk practices to take the Practice Essentials Course. Option 3 would not direct resources to an unnecessary transitional training infrastructure for candidates who choose not to practice law and do not pose a risk to the public.

Other factors taken into consideration by Option 3 include

- (i) the role played by law firms in training new lawyers; and

https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf, p. 10.

⁶⁷ Ibid., pp. 62-63.

⁶⁸ Service issues are described in the Professional Regulation Division Report to Convocation May 2017 (Analysis of Complaints Received in the Professional Regulation Division in 2016), p. 22. Also see the Professional Regulation Division End of Year Report (31 December 2016), p. 23, online at http://www.lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation-May2017-Professional-Regulation-Committee-Report.pdf.

⁶⁹ 2017 Pathways Evaluation, *supra* note 13, p. 124 (“Settings for Articling Placements (Years One through Three)”).

- (ii) the establishment of mentoring initiatives in the profession, described in greater detail below.

LSO Initiatives

In January 2016, LSO Convocation approved the creation and funding of a new law practice coaching and advisory network for lawyers and paralegals, one of the goals of which was to “provide coherent and systematic opportunities for the enhancement of competence”.⁷⁰ The LSO Coach and Advisor Network was launched in November 2016. Since inception, 150 lawyers and paralegals have volunteered for the program and have responded to over 500 requests from individuals seeking opportunities to meet with a coach or advisor.⁷¹ Many legal organizations have also established mentoring initiatives.⁷² The LSO’s Practice Management Helpline also assists lawyers with situations raising ethical questions.

Role of Law Schools

The proposed new skills examination, common to Options 2, 3 and 4 could function as an incentive to law schools to ensure that their curricula sufficiently prepare graduates for this practical examination. Further, with the removal of articling, students may pressure law schools to provide more experiential training opportunities.

Evaluative Principles Analysis – Option 3

Transitional Training

Option 3 recognizes that candidates who do not provide legal services to the public do not require transitional training in the traditional sense. It also takes into consideration that candidates who begin their careers in a workplace of six or more lawyers will have greater access to supervised training and mentoring in those settings.

For lawyers in sole or small firm practices of five or fewer licensees, the Practice Essentials Course would systematically address the first three transitional training goals (application of practice and problem-solving skills through contextual or experiential learning, consideration of practice management issues, including the business of law,

⁷⁰ Mentoring and Advisory Services Proposal Task Force Report to Convocation, January 2016, online at https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf.

⁷¹ Current statistics regarding the use of Coach and Advisor Network is available in the Professional Development & Competence Committee Report to Convocation, February 2018, online at https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2018/2018-Feb-Convocation-Professional-Development-Competence-Committee-Report.pdf.

⁷² Further information regarding the OBA Mentorship Program is available at <https://www.oba.org/Professional-Development-Resources/Mentorship>. Further information about the Advocates’ Society mentorship initiative is available at http://www.advocates.ca/TAS/Community_Events/Mentoring/TAS/Community_Events/Mentoring.aspx?hkey=b0e04c98-eabb-495e-b345-dc9a2cc95ea1.

and application of ethical and professionalism principles). In fact, the course could be more effective in addressing these goals than articling in many cases. Not all work environments offer candidates exposure to client services and communication, financial and practice management, and the business of running a law or legal services practice, which would be covered in the course.

The final two transitional training goals are socialization from student to practitioner and the introduction to systemic mentoring. While candidates who complete the Practice Essentials Course may experience some of these benefits through their participation in the course, they would not have had as lengthy a period of supervised work pre-licensure. That said, Option 3 takes into consideration that, compared to previous generations of law students, today's law students have greater access to opportunities to provide legal services as a result of a wide variety of experiential learning opportunities currently available in law school.⁷³ Further, as noted above, both the LSO and other legal organizations offer a variety of mentoring programs that may offer opportunities for socialization from student to practitioner. While the goals of transitional training can be achieved in law school to some extent, they can also be achieved post-call in a practising environment where lawyers have access to more experienced members of the profession.

Competence

Option 3 addresses competence by requiring candidates to be tested through the barrister and solicitor examinations and the skills examination. Further, individuals practising on their own or in small firms would benefit from additional focus on the business of running a law practice through the Practice Essentials Course. Further, all Canadian law schools must demonstrate that their curricula requires students to demonstrate competencies in three core areas (skills, ethics and professionalism, and substantive legal knowledge).⁷⁴ As part of the NCA process, the credentials of internationally-trained lawyers are evaluated in accordance with the competencies and standards in the FLSC National Requirement.⁷⁵

Option 3 also takes into consideration the mentoring initiatives undertaken by both the LSO and legal organizations, described above, that are designed to enhance competence.

Fairness

⁷³ Information provided as part of the DOL (current as of March 2017) indicates that eleven Canadian law schools offer experiential training opportunities including legal clinics, clerkships, internships, and mediation practicums, which may or may not be for academic credit. All Canadian law schools offer non-credit or volunteer learning opportunities. See www.lsodialogue.ca. In September 2012, Osgoode Hall Law school became the first Canadian law school to introduce an experiential education requirement as part of its curriculum.

⁷⁴ See the National Requirement of the Federation of Law Societies of Canada. "Canadian Law School Curricula: Minimum Competencies and Skills Attained at a Canadian Law School", www.lsodialogue.ca.

⁷⁵ The factors considered by the National Committee on Accreditation are set out at **Tab 3.1.1.3**.

Option 3 ensures that all licensing candidates have an equal opportunity to be licensed. Market conditions with respect to the supply of paid articling or LPP positions would no longer determine access to transitional training as a mandatory component of the licensing process. Option 3 would eliminate concerns about the “two tiered” nature of the two transitional training pathways. That said, not all candidates have identical access to transitional training opportunities in law school, with the result that some may be in a better position than others to be successful on the mandatory skills examination. However, as noted earlier, Option 3 may encourage law schools to recognize the need to ensure that all law graduates would be able to demonstrate the competencies that would be tested in the Skills Examination by ensuring that these competencies are offered as part of the law school curriculum, either through more experiential training opportunities or otherwise.

Option 3, if implemented, would need to be carefully designed to ensure that the licensing system continues to meet the needs of French-speaking candidates, and to ensure that the public has access to competent French-speaking lawyers. The Practice Essentials Course could be offered in French and English, incorporating much of the content of the current PPD, including the emphasis on lawyers’ ethical obligations to ensure that clients are aware of their language rights as set out in the *Rules of Professional Conduct*. Mentors from the francophone bar could be involved in the delivery of the course as instructors.

The cost of the proposed course could be a burden for some new lawyers. It could be argued that the imposition of an additional requirement on only one category of licensee is unfair. Through this consultation, the Committee hopes to receive recommendations to minimize this burden.

Option 3 reduces the prospect of a power imbalance because licensing would no longer be contingent upon transitional training. That said, it is important to note that some power imbalances may still exist in legal workplaces.

Option 3, if implemented, would establish a completely new licensing system. As a result, not all of the impacts of Option 3 and steps to mitigate these impacts can be currently identified. For example, some argue that transitional training plays a key role in assisting candidates to enter the legal services marketplace. Option 3 could have impacts on equality-seeking groups and international law graduates that may need to be further considered. Further, depending on the nature of a candidate’s law school exposure to experiential training, it may be challenging for some candidates to be successful in the skills examination. Some private providers may emerge in the marketplace offering courses to prepare candidates to fulfil this requirement.

Consistency

Option 3 would address the concerns about uneven articling experiences and inconsistencies regarding the acquisition of competencies between the two licensing pathways. All candidates would be required to complete the same summative

examinations, irrespective of their chosen career path. The Practice Essentials Course would provide a consistent means of ensuring that lawyers entering sole practice or small firms have been exposed to, and are able to demonstrate, the same competencies necessary for the practice of law, including those competencies relating to the business of law.

Cost

Assuming 600 newly licensed participants in the Practice Essentials Course annually, the estimated per candidate cost of the course could be in the range of \$2200-\$2500. Costs would vary if the course were extended to include all licensees who enter the sole or small practice category regardless of the date of licensure. This estimate assumes approximately 30 hours of online e-course content and five in-person days. Only candidates who choose to practise in this sector would be required to pay for the course, in addition to the current licensing fee.

All candidates would have to pay for the skills examination (as noted above, the new examination would likely cost between \$1600 and \$2000 per candidate).

In Option 3 fees would vary depending on the category of practice, as follows:

- i.) Non-Practising Lawyers – would continue to pay the current licensing fees, less the cost of the transitional training requirement, as well as the new Skills Examination fee (the total licensing cost for this category would be approximately \$4200 plus HST);
- ii.) Lawyers Entering Workplaces of Six or More – would continue to pay the current licensing fee, less the cost of the transitional training requirement, in addition to the new skills examination (approximately \$4200 plus HST);
- iii.) Lawyers Entering Sole Practice or Small Firms would be required to pay the current licensing fee, less the cost of the transitional training requirement, plus the new skills examination fee, and the Practice Essentials Course fee (to be taken at some point during the first 12-18 months of practice) for a total of approximately \$6,400-\$6700, plus HST.

Option 4: LPP/PPD for All Candidates

Overview

Like Option 3, Option 4 assumes the need for significant change in the current LSO licensing requirements, given the need to ensure that the current paradigm is responsive to the changing nature of the legal services marketplace. Option 4 also takes into consideration available data regarding the LPP/PPD and its effectiveness in ensuring a consistent exposure to competencies necessary for the practice of law.

Option 4 would require all licensing candidates to complete the LPP/PPD training course. The LPP could be offered at different sites and at different times throughout the

year. Recognizing the ongoing challenges in providing paid work placements to all LPP/PPD candidates in their chosen areas, the LPP/PPD work placement would be removed. As is the case with Options 2 and 3, candidates would also be required to complete the three examinations described above.

The primary components of Option 4 listed in order of completion, are:

- A. Barrister and solicitor examinations, as described in Option 1, with successful completion required before commencement of transitional training;
- B. LPP/PPD, without work placements; and
- C. Skills examination, as described in Option 2, with successful completion required before licensure.

Evaluative Principles Analysis – Option 4

Transitional Training

Option 4 satisfies all of the transitional training requirements. The LPP/PPD 17-week training course was specifically designed to train candidates in the experiential training competencies and to support their ability to fulfill the LSO's transitional training goals. The first transitional training goal (application of defined practice and problem-solving skills through contextual or experiential learning) is satisfied by the LPP/PPD 17-week course. The web-based and in-person learning modules, requiring candidates to complete specific tasks on files, ensure that candidates have an opportunity develop practice and problem-solving skills through contextual or experiential training.

The second transitional training goal is consideration of practice management issues, including the business of law. The LPP/PPD course curriculum includes content relating to practice and client management, and tests candidates' skills in these areas. By requiring all candidates to complete the LPP/PPD, all candidates would meet this transitional training requirement.

The third transitional training goal – application of ethical and professionalism principles in professional, practical and transaction contexts, and the fifth – introduction to systemic mentoring - are also satisfied by the LPP/PPD training course. The course ensures that candidates regularly meet with a mentor who reviews case file work and discusses ethics and professionalism and practice and client management issues with the candidates. The virtual or simulated law firm concept, as well as the three-week in person session that is part of the LPP, offers candidates an opportunity to experience socialization from candidate to practitioner (the fourth transitional training goal).

Competence

Mandatory completion of the LPP/PPD course would satisfy the competency criterion by providing a more consistent approach to the acquisition of competencies than does articling, which is more dependent on the specific practice of the articling principal. The

LPP/PPD course is designed to provide candidates with transitional training in the most common practice areas.

Further, as is the case with Options 2 and 3, the requirement that candidates successfully complete the barrister and solicitor examinations before licensure will assist in ensuring that candidates have mastered the competencies taught in law school. The skills examination will also ensure the practice readiness of all candidates. Candidates would also be better-prepared for the new skills examination having completed the LPP/PPD training course, given the design of the course which simulates the experience of working in a law firm.

Fairness

Option 4 would ensure a single pathway to licensing, eliminating any lingering concerns about the “two tiered” nature of the current system. It addresses the following fairness issues described earlier:

1. the removal of articling would address concerns about differential access to articling by candidates from equality-seeking groups and in particular racialized candidates;
2. concerns about discrimination and harassment during articling would be addressed, since articling would be eliminated;
3. unpaid and poorly paid articling positions would no longer exist; and
4. unpaid LPP work placements would no longer be a concern.

Consideration could be given to redesigning the PPD course to ensure that candidates are made aware of the employment opportunities in the French-speaking legal services sector and have occasion to network with French-speaking lawyers currently serving the public in this sector.

Consistency

Option 4 would provide consistent transitional training to all for the reasons enumerated earlier under Options 1 and 2. The LPP/PPD training courses are inherently consistent due to their structure and design.

Cost

It is estimated that implementation of LPP/PPD for all candidates could result in an experiential training fee of approximately \$10,000-\$12,000 per candidate as a result of the significant infrastructure and education provider expenses that would be incurred to support a mandatory course for over 2000 candidates annually. The estimated experiential training fee of approximately \$10,000 to \$12,000 per candidate could be reduced if law schools were to offer a form of the LPP/PPD as part of their curriculum that met the LSO’s transitional training requirements.

Another advantage of this approach might be that candidates would be able to obtain assistance from the Ontario Student Assistance Program (OSAP) while they complete their transitional training, since it would be offered as part of their law school studies. Currently, unpaid articling candidates and candidates completing the LPP/PPD training course are not able to obtain financial assistance from OSAP during this period.

Assuming the additional costs of the new skills examination described above, and including the costs of the Barrister and Solicitor licensing examinations, Option 4 could result in a total licensing fee of \$13,500 to \$15,500 (plus HST) per candidate.

8. CONCLUDING POINTS

Questions for Consideration

The following questions may assist those responding to this consultation paper.

1. Which option most effectively addresses the five goals of transitional training?
2. Which option most effectively ensures that new lawyers have entry-level competencies?
3. Which option is most effectively addresses fairness in the licensing process?
4. Which option is the most effectively addresses consistency in the licensing process?
5. Should successful completion of the Barrister and Solicitor Examinations be a prerequisite to commencing transitional training? Why? If not, why not?
6. Should the licensing process include the proposed new Skills Examination? Why? If not, why not?
7. In your view, what additional measures would be required to ensure that licensing candidates are adequately prepared for the proposed skills examination?
8. Should transitional training be a mandatory component of the LSO licensing process? If so, why? If not, why not?
9. Should the LSO focus its training requirements post-licensure as proposed in Option 3? Why?
10. What other factors should be considered in weighing the various options?

Orderly Transition

Any changes to the transitional training pathways or licensing examinations approved by Convocation following this consultation would require a transition period to ensure an appropriate length of time to implement any new policies and procedures.

Professional Development and Competence Committee

Options for Lawyer Licensing

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Motion

1. That Convocation determine one of the following two models for lawyer licensure in Ontario:

- (a) **Current Model with Enhancements (Option 2):** The two current transitional training pathways of articling and the Law Practice Program (LPP) and Programme de Pratique du droit (PPD) would be retained, with enhancements. These enhancements include:
- i) paid articling and LPP/PPD work placements, in accordance with Law Society requirements (required salary), with limited exceptions;
 - ii) measurements, audits or other forms of monitoring, to provide greater oversight of articling and the LPP/PPD work placements;
 - iii) mandatory education and training for articling principals and LPP/PPD work placement supervisors.
- (b) **Examination-Based Licensing (Option 3):** Candidates would be licensed as soon as they complete the barrister and solicitor examinations. Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a licensure requirement. The management of regulatory risk would shift to post-licensure, and would depend upon the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm of six or more lawyers would not be subject to any additional requirements. Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a new practice essentials course and would be subject to audit within their first few years of practice. Licensees who begin their careers in a firm of six or more lawyers or in the non-practising category and then move into sole practice or a small firm would also be required to take the course.

Executive Summary

Lawyer licensing is an integral part of the mandate of the Law Society of Ontario. According to its mandate, the Law Society must regulate the profession in the public interest and ensure that lawyers meet standards of learning, professional competence, and professional conduct. Since November 2016, the Professional Development & Competence Committee (the Committee) has been engaged in a process to develop long-term recommendations for an appropriate and sustainable licensing system for lawyers in Ontario. As part of its review of the licensing process, the Committee conducted the first phase of the Dialogue on Licensing (DOL) between April and June 2017. In May 2018, the second phase of the DOL was launched when the Committee released a consultation paper that proposed four options for lawyer licensing and invited the legal professions and the public to comment.

The four options that were proposed in the May 2018 paper are set out below:



Option 1: Current Model: The current two transitional training pathways (articling and LPP/PPD, plus barrister and solicitor examinations) would be retained, allowing for continuous adjustments to accommodate new developments.

Option 2: Current Model with Enhancements: The current two transitional training pathways would be retained, with enhancements. These enhancements include a requirement that candidates be paid at an amount equivalent to minimum wage, and measurements, audits or other forms of monitoring to provide greater oversight of articling and work placements.

Option 3: Examination-Based Licensing: Candidates would be licensed after they complete the licensing examinations. Transitional training would be eliminated as a requirement of licensure. The management of regulatory risk would shift to post-licensure and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm of six or more lawyers would not be subject to any additional requirements. Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a new practice essentials course and would be subject to audit within their first few years of practice.

Option 4: LPP/PPD for all Candidates: All licensing candidates would be required to complete the training course component of either the LPP or the PPD, without the work placement component. Candidates would also be required to successfully complete the licensing examinations.

Examinations: The consultation paper referred to two sets of examinations: the current barrister and solicitor examinations and a new skills examination. The current barrister and solicitor examinations are multiple choice, open-book examinations. Each examination is seven hours long and is designed to assess competencies that are required for entry-level practice. Currently, these examinations can be undertaken at any time during the licensing process. The consultation paper also proposed that candidates should undertake a skills examination as a prerequisite to licensure for Options 2-4.

DOL: In response to the invitation to comment on the May 2018 report, the Law Society received 86 submissions from individuals (primarily lawyers and licensing candidates), 34 letters from legal organizations and institutions, and a letter from the Office of the Fairness Commissioner (OFC).¹

In addition, the Law Society retained Strategic Communications Inc. (Stratcom) to conduct several focus groups about the licensing process and the four options for licensure. In October 2018, 12 facilitated focus groups were held in Toronto, Hamilton, London, Windsor, Sudbury, Ottawa, and Thunder Bay.

¹ The responses received are available on the Dialogue on Licensing website at www.lsdialogue.ca

The majority of legal organizations (61%) and a plurality of individuals (47%) preferred either Option 1 or 2, indicating significant support for transitional training composed primarily of supervised work experience following completion of law school. However, some respondents proposed an alternative, termed Option 5, which involved some integration of work experience into the law school curriculum.

The Committee has reviewed all of the feedback received through the DOL and considered if or how each option addresses the goals of transitional training, the need to ensure acquisition of entry-level competencies,² and the current challenges identified with the licensing process, such as:

- persistent shortages of articling positions given the increasing numbers of candidates seeking licensure in Ontario;
- lack of consistency across different articling positions and contexts;
- concerns about the viability of the LPP/PPD given that fewer candidates have enrolled in these programs than was anticipated;
- reports of discrimination and harassment of licensing candidates during transitional training; and
- unpaid or poorly-paid articling positions or LPP work placements, which could constitute a barrier to licensing for economically disadvantaged candidates.

Conclusions: The Committee has concluded that Option 1 (current model) does not respond to various challenges currently facing the lawyer licensing system. The Committee has also concluded that Option 4 (LPP/PPD for all) would impose too great a financial burden on licensing candidates, given its potential cost of up to approximately \$15,000, plus H.S.T. per candidate.

The Committee recommends Option 2 and Option 3 to Convocation for its consideration. The elements of Option 2, as recommended to Convocation, are i) maintenance of the current two transitional training pathways; ii) a required salary for all licensing candidates, with limited exceptions; iii) measurements, audits or other forms of monitoring to provide greater oversight of articling and work placements; and iv) mandatory education and training for articling principals and LPP/PPD work placement supervisors.

Option 2 is recommended because it reflects the view of the majority of Committee members and most of the profession, that is: training in an employment setting is the most effective form of transitional training because it provides candidates with the opportunity to deal with real issues

² The Barrister and Solicitor competencies may be viewed at <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-barrister-competencies> and <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/entry-level-solicitor-competencies>. The Law Society's experiential training competencies may be viewed at <https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/experiential-training-competencies>

and actual clients in authentic settings. It also provides many candidates with invaluable job opportunities and professional relationships. While the majority of the Committee acknowledges the flaws in the current system, specifically inconsistency in training and incidents of exploitation, discrimination and harassment, the majority believes that the proposed enhancements will address these flaws. Moreover, the majority believe that Option 2 is consistent with the licensing processes of law societies in other Canadian jurisdictions and those of most regulated professions.

A minority of the Committee recommends Option 3 as a contemporary sustainable pathway that responds to the increasingly diverse range of career paths followed by new lawyers. The elements of Option 3 are i) the elimination of mandatory transitional training; ii) continuation of barrister and solicitor examinations as a requirement of licensure; and iii) those entering sole practice or a small firm upon licensure would be required to complete a practice essentials course. The Committee notes that of lawyers called to the Bar between 2015 and 2017, approximately 30 percent of new lawyers are not actively practising law. Option 3 would focus the Law Society's resources on areas of regulatory risk through the requirement of a practice essentials course for those practising alone or in small firms. It would also ensure entry-level competence for all licensees through the barrister and solicitor examinations. Further, by eliminating transitional training, Option 3 eliminates the power imbalance that can lead to exploitation, discrimination and harassment, at least during the licensing process.

Irrespective of whether Convocation chooses Option 2 or Option 3, the majority of the Committee favour the inclusion of some form of skills testing in the licensing process, either through an examination or an assessment. The majority also recommends deferral of further consideration of this matter. The Committee has considered the advantages and disadvantages of the skills examination. A skills examination would be consistent with best practices developed by other legal regulators in the United States and the United Kingdom. It would also ensure consistent standards for all licensing candidates, regardless of the law school attended or the pathway pursued. A skills examination would also provide an opportunity to assess a candidate's ability to perform essential lawyering tasks. Concerns with the implementation of a skills examination centre on the resources required to develop and implement an examination that is defensible and fair. Such a process could lead to increased costs for candidates. In addition, some Committee members point to the skepticism expressed in the DOL about the efficacy of a skills examination.

The Committee also considered the feasibility of a skills assessment, which would be less resource-intensive. It would offer the opportunity to test a candidate's ability to perform essential lawyering tasks, through an assessment conducted by the articling principal or the LPP/PPD. If Convocation chooses Option 3, the skills assessment could be administered as part of the practice essentials course. Given that the concept of a skills assessment is relatively new, the Committee is recommending deferral of the matter of skills testing. During the upcoming months, the

Committee will consider the benefits and concerns arising from the implementation of both the skills examination and skills assessment, and report to Convocation at a later date.

Finally, the Committee recommends that the Law Society respond to the suggested Option 5 by reaching out to the legal academy to explore areas of collaboration in integrating more experiential learning into the law school experience. While recognizing that law schools have a role separate from the Law Society in developing standards and curriculum, the Committee believes that the both the public and the candidates will be better served if we work together to identify solutions posed by the need to ensure lawyer competence, find new ways to serve clients of modest means, and respond to the rapid changes occurring in society and the profession.

Background

A. Context

Currently, the articling program requires a candidate to work for 10 months under the supervision of an approved articling principal. In an effort to address concerns about transitional training while ensuring entry-level competence, the Law Society has made significant changes to the licensing process in recent years. In 2012, Convocation established a pilot project to incorporate a second pathway to licensing (the Pathways Pilot Project): the Law Practice Program (LPP) and the Programme de pratique du droit (PPD).

Following a request for proposal process, Ryerson University was selected to provide the English language program and the University of Ottawa was chosen to provide the French language program. The LPP/PPD programs consist of a 17-week training course followed by a four-month work placement. The LPP and PPD programs have been in place since September 2014 and are now in their fifth year.

In 2013, the Law Society approved the integrated practice program (“IPC”) at Lakehead University’s Bora Laskin Faculty of Law as an additional pathway to fulfill the experiential training requirement of the licensing process. Students are able to fulfil the experiential training component of the training process through practical course work during their three-year law degree and a 15-week practice placement embedded into their third year of law school.

B. Previous Decisions

In November 2016, Convocation asked the Committee to review the lawyer licensing process with the goal of formulating long-term recommendations for an appropriate and sustainable licensing system for lawyers in Ontario. As part of its review of the licensing process, the Committee conducted the first phase of the Dialogue on Licensing (DOL) between April and June 2017 to

provide an opportunity for input from the legal community about the challenges and opportunities of lawyer licensing.³

Based on the information gathered during the 2017 DOL, a survey of articling students⁴ and other information, the Committee identified various challenges with the transitional training component of the licensing process, including:

- persistent shortages of articling positions given the increasing numbers of candidates seeking licensure in Ontario;
- lack of consistency across different articling positions and contexts;
- concerns about the viability of the LPP/PPD given that fewer candidates have enrolled in these programs than was anticipated;⁵
- reports of discrimination and harassment of licensing candidates during transitional training; and
- unpaid or poorly-paid articling positions or LPP work placements, which may constitute an unfair barrier to licensing for economically disadvantaged candidates.⁶

Some of the other relevant considerations are licensing costs in the face of rising student debt loads,⁷ increasing numbers of lawyers who practice in settings in which they do not directly advise the public, and the suggestion that licensing requirements should focus on areas of greatest regulatory risk.

³ The materials developed for the 2017 DOL may be viewed at <http://lsdialogue.ca>. The Committee provided an information report to Convocation in February 2017 describing this initiative, which involved extensive participation of the profession in facilitated discussion groups across the province, as well as submissions from a range of stakeholders. The report may be accessed at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/2/2017-feb-convocation-professional-development-competence-committee-report.pdf>.

⁴ As part of its review of the licensing process, the Law Society commissioned the Articling Experience Survey from Dr. Sidiq Ali, Senior Evaluation Consultant of Research & Evaluation Consulting. As noted in the Committee's May 2018 report (Professional Development & Competence Committee, *Options for Lawyer Licensing: A Consultation Paper*, online at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-professionaldevelopmentcompetencecommitteereport-may-2018.pdf>), the survey revealed that some candidates are subject to sexual harassment, racial and gender discrimination. Please see p. 11 of the report.

⁵ As noted in the May 2018 consultation report, the Law Society anticipated that approximately 400 candidates would enrol in the LPP/PPD each year. As of November 20, 2018, there were 231 candidates enrolled in the LPP and 23 in the PPD. Enrollment information for the LPP is as follows: 221 (2014-2015); 219 (2015-2016); 232 (2016-2017) and 206 (2017-2018). In the LPP, there were 17 candidates enrolled in 2014-2015; 11 in 2015-2016; 21 in 2016-2017 and 12 in 2017-2018.

⁶ As indicated in the May 2018 consultation paper, the PPD has been able to offer paid placements to all candidates, although not always in a candidate's preferred sector or location. May 2018 consultation paper, *supra* note 4, p. 11.

⁷ See the 2017 submission from the Law Student's Society of Ontario regarding law school debt provided as part of the Dialogue on Licensing at https://lsdialogue.ca/wp-content/uploads/2018/07/Written-Submissions-Dialogue-on-Licensing-D2_2018jul6-red.pdf.

After considering the feedback received as part of the 2017 DOL, and taking into consideration the challenges listed above, the Committee developed the following four options for lawyer licensing:

Option 1: Current Model: The current two transitional training pathways would be retained, taking into account the fact that the current model will be continuously adjusted to accommodate new developments.

Option 2: Current Model with Enhancements: The current two transitional training pathways would be retained, with enhancements. These enhancements include a requirement that candidates be paid minimum wage, measurements, audits or other forms of monitoring to provide greater oversight of articling and work placements. Candidates would be required to pass the barrister and solicitor licensing examinations as a prerequisite to transitional training and then pass a new skills examination in order to become licensed.

Option 3: Examination-Based Licensing: Candidates would be licensed after they first complete the barrister and solicitor licensing examinations and then the new skills examination. Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a requirement of licensure. The management of regulatory risk would shift to post-licensure and depend on the career path of the new licensee. Candidates who choose not to practise law and licensees practising in a firm of six or more lawyers would not be subject to any additional requirements. Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a new practice essentials course and would be subject to audit within their first few years of practice.

Option 4: LPP/PPD for all Candidates: All licensing candidates would be required to complete the training course component of either the LPP or the PPD, without the work placement component. Candidates would also be required to successfully complete the barrister and solicitor examinations and the new skills examination.

Call for Input and Focus Groups – Overview

The Committee launched the second phase of the DOL on May 24, 2018, by inviting respondents to submit comments on the four options by October 26, 2018 (Call for Input). The Law Society received 86 submissions from individuals (primarily lawyers and licensing candidates), 34 letters from legal organizations and institutions, and a letter from the Office of the Fairness Commissioner (OFC).

In addition to the Call for Input, the Law Society retained Strategic Communications Inc. (Stratcom) to conduct several focus groups about the licensing process and the four options for licensure. In October 2018, 12 facilitated focus groups were held in Toronto, Hamilton, London, Windsor, Sudbury, Ottawa, and Thunder Bay. The focus groups consisted of the following:



- five groups of licensing candidates and lawyers practising for less than three years;
- one group of students, PPD candidates, and lawyers practising less than three years (French-speaking);
- one group of third-year Integrated Practice Curriculum (IPC) students/candidates and lawyers practising for less than three years;
- three groups of third year law students; and
- two groups of experienced lawyers with eight to 15 years of practice (with limited exceptions).

Stratcom's Report summarizing the results of the focus groups and key informants is available as **TAB 4.1**.⁸ In addition, key informant interviews were conducted with nine individuals representing the following organizations:

- the Ministry of the Attorney General;
- Law School Career Development Officers;
- Law Society Equity Advisory Group;
- Law Society Indigenous Advisory Group; and
- the Association for Canadian Clinical Legal Education.

Although participants in the focus groups, key informant interviews and respondents to the Call for Input had a great deal to say about the licensing process and specific features of the four licensing options, there was no overwhelming support for any of the options presented in the consultation paper. However, it was almost universally accepted that, at the end of the licensing process, candidates should have some degree of a practical, real-world experience with the practice of law, whether through articling and/or the LPP/PPD pathways, or during their law school training.

Some respondents, including legal organizations, thought that none of the options were responsive to the challenges of the lawyer licensing process and suggested various alternatives, ranging from the incorporation of the LPP/PPD into the law school curriculum to a mandatory practical legal training course similar to the LPP/PPD for all, followed by a mandatory work placement. Option 5 emerged as an alternative solution that would involve incorporating transitional training opportunities in law school, although respondents had different ideas about how this might be implemented.

⁸ Strategic Communications (Stratcom) conducted the focus groups and prepared the report at the Law Society's request. See Strategic Communications, Options for Lawyer Licensing: Key Informant Interviews and Focus Groups and Individual Interviews, (Stratcom - Options for Lawyer Licensing) submitted by David Kraft and Angela Lee, November 21, 2018.

A number of respondents, including legal organizations, supported Option 1, either because they wanted more information about Options 2 to 4, or thought the other options did not adequately address the issues.

For the reasons described in this report, informed by the feedback received from the Call for Input and comments made in the focus groups, a majority of the Committee recommends Options 2, while a minority recommends Option 3.

Analysis

A. Framework

Licensure is official recognition that an individual is qualified to practice as a lawyer and competent to do so. Licensing requirements are critical to the public interest, and to the reputation of the legal profession. The proper functioning of the profession, and its continued ability to self-regulate, are premised on ensuring that those who enter it meet appropriate and fair standards of professional competence and do not pose a risk to the public.

The Law Society's responsibility with respect to the competence of licensees is enshrined in section 4.1 (a) of the *Law Society Act*, which provides that the Society has a duty to ensure that "all persons who practise law in Ontario . . . meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide." In addition, s. 4.2, clause 5 of the Act requires the Law Society to have regard to the principle that "standards of learning, professional competence and professional conduct...should be proportionate to the significance of the regulatory objectives sought to be realized". Further, the Law Society's Strategic Plan for 2015-2019 requires the Law Society to evaluate and enhance licensing standards and requirements.⁹ Finally, the Law Society's public interest mandate extends to ensuring that economically disadvantaged candidates do not face unfair barriers to the profession.

In considering how the licensing process should ensure competence, the Committee identified the following principles according to which lawyer licensing options should be evaluated. Specifically, lawyer licensing should:

- ensure that each candidate achieves the goals of transitional training;¹⁰

⁹ The LSO strategic plan for the 2015-2019 bench term may be viewed at <https://lso.ca/about-lso/governance/2015-2019-strategic-plan>.

¹⁰ The Articling Task Force Final Report, October 25, 2012 identified the goals of transitional training as: 1) application of defined practice and problem-solving skills through contextual or experiential learning; 2) consideration of practice management issues, including the business of law; 3) application of ethical and professionalism principles in professional, practical and transactional contexts; 4) socialization from student to practitioner; and 5) introduction to systemic mentoring. The Articling Task Force Final Report may be accessed online at https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convoc2012_articlingtaskforce.pdf?lang=en-ca.



- provide candidates with an opportunity to meet required standards of professional competence;
- be derived in a fair and defensible manner, and ensure equitable access to licensing;
- be consistent; and
- be designed to take into consideration the cost of each option to the licensing candidate, and to the profession as a whole.

B. Research and Engagement

Overall Support for Options¹¹

Although there was some support for each option, the majority of respondents supported maintaining transitional training through the current pathways (either Option 1 or 2).

Among individual respondents, the levels of support for each option were as follows:

- Option 1 – 28 percent;
- Option 2 – 19 percent;
- Option 3 – 13 percent;
- Option 4 – 15 percent;
- Option 5 – 9 percent; and
- None of the Options – 17 percent.

Among legal organizations, the levels of support for each option were as follows:

- Option 1 – 28 percent;
- Option 2 – 33 percent;
- Option 3 – 3 percent;
- Option 4 – 0 percent;
- Option 5 – 3 percent; and
- None of the Options – 32 percent.

¹¹ Overall support was determined by recording the chosen option of each respondent and totalling the number of responses. Considerable judgement was required in determining support as some respondents qualified their support or chose more than one option. Where respondents chose more than one option, a fraction was allocated to each option chosen. Rounding has resulted in totals of more or less than 100 percent. While focus group results produce large amounts of qualitative data, the small sample size in this case and the open-ended questions do not allow for statistical precision.

Skills Examination – Overall Support – Call for Input

The Call for Input revealed that there was either limited support, limited information, or indifference regarding the proposed skills examination. Of individual respondents, 17.4 percent indicated that they were in favour of the skills examination, while 2.3 percent said they were against it. The majority of individual respondents (80.2 percent) did not express any views regarding the skills examination; in some cases, respondents said that they did not have enough information about the format and content of the examination to comment.

The results for legal organizations were similar. Seventeen percent of organizations said that they were in favour of the skills examination. Three percent said they against the proposed examination, while 80 percent did not take a position on the proposed skills examination. In some cases, these respondents indicated that they needed more information from the Law Society in order to express a view.

Skills Examination – Focus Groups

According to the Stratcom report, there was some interest and support for the idea that the introduction of the skills examination might encourage law schools to deliver more experiential training opportunities. However, with only a few exceptions, the majority of licensing candidates, law students, and new lawyers did not support the proposed examination. In particular, LPP/PPD and IPC candidates viewed this proposed enhancement as redundant, which would serve as an unnecessary and costly hurdle to overcome prior to licensing, rather than raising and/or streamlining measures of competency for new licensees.¹²

Focus Group and Call for Input Feedback

Option 1 - Support

A small number of focus group participants endorsed this option. For these participants, Option 1 offered the best available option to maintain transitional training. Participants were of the view that the other three options presented did not address the issues with the licensing process that had been identified by the Law Society.

During the Call for Input, 28 percent of individual respondents and 28 percent of legal organizations expressed support for Option 1. Respondents who chose Option 1 were generally supportive of the existing pathways. Some respondents described positive experiences as articling

¹² Stratcom – Options for Lawyer Licensing, *supra* note 8, p. 13.

principals or candidates. In particular, LPP/PPD proponents cited the following positive attributes of the program:

- The curriculum is high-calibre and provides an opportunity to connect with legal employers.
- Candidates are able to benefit from good mentoring experiences.
- The program responds to equity and diversity concerns.
- The curriculum meets the five goals of transitional training identified in the consultation paper.¹³

Option 1 – Concerns

Focus group participants who did not support Option 1 indicated that, in their view, the existing pathways are unequal, given that most law students would prefer to article. Option 1 attracted the lowest level of overall support in the focus groups. About one-tenth of those who expressed support for one of the options endorsed it.

Participants in the Call for Input who had concerns about Option 1 also mentioned the perceived “stigma” associated with the LPP. Critics of Option 1 also mentioned

- the number of licensing candidates who are working for minimum wage or less due to the oversupply of articling candidates;
- the power imbalance created between the candidate and the articling principal as a result of the excessive competition for available positions; and
- persistent discrimination in the profession that continues to impede racialized candidates from equal access to articling positions.

Option 2 - Support

According to Stratcom’s analysis, Option 2 attracted the most overall support of the four options presented in the focus groups and was endorsed by about 40 percent of those focus group participants who indicated a preference for any of the four options. Supporters indicated that this option enabled the preservation of existing pathways to licensing, while addressing some of the issues identified in the consultation paper through the proposed enhancements.

There was very strong support for the proposal that candidates be paid an amount equivalent to the statutory minimum wage during articling or the work placement. Focus group participants mentioned that a required salary would also assist in addressing the discrepancy between the paid employment period in the LPP/PPD (four months) and the articling pathway (ten months).

¹³ See footnote 10 of this report for the five goals of transitional training.

Focus group participants were somewhat supportive of the measures to provide greater oversight of articling and work placements and a small group of participants favoured the proposal to make the barrister and solicitor examinations a prerequisite for transitional training.

Option 2 – Concerns

The following concerns were expressed about the proposed enhancements:

- The introduction of a required salary could reduce the number of available transitional training positions, thereby exacerbating concerns about the sustainability of the licensing system.
- Clinics, public interest organizations and sole practitioners would be less able to comply with these new requirements than would other employers.
- The proposed audits could be onerous and resource-intensive.
- The proposal that candidates would be required to pass the barrister and solicitor examinations before progressing to transitional training was perceived as punitive for both candidates and employers. Candidates would face the prospect of losing a coveted transitional training position, while employers who had invested considerable effort and resources in selecting an articling candidate(s) would be required to make last-minute adjustments to cover their staffing needs.

Option 3 – Support

Twenty percent of focus group participants found Option 3 attractive on the basis that it appears to address some of the inequities between the two pathways. Call for Input respondents (13 percent of individual respondents and three percent of organizations) mentioned the following rationales for their support of Option 3:

- It is the most consistent of the four with the modern realities of the job market.
- Given that most law schools currently offer a basic level of experiential learning, it is no longer necessary that transitional training be a pre-licensure requirement.
- It would establish a straightforward and seamless path to licensing.
- The current system is unsustainable, given that the demand for transitional training positions exceeds supply.
- The current pathways facilitate exploitation of licensing candidates who need to fulfill the transitional training requirement and Option 3 would address this issue.
- Option 3 would enable the Law Society to balance the need to reduce discrimination in hiring with the need to ensure that candidates acquire necessary practical skills.

Option 3 – Concerns

Option 3 was unpopular with a large majority of focus group participants because it would eliminate transitional training as a mandatory element of the licensure process, including the socialization and mentorship opportunities associated with those experiences.¹⁴

Although some focus group participants endorsed the practice essentials course for those working as sole practitioners or in firms of fewer than six lawyers, a much larger group opposed the proposed course, since it would impose an additional cost on individuals working in an underserved sector of the legal services market. These participants described the proposed course as unfair, discriminatory, or unjustified as a result.

Some focus group participants were similarly critical of the notion that only lawyers entering sole practice or small firms would be subject to audits. These participants thought that the practice essentials course and the audits could discourage lawyers from choosing to work in these settings and had the potential to create a stratified profession.

Call for Input participants had similar concerns with Option 3, and also suggested that:

- If this option were to be implemented, there would still be concerns about discriminatory hiring practices at law firms.
- In order for this option to work, law schools would have to amend their curricula to further emphasize the acquisition of skills and competencies. It was not clear that law schools are prepared to make these changes; further, law schools operate in the context of a larger university and may not have complete autonomy with respect to the allocation of resources required to meet this goal.
- Experienced lawyers who move into sole practice or a small firm later in their careers should not be required to take the practice essentials course.

Option 4 – Support

Option 4 attracted the same level of support in the focus groups as Option 3 (20 percent of those participants who selected one of the four options). As rationales for their support, proponents mentioned the benefit of a single consistent pathway to licensure, and ensuring that all candidates are exposed to the curriculum developed for LPP/PPD training course. Some considered Option 4 as the next best option if it were not possible for law schools to offer the LPP/PPD as part of the law school curriculum. Participants in the Call for Input made similar arguments in favour of

¹⁴ Stratcom - Options for Lawyer Licensing, *supra* note 8, p. 16.

Option 4. Fifteen percent of individual respondents in the Call for Input chose Option 4; no legal organization chose this option.

Option 4 – Concerns

Focus group participants perceived the removal of the work placement from the LPP/PPD as a significant drawback, given the opportunities presented to candidates to make connections with potential employers through their work placement and to acquire relevant experience that would assist them in their search for a full-time position.

Removing the work placement was seen as disadvantageous for a number of reasons, including the fact that mandatory work placements offer racialized, equity-seeking, and internationally-educated candidates a means of accessing the legal services marketplace. Critics also felt that mandatory work placements provide candidates with valuable real world exposure. Option 4 skeptics also mentioned the high proposed cost of an LPP for all (approximately \$15,000 plus H.S.T. per candidate per year), which they described as prohibitive, given significant student debt levels.

According to the Stratcom report, most supporters of Option 4 in the focus groups indicated that their support was contingent upon the addition of a work placement component. Some Call for Input participants who expressed their support for Option 4 also suggested that the work placement be retained.

Comments – Skills Examination

According to the Stratcom report, few focus group participants viewed the introduction of this examination as a measure that would improve the consistency of the training experience in the two transitional pathways. With only a few exceptions, candidates, law students, and new lawyers did not support the proposed new skills examination. LPP and IPC candidates and lawyers licensed in these pathways viewed the proposed skills examination as redundant. Rather than raising and/or standardizing measures of competency for new licensees, most viewed it as an unnecessary and costly additional hurdle to be overcome prior to licensure.¹⁵

With respect to the discussion about the proposed skills examination in relation to Option 3, there was interest and support for the idea that the introduction of the skills examination, together with the elimination of transitional training, might encourage law schools to deliver more experiential training opportunities.

Respondents to the Call for Input made the following comments in support of the skills examination generally:

¹⁵ Ibid., p. 13.



- It would be a useful way to raise the standards for lawyers entering private practice;
- It would be the best way to guarantee that candidates have acquired necessary skills during transitional training.
- Experiential learning in law school could prepare students for this examination.

Like their focus group colleagues, Call for Input participants said that the proposed skills examination would duplicate the LPP/PPD, and that candidates completing their transitional training through this pathway should not be subject to this requirement. The OFC suggested that the Law Society's consultation paper did not provide any factual evidence to justify the examination, assuming that transitional training continues to be a mandatory pre-licensure requirement. In the absence of such evidence, according to the OFC, this new requirement could be contrary to the principles set out in fair-access practices legislation.¹⁶

Option 5

Some focus group and Call for Input participants were not in favour of any of the four proposed options and described their alternative proposals. Most alternative proposals suggested greater law school involvement in experiential training, although there were a variety of suggestions about what this might look like. We have categorized these proposals as Option 5. While some simply asked for more experiential training in law school, others went further to suggest that the LPP/PPD be incorporated into the law school curriculum. Another suggestion was that the Law Society offer additional support to law schools seeking to develop Integrated Practice Programs similar to Lakehead University.

Those proposing Option 5 mentioned the following in support of their proposals:

- Law students would no longer be subject to a competitive job search for a required transitional training position.
- The power imbalance in existing articling and work placements would be addressed.
- Licensing costs incurred by candidates would be reduced.
- Experiential training in clinics would assist in meeting the public's need for access to legal services.

Some law faculties expressed the following concerns about changes to the existing curriculum:

- Significant resources are required to provide experiential learning opportunities for law students.

¹⁶ *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, S.O. 2006, c. 31, online at <https://www.ontario.ca/laws/statute/06f31>.

- While law schools play a role in the development of competent practising legal professions, the law school experience serves other pedagogical purposes, including developing the capacity for critique, reflection, ethical development, and service in the public interest.
- Additional consultations with law schools should be undertaken before the Law Society formulates any recommendations that would require law schools to offer more experiential learning opportunities.

A version of Option 5 was proposed by three faculty members of the Regulatory Committee of Faculty Council at Windsor Law. Articling would no longer be a component of the licensing process. All law schools would offer a mandatory practicum based on current clinical law programs using resources contributed by the Law Society and the profession. The summer after law school, all candidates would complete the LPP without the work placement component.

As part of this proposal, Ontario law graduates would no longer be required to write the Law Society's licensing examinations, on the basis that law schools are doing an appropriate job of assessing candidates' skills and knowledge. The Law Society would retain responsibility for ensuring that candidates have completed the requirements for licensure. Internationally-educated candidates could still be required to pass the licensing examinations.

This submission notes that the proposed mandatory practicum during law school would require law school clinical and experiential programs to be expanded, which would have the additional benefit of fulfilling the Law Society's access to justice mandate.

Synopsis of the Year 4 Pathways Evaluation

Since 2014, the Law Society has retained Dr. A. Sidiq Ali, Senior Evaluation Consultant at Research & Evaluation Consulting to assist in establishing a framework for, and then conduct an ongoing evaluation of, the effectiveness of the articling program and the LPP in preparing candidates for entry to the profession. In September 2018, Dr. Ali provided the Committee with the most recent evaluation of the two current pathways to licensing. The Executive Summary of Dr. Ali's August 2018 summary report, which informed the Committee's deliberations, is attached as **TAB 4.2**.¹⁷

As in previous reports, Dr. Ali concluded that both pathways continue to provide exposure to transitional training competencies, growth in practical skills development, and access to mentors and their feedback. The report also notes a change in perceptions of the LPP/PPD, specifically:

- An increasing percentage of candidates in the LPP reported that it was their first choice for experiential training (38% in Year One, 27% in Year Two and 40% in Years Three and Four). There is a growing sense among LPP/PPD candidates that this pathway is a superior means of achieving skills competency development.

¹⁷ Pathways to the Profession: Year 4 Evaluation Summary Report (August 21, 2018) (2017-18 Pathways Report).

- Candidates graduating from law schools outside Canada are more likely to report that the LPP was their first choice for transitional training; and
- Many respondents who report that the LPP/PPD was not their first choice of experiential training do so because they prefer to earn income for 10 months of articling as opposed to four months in the LPP/PPD work placement.

C. Analysis of Options

Observations – Options 1 and 4

After careful consideration of the feedback received during the Call for Input and focus groups, the Committee has decided not to pursue Options 1 and 4. Instead the majority of Committee recommends that Options 2 be considered by Convocation. A minority recommends Option 3.

The Committee believes that Option 1 is not responsive to the current challenges facing the Ontario licensing system, including:

- the need to reduce the number of unpaid placements;
- the issue of unequal access to transitional training positions;
- Incidents of discrimination and harassment during transitional training, which could arise despite additional measures being undertaken by the Law Society to address these situations;¹⁸
- lack of consistency of articling experiences.

The Committee has also been persuaded by concerns raised by the profession during the focus groups and Call for Input about the financial burden on candidates of Option 4 (the consultation paper estimated the cost of this option to reach approximately to \$15,000, plus H.S.T., per candidate). None of the legal organizations expressed support for Option 4 during the Call for Input, and only 15.1 percent of individual respondents were in favour of it. Focus group participants expressed limited support for Option 4. The Committee has taken this feedback into consideration in concluding that Option 4 should not be further pursued.

¹⁸ The measures already adopted by the Law Society in response to the Articling Survey are described in the consultation paper and include engaging with law firms and legal departments to share best practices to address issues regarding harassment and discrimination; raising awareness of Law Society services and supports to assist individuals experiencing harassment and discrimination, including the Discrimination and Harassment Counsel and the Member Assistance Program; and reviewing and amending the Rules of Professional Conduct to ensure that the Rules are up-to-date and reflect the latest statutory changes and case-law developments. See pages 20-21 of the May 2018 consultation paper, *supra* note 4.



Option 2 – Overview of Recommendations

As recommended to Convocation, Option 2 proposes that the two transitional training pathways would be retained, with the following enhancements:

- Candidates would be paid a required salary.
- The Law Society would measure, audit or otherwise monitor articling and LPP/PPD work placements to provide greater oversight.
- The Law Society would provide mandatory education and training for articling principals and LPP/PPD work placement supervisors.

The majority of the Committee concluded that Option 2 should be recommended to Convocation as a model worth consideration for many reasons. First, this option retains articling as the primary form of transitional training, building on the long-standing tradition that is followed in every Canadian jurisdiction. Further, recognizing the numerous benefits of the LPP/PPD identified by stakeholders during the consultation, Option 2 would also permit this pathway to licensing to be retained. Similarly, Option 2 reflects the practical training component that is common to most regulated professions. Second, the maintenance of articling and work placements is almost universally supported by the legal community. The majority of respondent individuals and legal organizations shared the view of some Committee members, that is: a period of practical employment experience is the most effective form of transitional training because it provides candidates with the opportunity to deal with real issues and actual clients in authentic settings. Third, the majority of the Committee notes that Option 2 provides many candidates with job opportunities and relationships with other lawyers that cannot be replicated outside a work environment.

The Committee also acknowledged the weaknesses in the current system, specifically the power imbalance that can lead to discrimination and harassment, the lack of consistency in transitional training, and barriers to entry that are not based on merit, such as a candidate's ability to accept an unpaid transitional training position. Recognizing that the Law Society must take better regulatory control of articling to support quality training in the public interest, the majority of the Committee recommends that Option 2 include the following enhancements:

- a required salary for candidates calculated according to a formula to be developed by the Committee;
- measurement, monitoring and audit;
- training and orientation for articling principals and LPP/PPD work placement supervisors.



Required Salary

Summarizing the findings of the 2017 Articling Experience Survey conducted by Dr. Sidiq Ali of Research & Evaluation Consulting, the consultation paper noted that:

- Ten percent of articling candidates who had completed their articles, or were articling at the time of the survey, indicated that they were paid an annual salary of less than \$20,000 during their articling term.
- Candidates who were not paid at all are included in this group (four percent of those who had completed their articles, and three percent of those who were articling at the time of the survey, were not paid at all).

The 2017-2018 Pathways Evaluation found that while the percentage of unpaid work placements has declined over the four years of the LPP, 19 percent of LPP work placements were unpaid in 2017-2018 while 100 percent of PPD placements were paid.

The Committee is concerned that unpaid and underpaid articling positions and LPP/PPD work placements are a barrier to the completion of legal studies and entry to the profession for candidates from difficult economic circumstances, irrespective of merit. These placements may also reinforce the imbalance of power between candidates and principals and create opportunities for exploitation and mistreatment of candidates. To ensure that unpaid transitional training does not perpetuate unequal access to the profession, the Committee recommends that, where possible, articling and LPP/PPD candidates should be paid in accordance with Law Society requirements.

During the Call for Input, some legal clinics that currently provide legal services to vulnerable members of the public in areas such as disability, social assistance, and pension law, indicated that although they would prefer to be a position to provide a required salary to articling and LPP candidates, this is not currently possible given funding constraints. To address situations where the requirement may deprive candidates of good articles or work placements, the Committee is proposing that some articling principals or work placement supervisors may be eligible to apply for an exemption, as described below.

Individuals and entities subject to Law Society jurisdiction would be able to apply for an exemption from the required salary. The Committee proposes that the exemptions from the required salary should be available on a demonstrable basis that is appropriate in the circumstances.

Compliance with this requirement could be assessed during an audit, described below.

Measurement, Monitoring and Audit

As an additional response to concerns about inconsistent learning experiences, discrimination, and harassment, the Committee proposes to audit both articling principals and LPP/PPD work placement supervisors. The audits would assess compliance with the following:

- efforts to ensure that the licensing candidate has been exposed to the experiential training competencies (described below);
- payment of a required salary as described above;
- obligations regarding avoidance of discriminatory practices in recruitment or assignment of work; and
- ethical obligations regarding harassment of licensing candidates.

Practice Management Reviews, currently conducted by the Law Society as part of its quality assurance programming, could also be expanded to examine these issues.

As a result of changes approved by Convocation Law Society in 2012, both candidates and articling principals are required to report to the Law Society regarding the candidate's experience and levels of achievement in relation to experiential training competencies. Articling principals are required to file an experiential training plan at the outset of the articling placement to provide a level of assurance that training will meet the required competencies. Principals are also required to report on candidate exposure to all of the experiential training competencies and to assess the performance of the candidates with respect to specific skills and tasks. As part of the LPP/PPD programs, candidates' acquisition of these skills and competencies is monitored and assessed.

An audit protocol in articling would allow the LSO to directly observe and validate that the required competencies are being fulfilled in articling placements, to be more visible and active in the articling process, and to potentially remediate marginal placements. If the Law Society audit revealed that an articling principal was not endeavouring to ensure candidates are exposed to the required competencies as set out in the experiential training plan, engaging in discriminatory practices, subjecting the candidate to harassment, or failing to pay the required salary, the Law Society could take action. The steps taken in response could include:

- providing support and guidance to principals;
- removing the principal;
- contacting the LPP provider regarding the concerns;
- initiating an investigation of licensee misconduct.

If the articling principal were removed as a result of the findings of an audit, the Law Society would assist the licensing candidate in finding another position. This would be consistent with the Law Society's licensing process policies, which already permit a candidate to assign his or her

Articles of Clerkship agreement from one principal to another during the articling term, as well as to apply for an abridgement based on compassionate grounds.

The structure of LPP/PPD work placements differs from articling, since the LPP and PPD are responsible for the recruitment of work placement supervisors. A similar regime would be established to enable the removal of a work placement supervisor in the event that the audit uncovered issues. The LPP/PPD would assist the candidate in finding another position.

Training and Orientation for Articling Principals and LPP Work Placement Supervisors

The Committee recommends that articling principals and LPP work placement supervisors be required to complete mandatory training and orientation programming on the following topics as another means of supporting quality transitional training:

- the duties of a principal under Rule 6.2-2 of the Rules of Professional Conduct (Rules) to provide the student with meaningful training, exposure, and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law;
- the prohibition on sexual harassment in Rule 6.3-3 of the Rules;
- the special responsibility of lawyers to honour the requirements of human rights laws in force in Ontario under Rule 6.3.1-1 of the Rules;
- the obligations of lawyers to ensure that their employment practices do not offend Rules 6.3.1-1, 6.3.1-2 and 6.3.1-3 of the Rules; and
- the obligations of a principal under Section 10.17 of the [Law Society's licensing process policies](#), including the principal's obligation to
 - instruct the candidate in the practice and profession of law to the best of the principal's ability (s. 10.17(d));
 - provide an articling experience that conforms to the experiential training competencies and requirements for candidates prescribed by the Society (s. 10.17(e)); and
 - be an exemplar having regard to all circumstances including, but not limited to, the experience, competence, ethical standards and professional conduct record of the licensee (s. 10.17(h)).

The orientation programs would be one to two hours long, and would be available online. They could also be eligible for substantive or professionalism CPD hours.

Impact on Articling Positions and Work Placements

The Committee recognizes that these measures could cause a reduction in the number of placements available, either articles or work placements. Principals and supervisors often consider supervising candidates as the fulfillment of a duty to the profession, not merely as a benefit to their practices. They may see these additional requirements as unduly burdensome or simply

unaffordable, in terms of time and money expended and some may stop hiring candidates. The Committee is also aware that it is not the role of the Law Society to regulate employment relationships between licensing candidates and their employers.

With respect to positions that subject candidates to discrimination, harassment and exploitation, the Committee believes that the Law Society should do what is feasible to prevent candidates from such abuse. Similarly, for those placements that do not offer candidates opportunities to develop experiential training competencies, the Committee believes that the Law Society must take action to identify these placements and address the deficiencies, in order to meet its statutory obligation to ensure the competence of licensees.

Barrister and Solicitor Examinations as a Prerequisite for Transitional Training

The Committee has carefully reviewed the feedback received in response to the consultation paper's proposal that candidates be required to pass the barrister and solicitor examinations before proceeding to transitional training. Law students, licensing candidates, lawyers, and most legal organizations were concerned that this enhancement would result in a lack of flexibility for licensing candidates who are increasingly balancing employment, academic, family, personal, and other circumstances. It could cause hardship to both individual candidates and employers if candidates were unable to begin their transitional training as anticipated. The OFC was also critical of this proposal.

In light of these comments, the majority of Committee members are of the view that it would be best for the Law Society to continue to maintain a flexible approach in this area. This proposal will not be pursued, and licensing candidates will continue to have three years to complete the licensing examinations after graduating from law school.

LPP/PPD

As noted above, Option 2 includes the continuation of both pathways: articling and LPP/PPD. The LPP offers effective transitional training and perceptions of its value are improving. In an environment where the number of candidates exceeds the number of articling positions, an alternative such as the LPP/PPD is essential to ensure that the licensing process is fair and that candidates are not denied licensure simply because they are unable to obtain an articling position.

Many participants in the focus groups and Call for Input expressed great appreciation for the program, indicating that the curriculum prepared them well for legal practice and the mentors were an invaluable source of help and advice. In addition, the PPD plays a crucial role in ensuring that lawyers are competent to provide legal services in French to meet access to justice needs of the Francophone community.

If Convocation were to choose Option 2, the LPP/PPD would no longer operate as pilot projects. The 2018-2019 LPP/PPD year is underway and arrangements have been made for both programs to continue in their current form for the 2019-2020 year. Following the completion of the 2019-2020 year, there may be changes to the way in which these programs are delivered. In their submission to the Call for Input, the Ryerson University LPP indicated that the program's costs could be lowered if the Ryerson LPP had a greater ability to manage the scheduling and structure of the program. The Committee encourages and supports efforts to reduce the cost of the Ryerson LPP.

Further, the Committee is concerned about the financial sustainability of the PPD, given the enrollment to date.¹⁹ PPD enrollment has averaged 16.8 candidates annually over years 1-5 of the Pathways Pilot Project, ranging from 11 to 23 candidates enrolled in the program.²⁰ In light of these concerns, the Committee recommends that the Law Society and the University of Ottawa enter into discussions to address the cost and sustainability of the PPD.

Option 3 – Overview of Recommendations

As recommended to Convocation, Option 3 proposes:

- Candidates would be licensed after they complete the barrister and solicitor licensing examinations.
- Transitional training, such as the requirement to complete articling or the LPP/PPD, would be eliminated as a requirement of licensure.
- The management of regulatory risk would shift to post-licensure and depend on the career path of the new licensee, so that
 - Candidates who choose not to practise law and licensees practising in a firm of six or more lawyers would not be subject to any additional requirements.
 - Licensees practising as sole practitioners or in a firm with fewer than six lawyers would also be required to complete a practice essentials course addressing practice management, and would be subject to audit within their first few years of practice. Licensees who begin their careers in a firm of six or more lawyers and then move into sole practice or a small firm would also be required to take the course.

Based on its review of the feedback received, an analysis of regulatory risk to the public, and mindful of the sustainability of the current universal transitional training requirement, a minority of the Committee is also recommending Option 3 to Convocation for its consideration. If implemented, Option 3 would result in profound change in the current licensing system, as it would involve the removal of the pre-licensure transitional training requirement for all. The

¹⁹ See Professional Development & Competence Committee Options for Lawyer Licensing: A Consultation Paper, *supra* note 4, p. 9 (table with enrollment information for the LPP/PPD).

²⁰ PPD enrollment for the 2018-2019 licensing term (year 5) as of November 21, 2018.

acquisition of competencies would be measured through the successful completion of the current barrister and solicitor examinations.

A minority of the Committee is of the view that Option 3 is most responsive to the increasingly diverse range of career paths followed by new lawyers. There are well over 50,000 lawyer licensees in Ontario. Approximately forty percent of lawyers are not actively practising law. Further, of the approximately 35,000 lawyers who are practising, approximately 10,300, or 30%, are performing roles in government, education, businesses and other settings where they may not directly advise the public.²¹ It is appropriate that the licensing process be designed to focus resources on areas of greatest regulatory risk. Law Society data demonstrates that sole practitioners continue to receive a significantly higher number and proportion of complaints while licensees practising in larger firms continue to receive a significantly fewer number and proportion of complaints.²²

Option 3 recognizes that candidates who do not provide legal services to the public do not require transitional training in the traditional sense. It also takes into consideration that candidates who begin their careers in a firm of six or more lawyers will have greater access to supervised training and mentoring in those settings. For lawyers in sole or small firm practices of five or fewer licensees, a course on practice essentials (described below) would systematically address the first three transitional training goals (application of practice and problem-solving skills through contextual or experiential learning, consideration of practice management issues, including the business of law, and application of ethical and professionalism principles). Finally, by eliminating transitional training from the licensing process, Option 3 would address the power imbalance that can lead to exploitation, discrimination and harassment, at least during the licensing process.

Practice Essentials Course

In keeping with the concept that regulation should focus on areas of risk, the course would be primarily focussed on practice management and areas that most frequently give rise to complaints. A practice essentials course would provide an opportunity to proactively promote best practices in practice management from the outset, possibly offsetting the need for remediation later on as observed in practice management reviews.

Subjects to be covered in the course include:

- client service and communication;
- financial and practice management; and

²¹ Based on LSO data as of August 2018.

²² Professional Regulation Division End-of-Year Report (31 December 2016), online at http://www.lso.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2017/Convocation_May2017-Professional-Regulation-Committee-Report.pdf.

- the business of running a law practice.

Optional modules that would focus on particular areas of practice (real estate, estates and trusts, family law, criminal law, civil litigation, and corporate-commercial law) could also be added to the course. A combination of in-person and online delivery would be explored. The Law Society's development costs for the practice essentials course could be in the \$500,000-\$1,000,000 range, depending on the delivery mode and taking into account the content development, instructor supports, venues, and other activities that would be involved.

The course could also include skills assessments testing candidates' ability to perform essential lawyering tasks, such as writing an opinion letter or interviewing a client.

Skills Examination – Overview

The May 2018 consultation paper proposed a new skills examination. If introduced, the skills examination would likely be computer-enabled, and would require candidates to perform written tasks simulating the activities that would be expected of an entry-level lawyer in a practice environment.

A skills examination is a “constructed response” assessment requiring a candidate to produce a correct answer or perform a task that demonstrates knowledge, skills, or abilities, permitting the evaluation of high-order thinking skills. Examples of constructed-response questions include

- “fill in the blank”;
- short and (long) essay answers;
- task or scenario-based simulations; and
- structured interviews, such as the Objective Structured Clinical Examinations, used in licensing examinations administered by Ontario's health regulatory colleges and Canadian medical regulators, among others.

The skills tested in the examination would be aligned with the Federation of Law Societies of Canada National Competency Profile as well as the skills and competencies developed for the two current licensing pathways. The skills examination could test candidates on one or more of the following:

- drafting an opinion letter;
- drafting an affidavit;
- conducting a negotiation;
- analyzing an ethical issue; and
- interviewing a client.

The Law Society would provide written materials to candidates to assist them in preparing for the examination. The written materials could include practice examinations and supporting documents. Candidates would have three opportunities to write the skills examination.

Skills Testing – Discussion

Irrespective of whether Convocation chooses Option 2 or Option 3, the majority of the Committee favours the inclusion of some form of skills testing in the licensing process. The Committee is considering two models of skills testing – integrated skills assessment and a distinct (or separate) skills examination. The table below summarizes the options under consideration in this area.

MODELS FOR SKILLS TESTING

	Option 2 – Current Model with Enhancements	Option 3 – Examination-based Licensing
MODEL 1 – Integrated Skills Assessment	Skills Assessment would take place during transitional training, would be administered by the articling principal or by the LPP/PPD, and would be a required component of the licensing process.	Skills Assessment would take place after licensure during the practice essentials course required for those practising as sole practitioners or in firms of five or fewer lawyers.
MODEL 2 – Skills Examination	A Skills Examination would be administered by the Law Society and be completed after the articling program or the LPP/PPD and would be a required component of the licensing process.	A Skills Examination would be completed after the barrister and solicitor examination and administered by the Law Society. It would also be a required component of the licensing process.

The skills examination would be consistent with the approach taken by legal regulators in other jurisdictions.²³ Some members of the Committee are of the view that the examination would be another step in the evolution of the Law Society's competence mandate, in accordance with

²³ The National Conference of Bar Examiners in the U.S. administers the Multistate Performance Test. Information about the number of U.S. jurisdictions administering the test, can be found on the National Conference of Bar Examiners website at <http://www.ncbex.org/exams/mpt/> and <http://www.ncbex.org/exams/mpt/preparing/>. The Solicitors Regulatory Authority in England and Wales is introducing a Solicitors Qualifying Examination (SQE) that will include a series of practical skills assessments testing candidates in various areas such as client interviewing and legal drafting. See <https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/sqe-overview/>. The other component of the SQE will consist of a multiple-choice assessment.

currently accepted best practices. The examination has the potential to raise practice standards and could also ensure consistent standards for all candidates for Law Society licensing, irrespective of the law school attended and pathway pursued to licensing.

Other members of the Committee raised concerns about the proposed examination, which could involve initial development costs to the Law Society in the range of \$700,000 to \$1,000,000 (excluding H.S.T. and indirect expense allocation) and result in additional fees of approximately \$1800 per candidate if implemented. These concerns included: the extent of Law Society resources that would be required to develop and administer the examination; the increased cost to be incurred by candidates, who have already indicated that they find licensing costs to be burdensome; and the possibility of unfairness, given that there could be significant differences in achievement in the examination based on the transitional training pathway chosen. Committee members were also concerned that some law schools might be unwilling to make the necessary adjustments to their approach to adequately prepare students for the examination. Finally, the 2018 consultation (both focus groups and Call for Input) revealed significant skepticism about the benefits of the examination.²⁴

Given these issues, a majority of the Committee is also considering an alternative, less resource-intensive approach. Should Convocation choose Option 2, licensing candidates could be required to complete two or three skills assessments to be administered by articling principals who would report the results of the assessments to the Law Society. The purpose of these assessments would be to assess candidates' ability to complete tasks that an entry-level lawyer would be required to accomplish. The Law Society would provide principals with materials, including source documents, instructions, and marking rubrics. Tools for assessment could include drafting an opinion letter, preparing a proposal for settlement or agreement, or writing a legal memorandum.²⁵ Skills assessment would be one element of the Law Society's measurement and monitoring of articling. As part of the audits of articling placements, the Law Society would verify the principal's compliance with the requirement to administer the skills assessment. A majority of the Committee believes that this approach is consistent with the Law Society's statutory duty to ensure a proportionate approach to standards of learning and professional competence. Skills assessments would also be administered by the LPP/PPD.

²⁴ As noted earlier in this report, only 17.4 percent of individual respondents during the Call for Input were in favour of such an examination, while only 17 percent of legal organizations expressed support for the idea. The majority of focus group participants did not view the proposed examination as an effective way of ensuring a consistent training experience between the two pathways, or reducing inequities in the licensing process.

²⁵ In the event that the required skills are assessed as part of the LPP/PPD training course, licensing candidates in the LPP/PPD would not be required to comply with these requirements.

Should Convocation choose Option 3,

- a skills assessment could take place during the practice essentials course.
- In the alternative, a skills examination could be administered by the Law Society and would be a pre-requisite to licensure.

The projected costs of a skills assessment model are likely to be significantly less than the cost of a formal skills examination. Development costs to the Law Society are likely to be in the range of \$250,000-\$300,000, and additional licensing fees are estimated at \$150-\$200 per candidate. Since the concept of a skills assessment has emerged as a result of stakeholder feedback and further dialogue, the Committee is recommending deferral of the matter of skills testing. During the upcoming months, the Committee will consider the benefits and concerns arising from the implementation of both the skills assessment and skills examination, and report to Convocation at a later date.

The recommendation to defer consideration of skills assessment and skills examination is not unanimous. A minority of the Committee is of the view that a skills examination should be implemented as part of either option for the following reasons:

- (i) A skills examination would be developed in conjunction with psychometricians, thereby ensuring a greater degree of rigour, fairness and objectivity than is the case with an assessment that would be administered by an articling principal.
- (ii) A skills examination is less problematic than an assessment, since articling principals may perceive new Law Society requirements to administer the assessments as an administrative burden, particularly in a sole practice or small firm.
- (iii) Stakeholder comments during the Call for Input regarding a lack of clarity about the proposed content of a skills examination should not be interpreted as an argument against developing a skills examination as a means of assessing entry-level competence and protecting the public.

Option 5 - Overview

As noted above, a number of consultation respondents suggested a greater degree of integration of experiential training into the law school experience. These respondents and many others point to the very significant investment that today's law students make long before they are called to the bar. Typically, a new licensee has undergone eight years of study and training, composed of four years in an undergraduate degree program, three years of law school and approximately one year in the licensing process. This process means that students often graduate with more than \$100,000 in debt. However, according to the reports of many candidates, even those with paid

articling positions, their articles often lack the desired guidance, mentoring and structured learning. Candidates often enter the practice of law feeling unprepared and unqualified.

While a percentage of new lawyers may not be practising, the majority of new lawyers provide legal services, either in private practice or as corporate counsel. Moreover, non-practising lawyers often use their lawyering skills in unconventional contexts, to the benefit of their employers. New lawyers and their clients could benefit from an education and training system that saw both law school and transitional training as part of a continuum that aims to produce competent licensees committed to advancing the cause of justice and the rule of law. Ultimately, the client bears the burden of inadequate training. In addition, both the Law Society and the legal academy are grappling with the challenges posed by the rapid changes taking place in society and the profession and the need to find new ways to serve clients of modest means.

With so much at stake for both the public and licensees, the Committee recommends that the Law Society reach out to the academy and explore areas of collaboration with respect to integrating more experiential training into the law school experience. The Committee notes that all law schools are offering an increasing number of experiential learning opportunities and Lakehead University has successfully incorporated the IPP into the law school curriculum.²⁶ Moreover, through the DOL, some members of the legal academy have invited the Law Society to engage in a dialogue in the coming months regarding the future of legal education.

While recognizing that law schools and the Law Society have separate roles, the Committee believes that much could be accomplished if all participants in the legal education continuum begin to discuss their common challenges in an effort to identify solutions.

Implementation

A. Cost

The estimated development costs and candidate fees (excluding H.S.T.) of Option 2 and Option 3 can be summarized as follows. Licensing fee projections assume a continuing subsidy from the profession in the amount of \$1,000,000.

Option 2 – The cost of developing new quality assurance protocols (monitoring, training and supports) for all articling and LPP/PPD work placements are projected at \$200,000 to \$300,000. Once implemented, the protocols are likely to result in a fee increase of approximately \$175 per candidate, which would be added to the current licensing fee of \$4710. Under Option 2, the total per candidate licensing fee is projected at approximately \$4900.

²⁶ The 2017 DOL materials include a chart summarizing experiential learning opportunities, and may be accessed at <https://lsdialogue.ca/wp-content/uploads/2017/03/Dialogue-Topic-1-EN.pdf>

Option 3 – Licensing fees would vary depending on the category of practice:

- Non-practising lawyers and lawyers entering workplaces of six or more would continue to pay the current licensing fee, less the cost of the transitional training requirement, for a total licensing fee of approximately \$1900.
- Lawyers in sole practice or in a firm of fewer than six lawyers would be required to pay the current licensing fee (less the cost of the transitional training requirement) and the practice essentials course fee of approximately \$2500, for a total licensing fee of approximately \$4400.

Future reports to Convocation will include more detailed information about timing, resource, and cost impacts of implementation.

The projected costs of the skills examination and skills assessment models have been outlined above at pages 29-30. Given that further information about the benefits, challenges and resource implications of the two models is required, the Committee is recommending deferral of consideration of skills testing at this time.

B. Timing and Reporting

The design of the enhancements proposed by Option 2 and the skills examination and assessment will require additional consideration. As a result, the earliest these changes could be implemented would be for the licensing cohort that begins on May 1, 2021. If Convocation chooses Option 3, timelines for implementation will be determined and reported to Convocation.

After Convocation has determined the matters outlined in the motion, the Committee will return to Convocation for input and decisions related to implementing the chosen option and the skills assessment or skills examination. This will include more detailed information about timing, resource, and cost impacts.

As is the case with other Law Society initiatives, in the event that Convocation chooses Option 2, once the enhancements are in place, there will regular reports to the Committee and Convocation from time to time enabling the efficacy of the enhancements to be assessed.

Articling Placement Reporting Tool Results for 2020-2021

1. Overview

Articling principals and candidates use the Law Society's online Articling Program Reporting Tool to report on the candidate's exposure to the experiential training competencies during the placement. Articling principals must also use the Tool to report on candidate fulfillment of the five performance appraisal competencies or tasks.

Principals report on the competencies are using a five-point, behaviourally anchored rating scale which describes the candidate's exposure or performance through specific behaviours. For example:

Experiential Training Competency – Focussed on Candidate Exposure

Area	Competency		BEHAVIOURAL ANCHORS
4. DRAFTING AND LEGAL WRITING	Prepare drafts of litigation documents (e.g., pleadings, notices of motion, notices of application, draft orders, offers to settle, notices of appeal, affidavits, facta, minutes of settlement, releases)	5	Prepared drafts of a wide variety of litigation documents.
		4	Prepared drafts of a variety of litigation documents.
		3	Prepared drafts of a limited range of litigation documents.
		2	Prepared drafts of litigation documents for one type of matter.
		1	Not applicable in this context.

Performance Appraisal Competency – Focussed on Candidate Performance

ORDER	Skill Competency	Competency To Be Assessed		BEHAVIOURAL ANCHORS
2	Interviewing a Client	Eliciting information from the client.	5	Identifies and collects relevant information that exceeds the expectations of the instructing lawyer. Determines the level of sophistication and communication needs of the client and tailors the general level of discourse accordingly.
			4	Uses active listening skills to confirm understanding of the client's responses. Employs an effective plan for eliciting information from the client.
			3	Asks relevant questions tailored to the situation and client (e.g., open-ended or focused as required). Obtains sufficient information required to proceed.

			2	Does not tailor the type of questions asked to the situation or client. Does not obtain the necessary information required to proceed.
			1	Spends a disproportionate amount of time collecting irrelevant information. Obtains little or no relevant information from the client.

2. Summary of Experiential Training Competency Ratings (based on 1,337 filings as of August 31, 2021)

- 24/43 or 56% of the experiential training competency ratings dropped marginally compared to the previous year.
- The aggregate ratings for five experiential training competencies dropped by more than a quarter of a rating point. Most of these were in the area of advocacy, reflecting reduced opportunities for candidates to engage in court appearances and related activities as a result of the pandemic:
 - Q2 - Observe procedures related to engagements/retainers and/or documenting the scope of services (-0.28)
 - Q32 - Conduct negotiations under supervision of a lawyer (e.g., small claims, simple tribunal matter) (-0.41)
 - Q36 - Attend court or tribunal, where permitted, to speak to routine administrative matters (e.g., unopposed adjournments, uncontested and consent motions, and set dates). (-0.69)
 - Q37 - Prepare clients or witnesses for trial or other examination (-0.32)
 - Q38 - Conduct a hearing or trial where permitted (e.g., status hearings, judgment-debtor examinations, Small Claims Court and tribunal matters). (-0.37)

3. Summary of Performance Appraisal Competency Ratings (based on 1,332 filings as of August 31, 2021)

- 3/21 or 14% of performance appraisal competency ratings dropped marginally compared to the previous year.
- The rating for one performance appraisal competency dropped by over half a rating point, reflecting reduced opportunities for court and tribunal appearances resulting from the pandemic:
 - Q13 - Conducting a motion, application or simple hearing before an adjudicative body (-0.57)

Experiential Training Competencies (Principal Reporting)	Average rating for 2017-2018 + 2018-2019 (N = 3,948)	Average rating for 2021-2022 (N = 1,337)	Difference
Ethics and Professional Responsibility			
Q1 - Discuss ethical obligations and responsibilities of a lawyer	4.34	4.29	-0.05
Q2 - Observe procedures related to engagements/retainers and/or documenting the scope of services	3.63	3.35	-0.28
Q3 - Discuss the lawyer's duty to preserve client confidentiality and the appropriate measures to be taken	4.26	4.22	-0.04
Q4 - Discuss potential client conflict of interest issues and observe or use client conflict management process	3.62	3.50	-0.12
Q5 - Discuss appropriate steps to take when asked by a client to do something that would breach professional obligations	3.73	3.61	-0.12
Interviewing			
Q6 - Participate in/observe client interviews	3.77	3.57	-0.20
Q7 - Document client meetings (e.g., meeting notes, memos to file)	4.19	4.18	-0.01
Q8 - Attend interviews with witnesses and/or experts	2.92	2.73	-0.19
Q9 - Prepare witness statements, affidavits, or other court documents based on interview	3.41	3.27	-0.14
Fact Investigation and Legal Research			
Q10 - Review and/or summarize relevant documentation (e.g., transcripts, client's personal or internal files, corporate minute books, contracts, files maintained by government or administrative bodies)	4.55	4.63	0.08
Q11 - Identify applicable areas of law and legal issues	4.66	4.73	0.07
Q12 - Conduct research on substantive and procedural issues	4.56	4.68	0.12
Q13 - Interpret and apply results of research	4.54	4.63	0.09
Q14 - Report results of research to lawyer orally and/or in writing	4.71	4.78	0.07
Drafting and Legal Writing			
Q15 - Use precedents to prepare legal documents	4.39	4.51	0.12

Experiential Training Competencies (Principal Reporting)	Average rating for 2017-2018 + 2018-2019 (N = 3,948)	Average rating for 2021-2022 (N = 1,337)	Difference
Q16 - Formulate and draft legal argument, analysis, advice or submissions	4.10	4.24	0.14
Q17 - Prepare drafts of litigation documents (e.g., pleadings, notices of motion, notices of application, draft orders, offers to settle, notices of appeal, affidavits, facta, minutes of settlement, releases)	3.66	3.62	-0.04
Q18 - Prepare drafts of solicitor-type documents (e.g., correspondence, resolutions, officer's certificates, powers of attorney, agreements, letters of opinion, reporting letters, Wills)	3.45	3.51	0.06
Planning and Advising			
Q19 - Conduct due diligence to ensure all relevant information has been obtained and reviewed	3.85	3.86	0.01
Q20 - Generate options and formulate strategy with lawyer in light of client's needs and circumstances.	3.95	3.96	0.01
Q21 - Observe client meetings in which remedies, options, advice, and instructions are discussed	4.00	3.93	-0.07
Q22 - Advise client under direct supervision of lawyer	3.28	3.07	-0.21
File and Practice Management			
Q23 - Keep client informed of progress of the matter	4.02	3.83	-0.19
Q24 - Document a file (e.g., records of telephone calls, memos to file, client instructions)	4.40	4.39	-0.01
Q25 - Organize a file	4.23	4.20	-0.03
Q26 - Use time docketing system and/or follow process for recording expenses and disbursements	4.20	4.32	0.12
Q27 - Become familiar with and apply cost and time saving techniques that benefit the client	3.71	3.73	0.02
Q28 - Use a tickler system (bring forward and limitation dates)	3.82	3.79	-0.03
Negotiation			
Q29 - Prepare for negotiations (e.g., transactional, litigation, ADR)	3.20	3.06	-0.14

Experiential Training Competencies (Principal Reporting)	Average rating for 2017-2018 + 2018-2019 (N = 3,948)	Average rating for 2021-2022 (N = 1,337)	Difference
Q30 - Observe negotiations	3.38	3.22	-0.16
Q31 - Review and discuss status or outcome of negotiations with lawyerQ31	3.20	3.05	-0.15
Q32 - Conduct negotiations under supervision of a lawyer (e.g., small claims, simple tribunal matter)	2.45	2.04	-0.41
Q33 - Observe forms of alternative dispute resolution (e.g., mediation, arbitration, conciliation)	2.77	2.71	-0.06
Advocacy			
Q34 - Observe and/or support advocacy in a variety of settings (e.g., motions, tribunal hearings, trials, pre-trial conferences, discoveries, applications, references, assessments of costs, examinations).	3.83	3.74	-0.09
Q35 - Request, provide or participate in document disclosure as required (e.g., affidavits of documents, Crown disclosure, Children's Aid Society).	3.34	3.21	-0.13
Q36 - Attend court or tribunal, where permitted, to speak to routine administrative matters (e.g., unopposed adjournments, uncontested and consent motions, and set dates).	2.82	2.13	-0.69
Q37 - Prepare clients or witnesses for trial or other examination	2.75	2.43	-0.32
Q38 - Conduct a hearing or trial where permitted (e.g., status hearings, judgment-debtor examinations, Small Claims Court and tribunal matters).	1.98	1.61	-0.37
Transactional/Advisory Matters			
Q39 - Use transactional checklists as appropriate (e.g., due diligence checklist, closing agenda)	2.79	2.91	0.12
Q40 - Prepare drafts of relevant transactional documents (e.g., closing agenda, due diligence summaries, resolutions, receipts, requisition letters, purchase agreements, promissory notes, opinions, shareholders agreements, reporting letters)	2.36	2.56	0.20
Q41 - Fulfill appropriate regulatory requirements and/or identify forum/parties/stakeholders	2.46	2.56	0.10

Experiential Training Competencies (Principal Reporting)	Average rating for 2017-2018 + 2018-2019 (N = 3,948)	Average rating for 2021-2022 (N = 1,337)	Difference
Q42 - Conduct and/or review relevant searches (e.g., PPSA, Bulk Sales Act, bankruptcy, executions, title, corporate names, tax certificates, trademarks, liens).	2.57	2.64	0.07
Q43 - Participate in closing	2.17	2.28	0.11

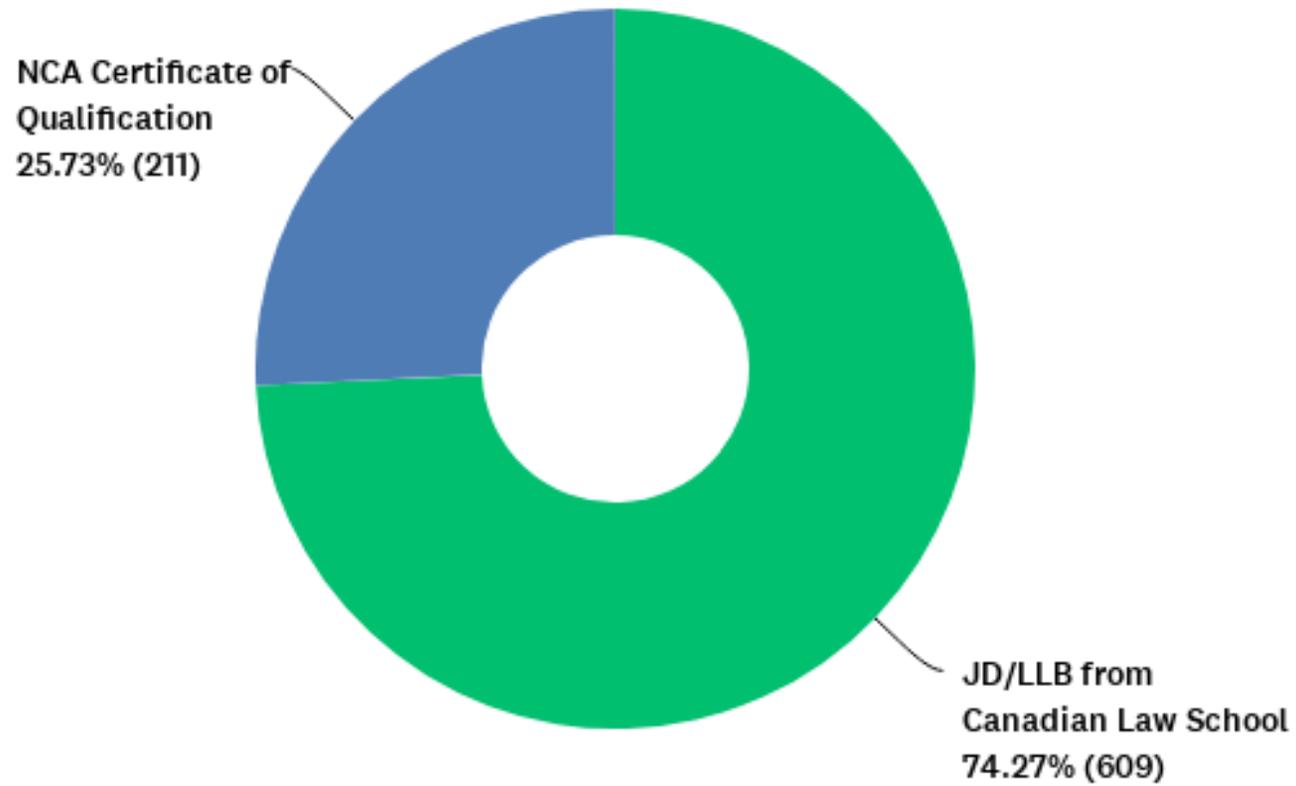
Performance Appraisal Competencies	Average rating for 2017-18 and 2018-19 (N = 3,948)	Average rating for 2021-2022 (N = 1,332)	Difference
Task: Interview a Client			
Q1 - Establishing rapport with the client	3.80	3.81	0.01
Q2 - Eliciting information from the client	3.80	3.87	0.07
Q3 - Determines the client's legal needs	3.95	3.97	0.02
Q4 - Advising the client (under a lawyer's supervision) in light of the client's circumstances	3.50	3.52	0.02
Q5 - Documenting advice given to the client and instructions received from the client	3.83	3.96	0.13
Q6 - Managing client expectations	3.44	3.48	0.04
Task: Draft a Legal Opinion			
Q7 - Identifying the client's goals and objectives	3.47	3.67	0.20
Q8 - Gathering facts	4.23	4.33	0.10
Q9 - Identifying applicable areas of law and conducting legal research and analysis	3.94	4.09	0.15
Q10 - Identifying and assessing possible courses of action and range of outcomes	3.89	3.96	0.07
Q11 - Developing a legal strategy in light of the client's circumstances	3.66	3.74	0.08
Task: Represent a Client in an Appearance or ADR or Settlement Process			
Q12 - Formulating and articulating a well-reasoned and accurate legal argument, analysis, or submission	3.98	4.01	0.03
Q13 - Conducting a motion, application or simple hearing before an adjudicative body	2.34	1.77	-0.57
Q14 - Advocating in a non-adjudicative context	3.20	2.97	-0.23

Performance Appraisal Competencies	Average rating for 2017-18 and 2018-19 (N = 3,948)	Average rating for 2021-2022 (N = 1,332)	Difference
Q15 - Negotiating the resolution of a dispute or legal problem	2.99	2.80	-0.19
Task: Demonstrate Professional Conduct			
Q16 - Identifying ethical issues and problems	3.95	4.06	0.11
Q17 Making informed and reasoned decisions about ethical issues	4.02	4.09	0.07
Task: Use of Law Firm/Legal Practice Management Systems			
Q18 - Using systems supporting management of potential client conflicts	3.31	3.32	0.01
Q19 - Using systems supporting the management of timelines and limitation periods	4.01	4.12	0.11
Q20 - Using systems supporting management of client records and files	4.32	4.44	0.12
Q21 - Using systems supporting docketing	4.12	4.30	0.18

Interim 2021-2022 Lawyer Licensure Questionnaire Results

Purpose:	The Lawyer Licensure Questionnaire (formerly known as the Call to the Bar survey) is administered to all lawyer candidates just before they become licensed. The questions are designed to capture candidate perceptions around quality of experiential training their experience in the licensing process, employment plans and readiness to practice. As of September 2020, paralegal candidates receive a similar Paralegal Licensure Questionnaire. The questionnaires include questions aimed at assessing the impact of the pandemic on candidates completing the licensing process.
Dates:	May 2021 to August 31, 2021 (4 months)
Total targets:	1,405 candidates
Total responses:	820 responses
Response rate:	58%

Q1 Please indicate your path of entry to the licensing process.



Q2 Please indicate the Canadian Law School that you attended.

Osgoode Hall Law School / York University	19%	112
University of Ottawa	18%	109
University of Windsor	16%	95
Western University	12%	74
Queen's University	12%	70
University of Toronto	11%	68
Dalhousie University	3%	19
McGill University	2%	15
Lakehead University	1%	6
University of New Brunswick	1%	6
University of Saskatchewan	1%	6
University of British Columbia	1%	5
University of Calgary	1%	5
University of Victoria	1%	4
University of Sherbrooke	1%	3
Thompson Rivers University	<1%	2
University of Alberta	<1%	2
University of Manitoba	<1%	2
University of Moncton	<1%	1

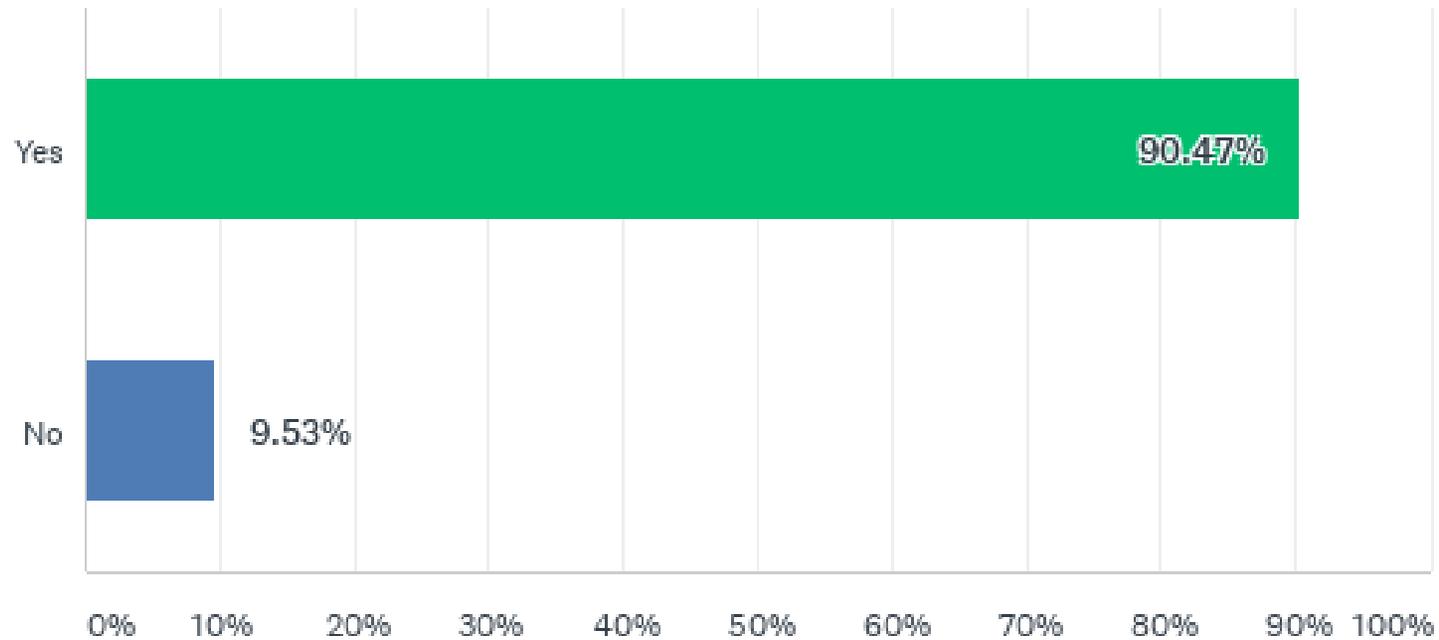
University of Montreal	<1%	1
Quebec (Civil Law Degree)	<1%	1

Q2 In which country did you obtain your legal academic experience?

United Kingdom	38%	80
India	22%	46
Nigeria	11%	22
United States	7%	14
Pakistan	5%	11
Australia	3%	7
Ukraine	2%	4
Hong Kong	1%	3
Philippines	<1%	2
Turkey	<1%	2
Afghanistan	<1%	1
Anguilla (West Indies)	<1%	1
Bangladesh	<1%	1
Barbados (West Indies)	<1%	1
Brazil	<1%	1
China	<1%	1

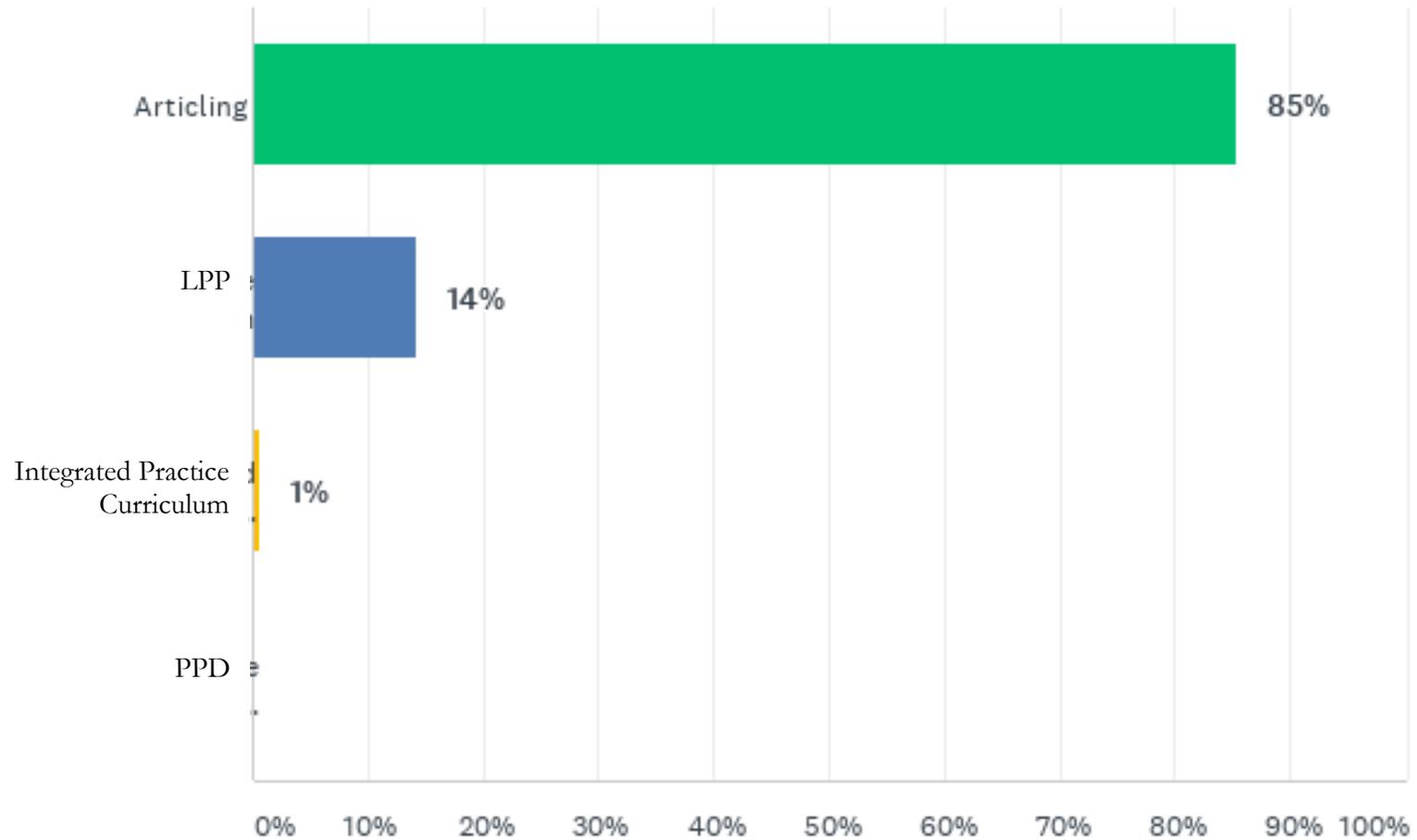
Colombia	<1%	1
Dominican Republic	<1%	1
Egypt	<1%	1
Ghana	<1%	1
Iran, Islamic Republic of	<1%	1
Jamaica (West Indies)	<1%	1
Romania	<1%	1
Russian Federation	<1%	1
Singapore	<1%	1
South Africa	<1%	1
Sri Lanka	<1%	1

Q4 Did you fulfill the experiential training requirement through Articling, the Integrated Practice Curriculum, the Law Practice Program or the Programme pratique du droit?



- A total of 77 respondents (9.53%) were exempted from the experiential training requirement. These candidates were not presented with questions about experiential training when responding to the questionnaire.

Q5 Please indicate the path you took to obtain the experiential training requirement of the lawyer licensing process.



Q6 What was the setting of your placement?

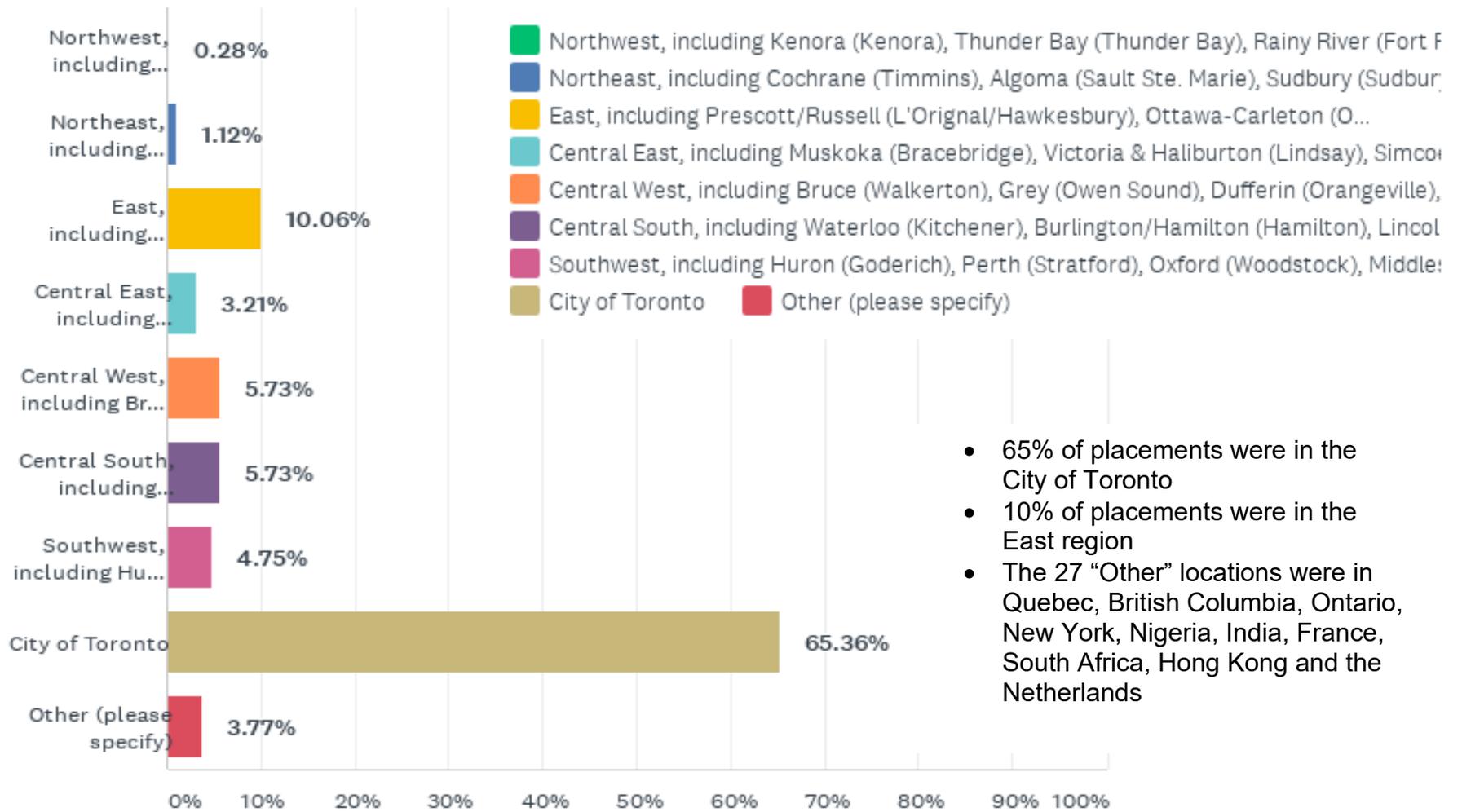
Law firm (more than 200 lawyers)	14%	103
Law firm (2-5 lawyers)	13%	91
Sole practice	11%	76
Government or public agency	10%	75
Law firm (11-25 lawyers)	10%	73
Law firm (26-50 lawyers)	9%	62
Law firm (6-10 lawyers)	8%	57
Law firm (51-100 lawyers)	7%	51
In-house counsel for a private corporation	6%	40
Law firm (101-200 lawyers)	5%	35
Other (clerkships, more than one placement, in-house for public organization)	3%	19
Crown's office	2%	13
Non-governmental organization (NGO)	1%	10
Legal clinic	1%	9
Education	<1%	1
Tribunal	<1%	1

Q7 In what area(s) of law did you practise during your placement? Select all that apply.

Corporate Commercial Law	46.37%	332
Civil Litigation – Plaintiff	42.60%	305
Civil Litigation – Defendant	41.48%	297
Real Estate Law	32.96%	236
Employment/Labour Law	31.15%	223
Wills, Estates, Trusts Law	26.82%	192
Administrative Law	22.35%	160
Family Law/Matrimonial Law	18.16%	130
Securities Law	17.46%	125
Criminal/Quasi Criminal Law	17.04%	122
Construction Law	15.92%	114
Intellectual Property Law	14.11%	101
ADR/Mediation	12.15%	87
Human Rights/Social Justice Law	11.17%	80
Tax Law	10.89%	78
Bankruptcy Law	9.78%	70
Workplace Safety and Insurance Law	8.24%	59
Environmental Law	7.68%	55
Health Law	7.54%	54

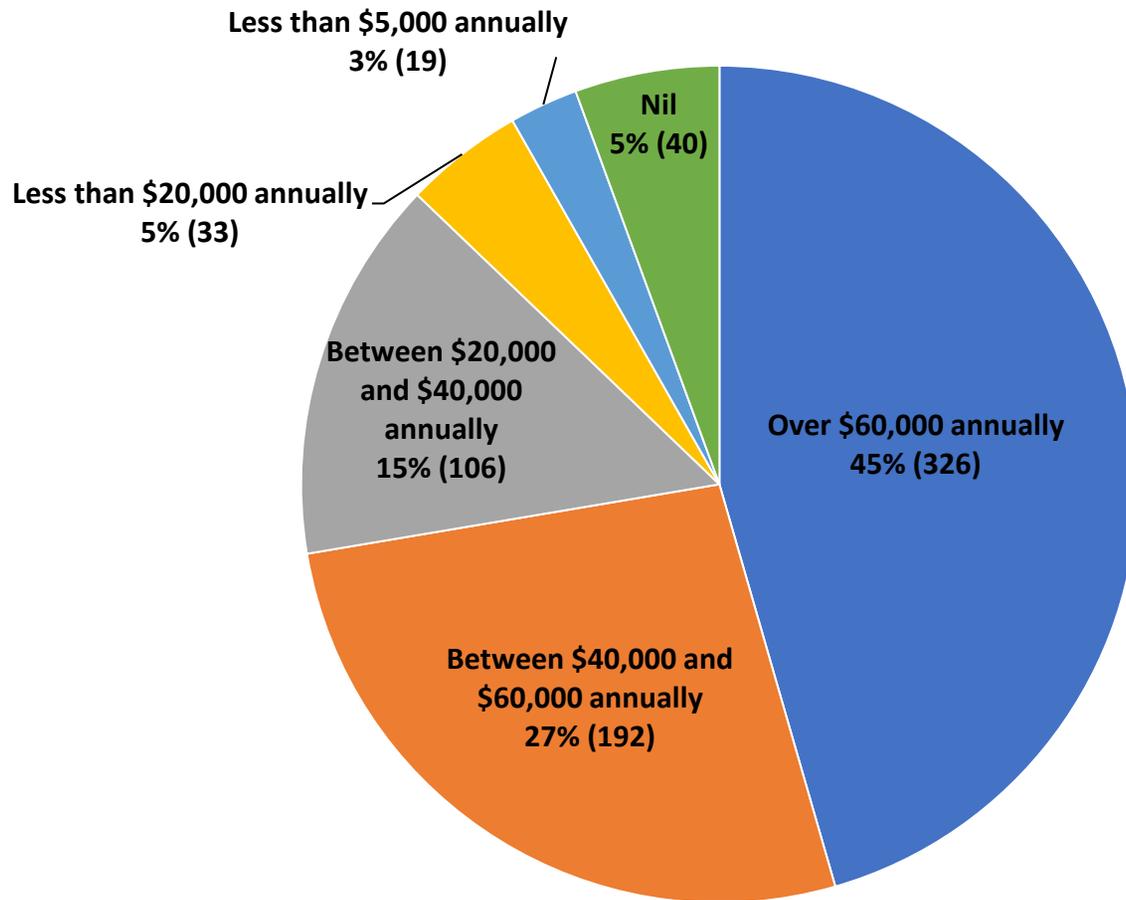
Immigration Law	6.15%	44
International Law	5.31%	38
Aboriginal Law	4.75%	34
Poverty Law	2.37%	17
Language Rights Law	0.28%	2

Q8 Where was your placement located?



Q9 Please indicate the range of compensation for your work during your placement.

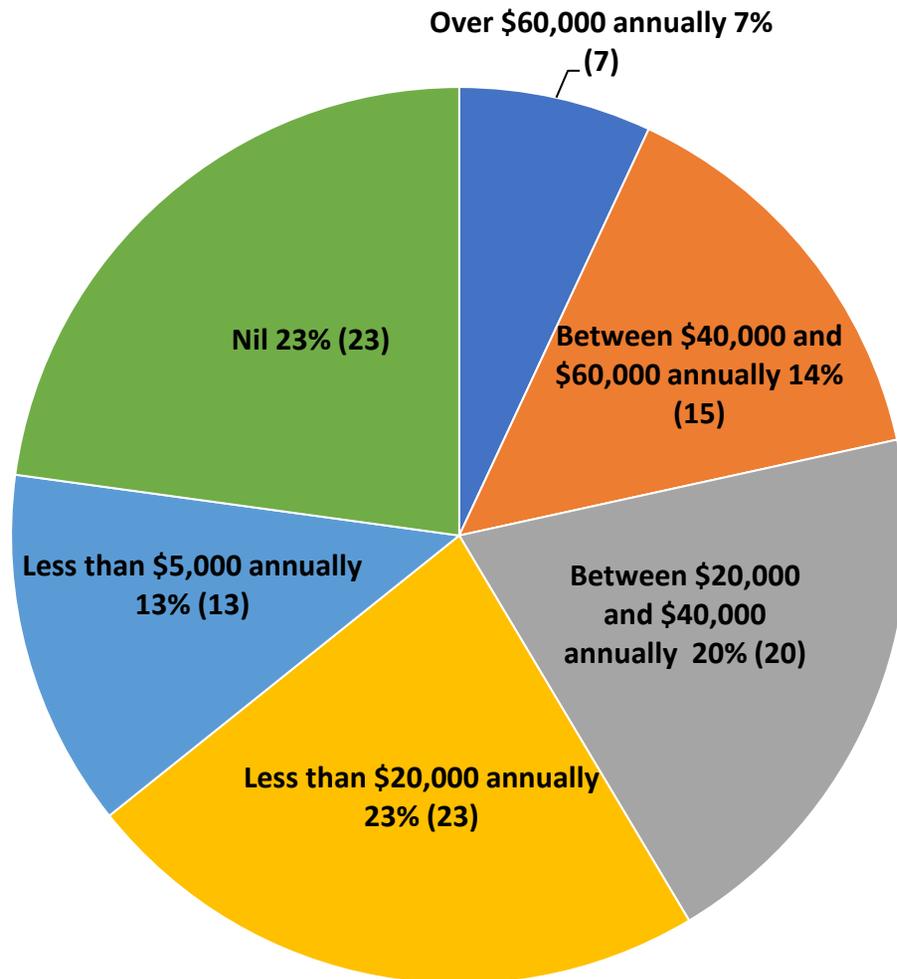
All Experiential Training Pathways



- 45% earned more than \$60,000
- 27% earned between \$40,000 and \$60,000
- 15% earned between \$20,000 and \$40,000
- 13% earned less than \$20,000 (8% earned less than \$5,000 and 5% earned nil)

Q9 Please indicate the range of compensation for your work during your placement.

LPP/PPD only (101 respondents)*

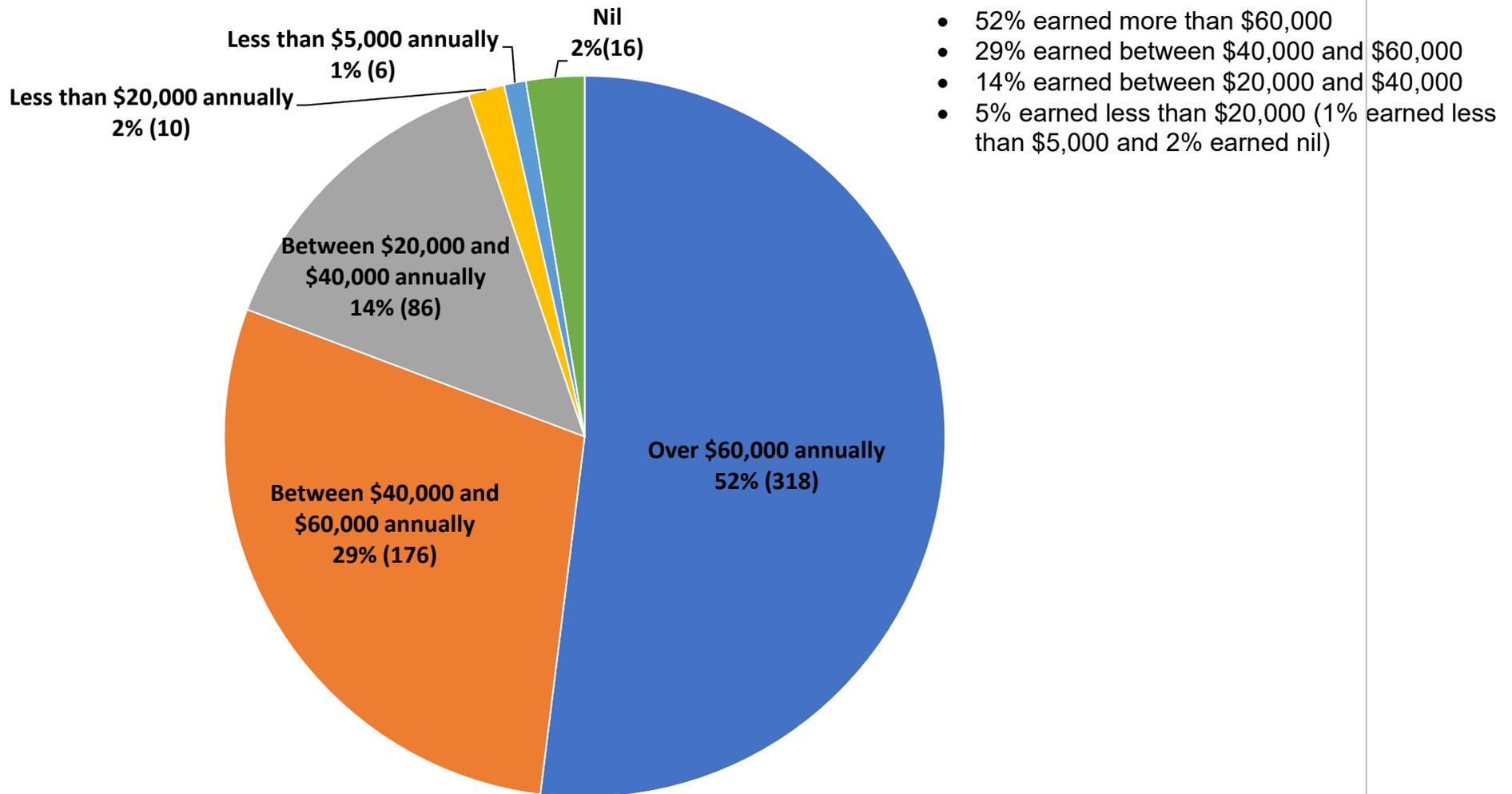


- 7% earned more than \$60,000
- 14% earned between \$40,000 and \$60,000
- 20% earned between \$20,000 and \$40,000
- 59% earned less than \$20,000 (13% earned less than \$5,000 and 23% earned nil)

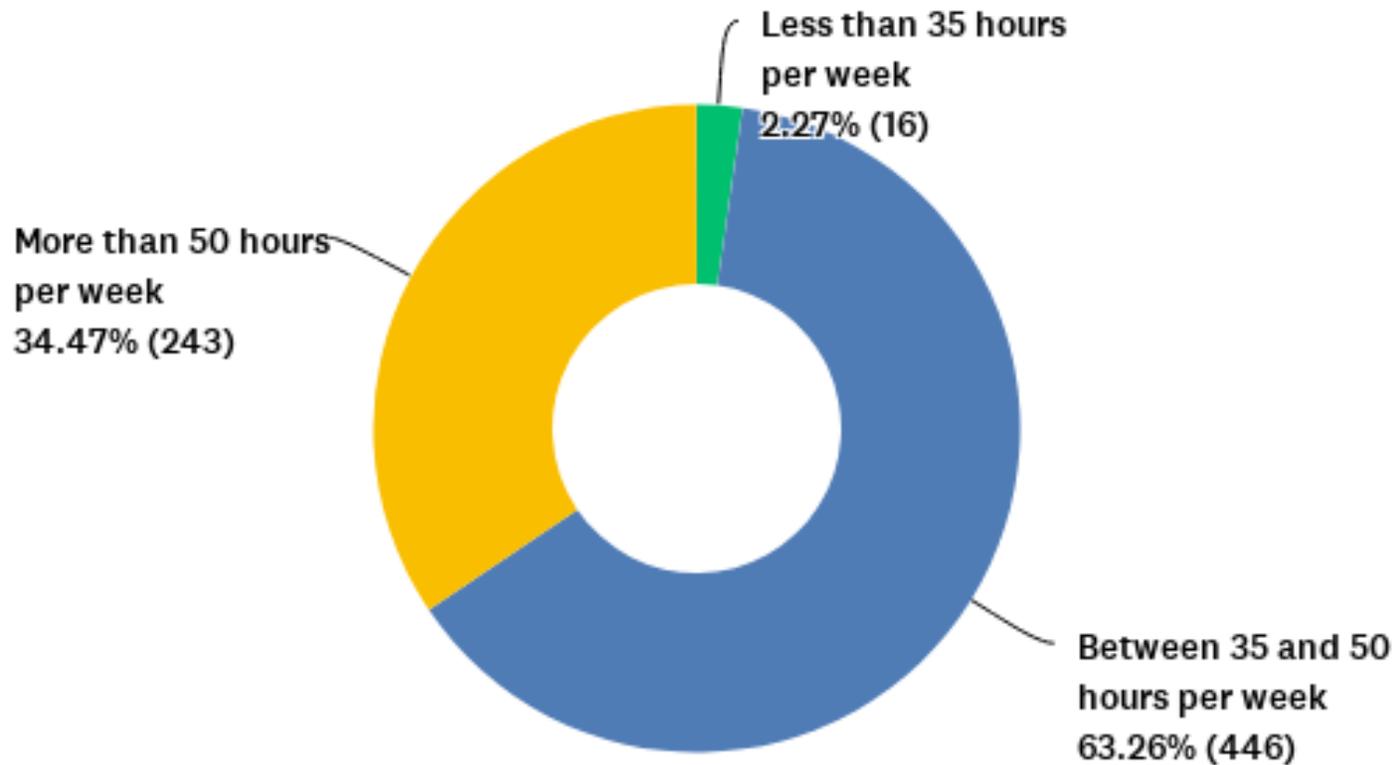
*Results may be skewed to suggest lower annual compensation than was actually paid. Some LPP candidates may not have prorated the compensation they received during their four-month placement to an annual salary. Question will be clarified going forward.

Q9 Please indicate the range of compensation for your work during your placement.

Articling only (612 respondents)

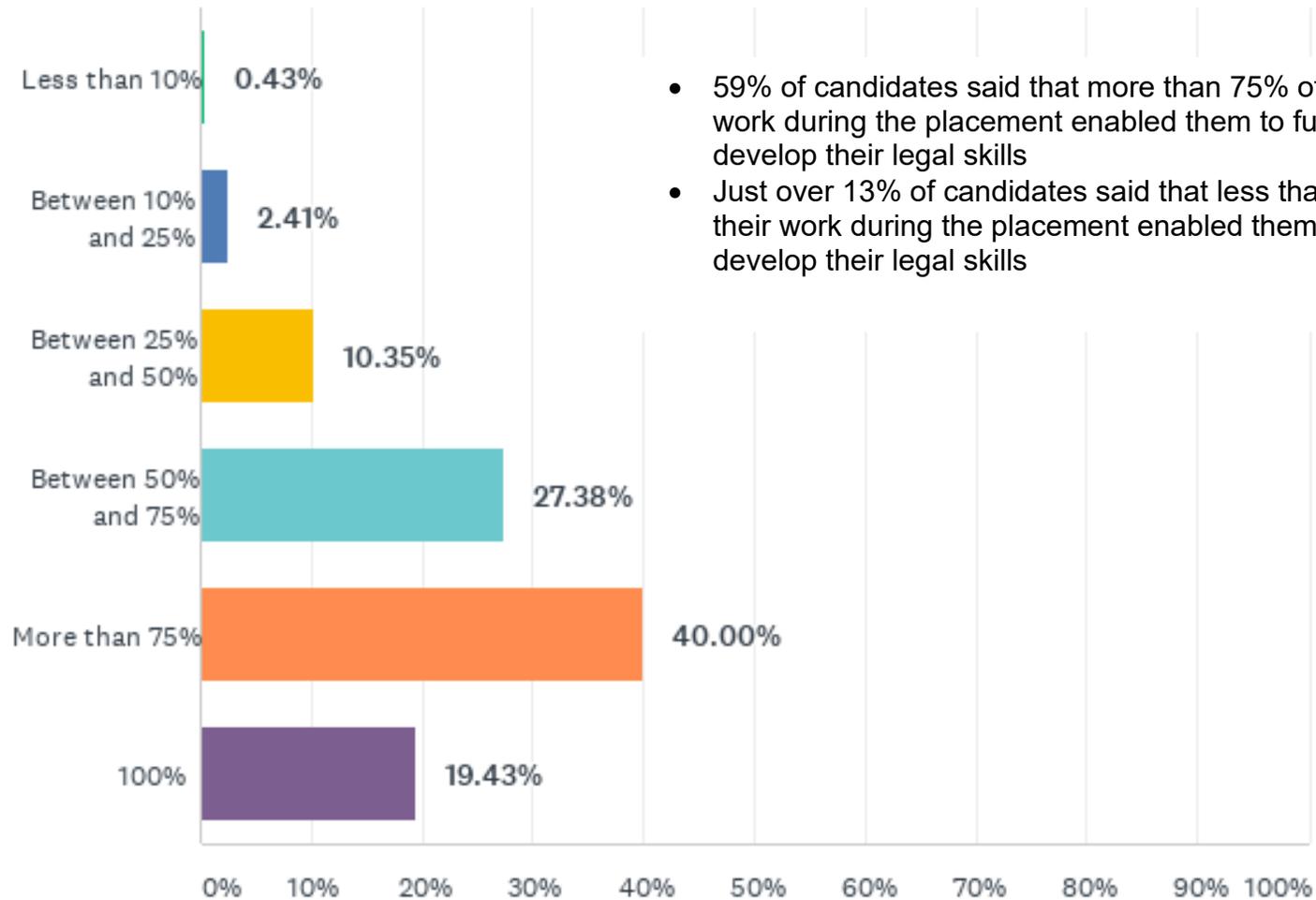


Q10 For how many hours per week did you work at your placement?



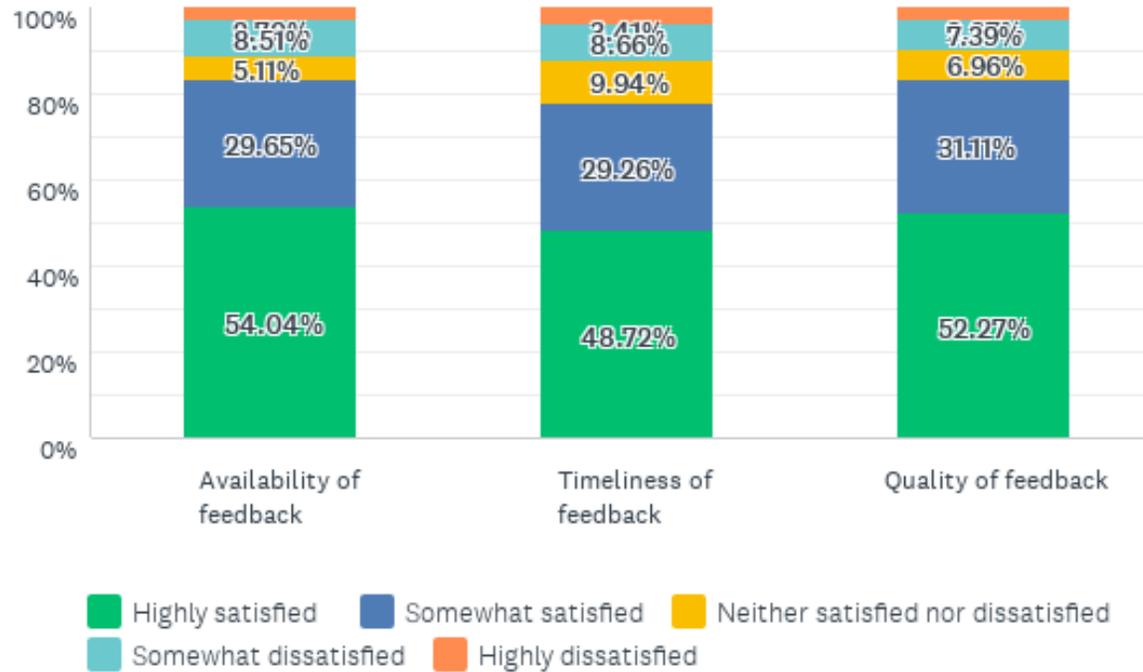
- Most candidates (63%) worked between 35 and 50 hours per week
- Only 2% of candidates worked less than 35 hours per week

Q11 What percentage of your work during the placement enabled you to further develop your legal skills?



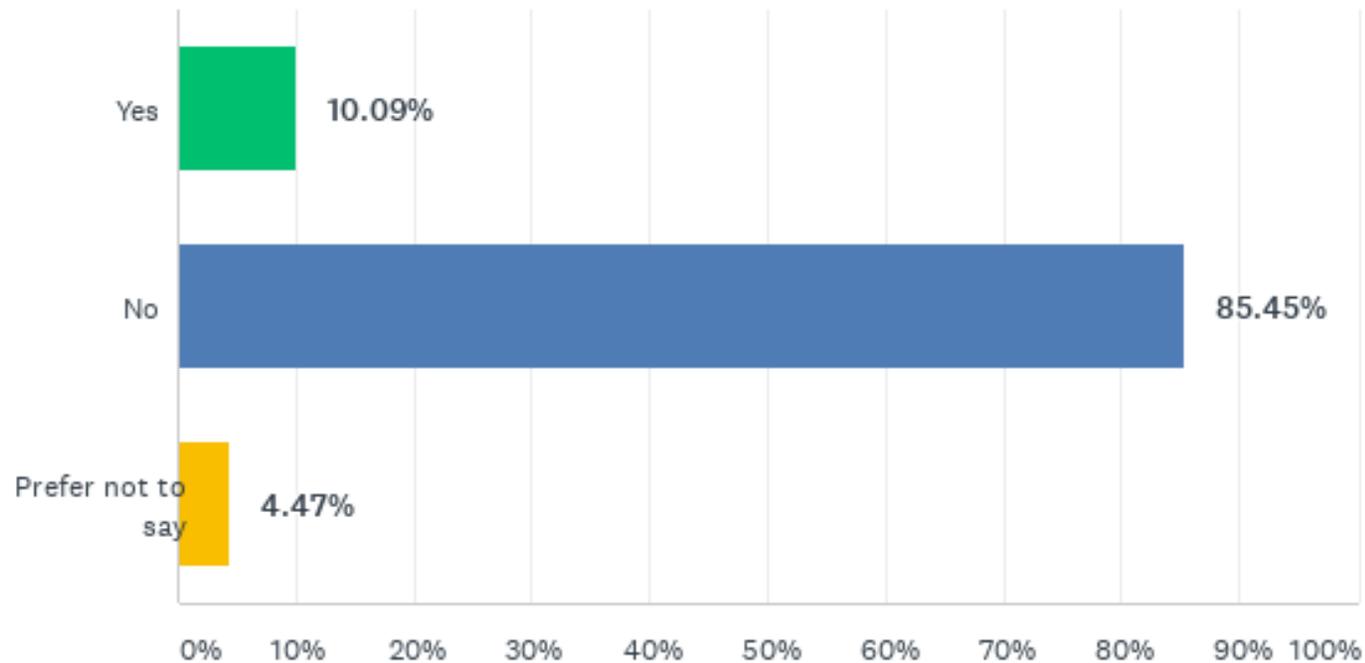
- 59% of candidates said that more than 75% of their work during the placement enabled them to further develop their legal skills
- Just over 13% of candidates said that less than 50% of their work during the placement enabled them to further develop their legal skills

Q12 Please rate the feedback received from your principal/supervisor during your placement.



- The majority of candidates are either highly or somewhat satisfied with the feedback received from their principal or supervisor: 84% are satisfied with the availability of feedback, 78% are satisfied with the timeliness of feedback, and 83% are satisfied with the quality of feedback

Q13 During the recruitment process for your placement, did you experience discrimination or harassment related to your age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation, or other factors?



- Ten percent of candidates (70) responded Yes

Summary of voluntary comments from respondents who said Yes

A total of 23 candidates chose to comment on their experience with discrimination or harassment during the recruitment process for a placement. Their experiences with discrimination and harassment were based on age, family status, race, financial status, being foreign qualified, gender, sexual orientation, sexual harassment, and disability.

The most common factor mentioned is race; seven candidates reported they experienced discrimination based on their race. One candidate said that racism and classism was quite prominent throughout recruitment.

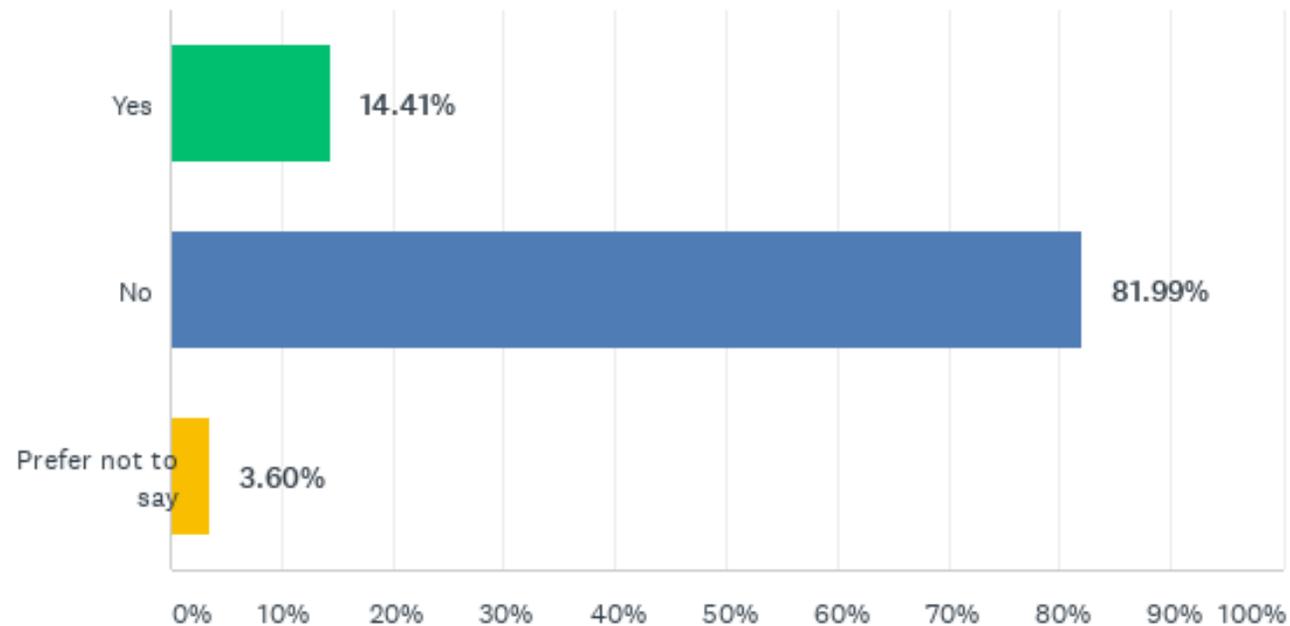
Three candidates reported that they experienced discrimination based on their age and another three candidates said they experienced discrimination because of their family status. Comments were about not being hired because they are a mother, or the recruiter tried to find out if the candidate's marital or family status will change.

Two candidates indicated that they experienced sexual harassment. One principal kept asking a candidate about their marital status and other personal information and asked to see the candidate outside of the office. When the candidate said no, the principal told them that they weren't friendly enough.

Two candidates said that they felt like they were discriminated against because they were NCA candidates, and two candidates said that they were discriminated against because they had a disability. One candidate said the organization was unwilling to provide accommodation for the disability.

Two candidates experienced discrimination because of their gender and two candidates said they experienced discrimination because of their sexual orientation. One candidate said that if recruiters know I'm gay, I won't get the placement.

Q14 At any time during your placement, do you feel that you faced any comments or conduct related to your age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation that was unwelcome?



- Fourteen percent of candidates (100) responded Yes

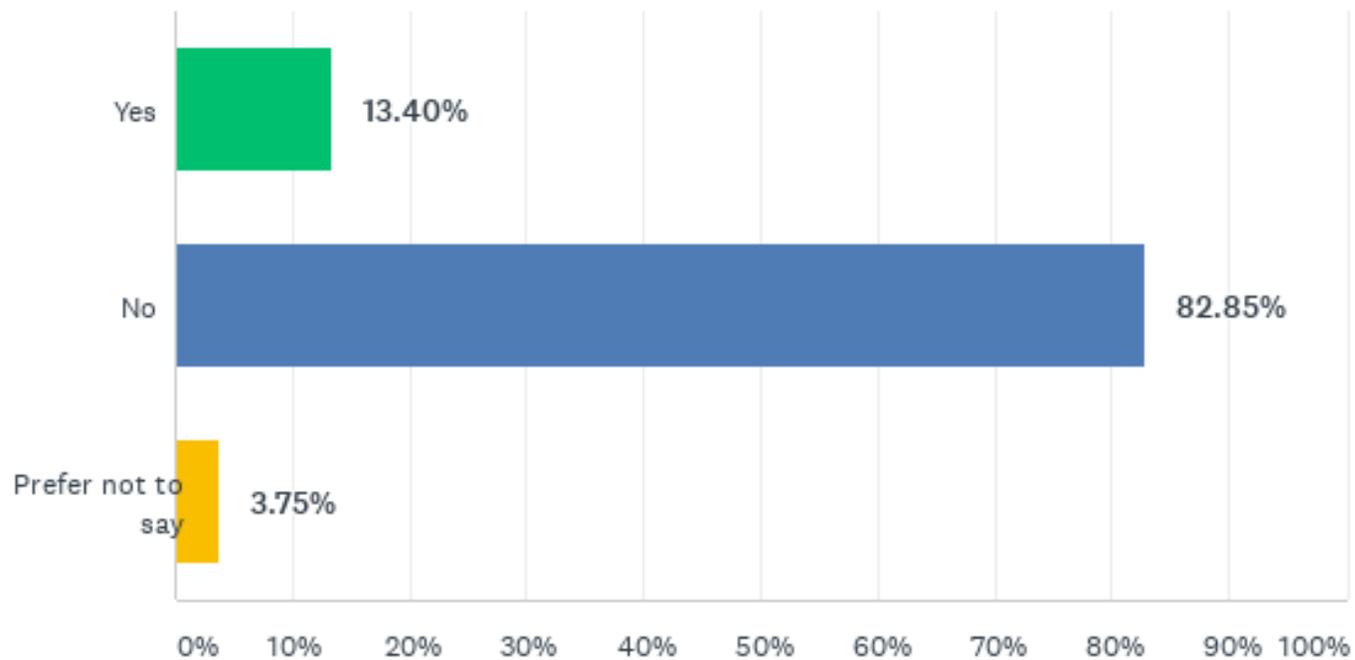
Summary of voluntary comments from respondents who said Yes

A total of 14 candidates chose to tell us about their experience facing unwelcome comments or conduct during their placement relating to race, gender, sexual harassment, and age. Another candidate told us that they were treated unfairly because of a medical issue and another one said they were told that they were hired because of their diversity.

Five candidates faced unwelcome comments or conduct relating to race; two were related to being white. Two candidates said they faced unwelcome comments or conduct relating to their gender, and two said they faced unwelcome comments or conduct relating to their age.

One candidate said that a defendant made sexual advances on them in front of lawyers that the candidate worked with.

Q15 At any time during your placement, do you feel that you faced any unequal or differential treatment related to your age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation?



- Thirteen percent of candidates (93) responded Yes

Summary of voluntary comments from respondents who said Yes

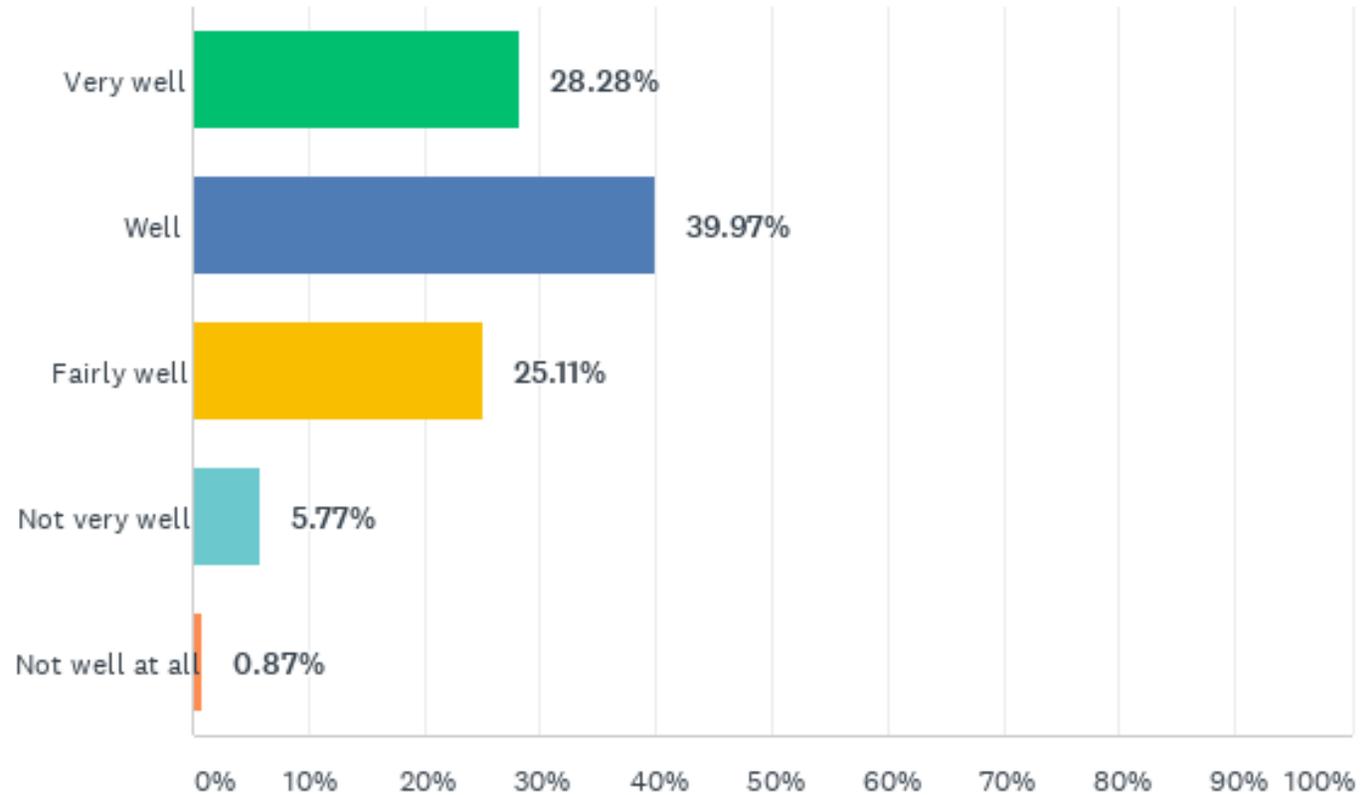
Thirteen candidates commented about facing unequal or differential treatment during their placement relating to sexual harassment, race and gender. Two other candidates said that they felt other candidates were given preferential treatment because of their race, religion or family status. Another two candidates said that they did not fit in because they weren't in a protected subgroup and one candidate simply said that most lawyers and clients are white.

Three candidates said that gender was the factor when they faced unequal or differential treatment during their placement. Two candidates said that being female was the basis for the unequal or differential treatment.

Two candidates said that their race was the factor when they faced unequal or differential treatment; one candidate said that the owner had qualms about people of colour.

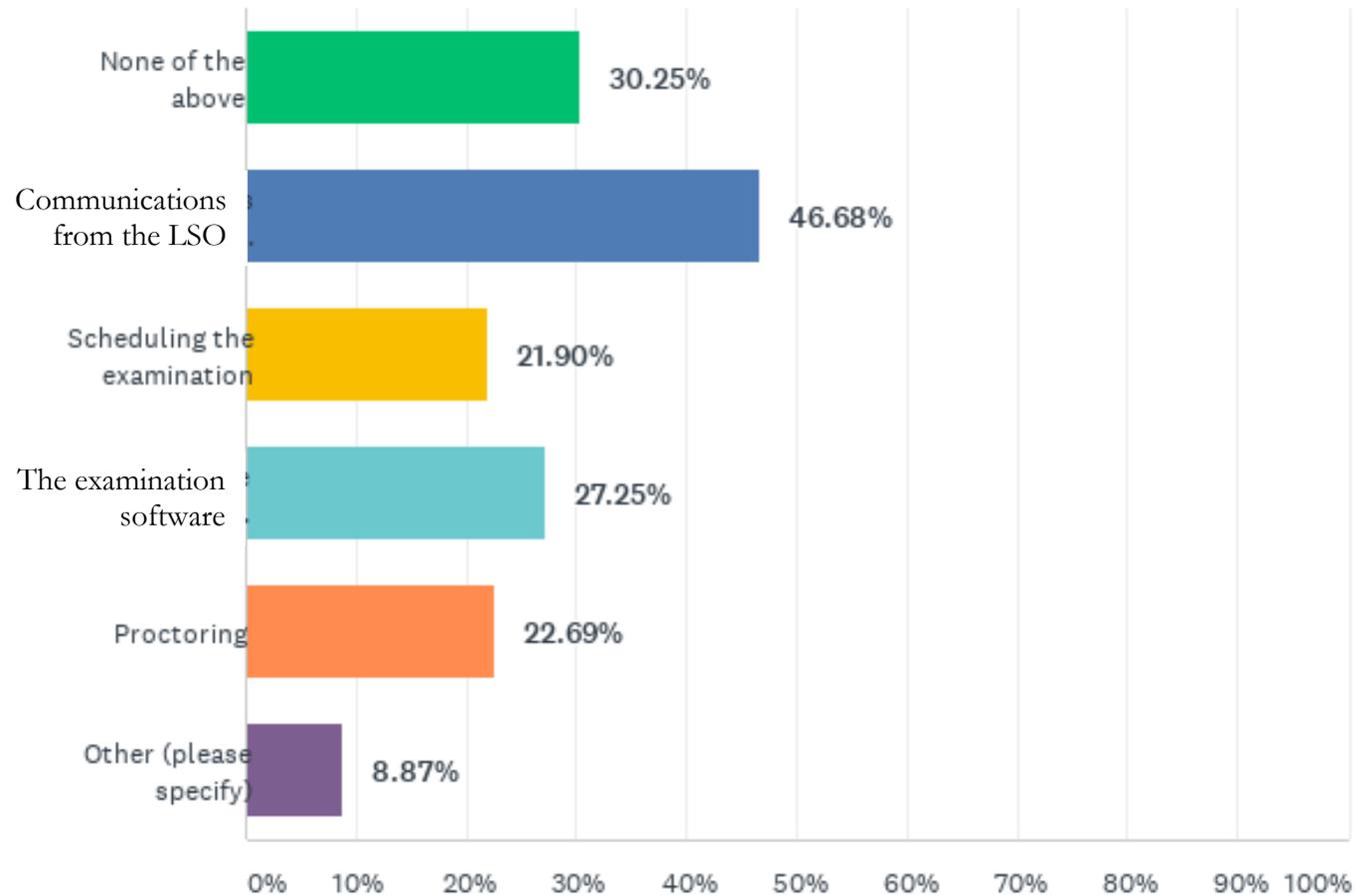
One candidate said they only faced unequal or differential treatment when they told their principal that they would not get together with them outside of work.

Q16 How well did your placement prepare you to enter the practice of law?



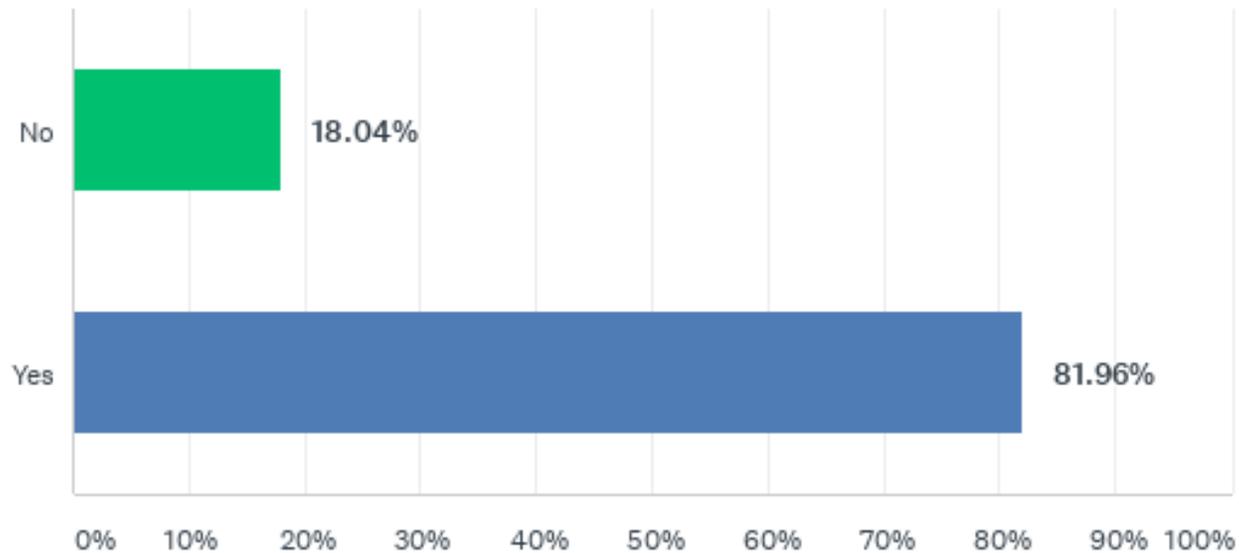
- 68% said their experiential training prepared them very well or well to enter the practice of law
- 25% said their experiential training prepared them fairly well to enter the practice of law
- 7% said their experiential training did not prepare them well to enter the practice of law

Q17 In 2020, the Law Society transitioned to online delivery of the licensing examinations. Please indicate any aspect(s) of the examination delivery model that you found challenging.



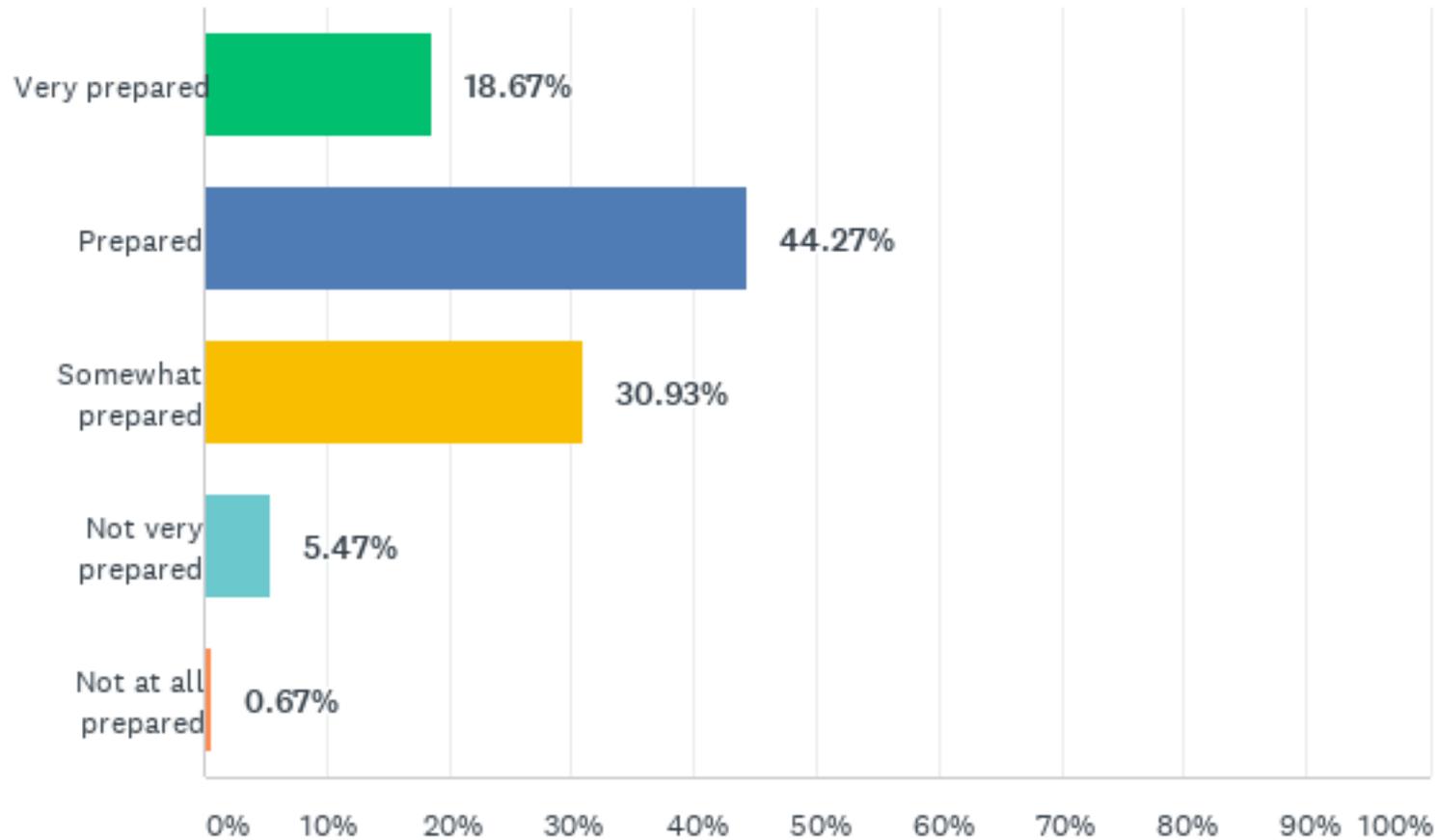
- 30% of candidates said that they didn't experience any challenges writing the online exams
- 47% said that they found communications from the LSO to be challenging
- 28% said that they found the examination software challenging

Q19 Has COVID-19 impacted your experience in the Licensing Process?



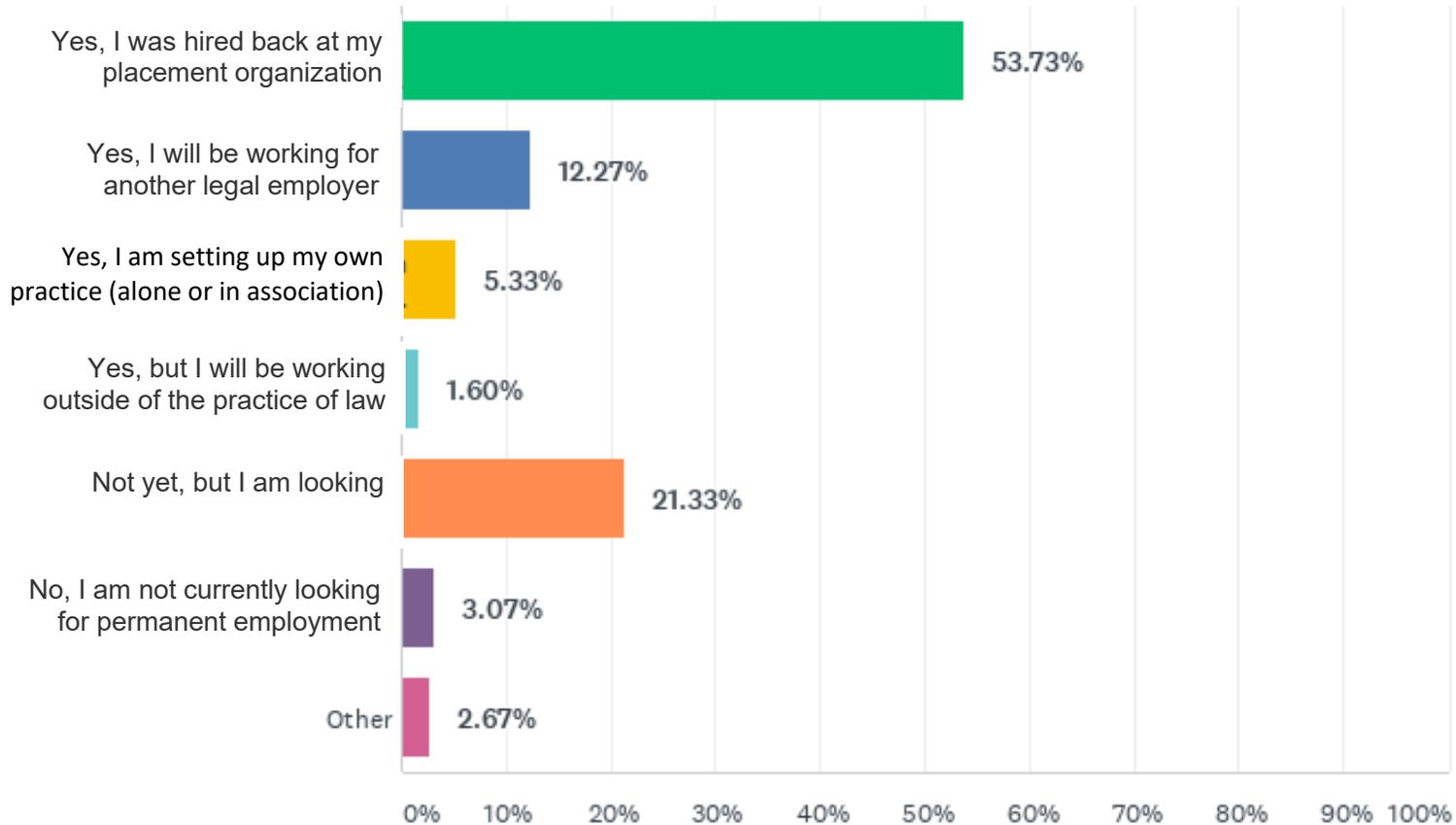
- 82% of candidates said that COVID-19 impacted their experience in the Licensing Process
- When asked which component(s) were impacted,
 - 82% said that experiential training was impacted: no networking, courts were not open, hindered learning, hire-back and performance
 - 70% said that licensing examinations were impacted: new model, LSO communications, stressful, tech glitches and less time per question
 - 89% said that call to the bar was impacted: no ceremony, didn't know when I would be called and this impacted employment, anti-climatic end to a long and hard process, disappointing

Q27 How prepared do you feel to enter the practice of law?



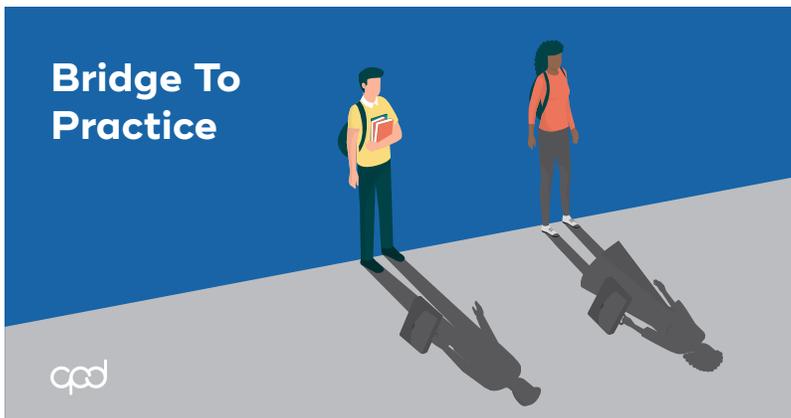
- 63% said they feel very prepared or prepared to enter the practice of law
- 31% said they feel somewhat prepared to enter the practice of law

Q28 Have you made arrangements concerning your permanent employment following licensure?



- 73% have made arrangements for their permanent employment: 54% were hired back, 12% will be working for another legal employer, 5% will be setting up their own practice, and 2% will be working outside of the practice of law
- 21% said they were looking for employment

BRIDGE TO PRACTICE



Bridge to Practice launched on February 16, 2021

Bridge to Practice (B2P) supplements the academic education of articling students and lawyers licensed in 2020 and 2021 with archived programming from CPD’s on-demand library. B2P content is carefully selected by CPD’s Counsel and management to add to students’ and lawyers’ knowledge and skills as they begin their legal careers.

At the end of the summer, content was added to the offerings that were uploaded in February and May onto the B2P microsite. This upload augmented the available substantive and professionalism content with additional programming chosen specifically for the B2P community. The summer release of content also included programming from organizations outside of the LSO, from The Advocates’ Society (TAS) and the Law Practice Program (LPP) at Ryerson University. The LPP content entitled “Land your Next Law Job” encompasses a full-day program on practice management recorded in May 2021. It is available in 6 segmented modules on the B2P site. Programming provided from the TAS library addresses skills training about preparing for cross-examination, persuasion within a virtual environment, and client management as an advocate. The Advocates’ Society also created and made available a special discount for membership in their group specifically for B2P community members, where lawyers network and connect with other advocates.

We were pleased to be able to expand the B2P offering with programming in addition to the LSO’s CPD content so that other providers can help promote competence and skills for students and new licensees. Take up of B2P content remains highest for those programs that are specific to known/needed competency areas (“Wills and Estates Refresher” program and “The First Client Interview” eCourse) and/or practice management and professional responsibility topics which would be expected to be of interest to those beginning their legal careers (“How to Build a Practice that Fits your Life”).

store.lso.ca/btp

The Bridge to Practice Campaign

The LSO introduced Bridge to Practice to newly licensed lawyers and candidates currently completing articling and invited them to explore the resources available. A Bridge to Practice LinkedIn Community Group was created at the inception of the project, and currently has over 200 members (see below). LinkedIn interaction from articling student/new call members has been limited, to date, but has hopefully sponsored connection between LinkedIn B2P members amongst their peer groups.



Social Media Video: February 16th One video from the LSO Treasurer on LinkedIn and YouTube

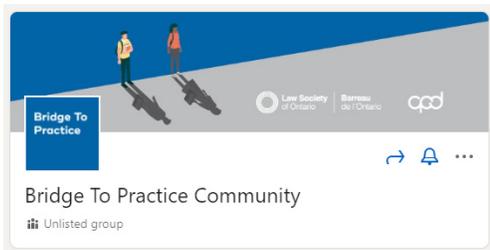


637

Views on YouTube
(plus views on LinkedIn Community)



Social Media Engagement: LinkedIn Community Group



238

Bridge to Practice
Community members

**All statistics are as of November 12, 2021.*



The Bridge to Practice Campaign Results

Number of downloads (February 16 – November 12):

Total Downloads: 2,337

MODULE	DOWNLOADS
Bridge to Practice: Opening Your Law Practice	96
Bridge to Practice: Opening Your Real Estate Practice	98
Bridge to Practice: How to Run a Home-Based Practice	95
Bridge to Practice: Building Your Internet-Based Practice	92
Bridge to Practice: The Do's and Don'ts of Trust Accounting for Lawyers	92
Bridge to Practice: The First Client Interview	106
Bridge to Practice: New Research Tools for Lawyers and How to Adopt Them	94
Bridge to Practice: A Small Model: How to Build a Practice that Fits your Life	113
Bridge to Practice: Building your Team: Hiring, Firing, and Everything in Between	60
Bridge to Practice: How to Collect your Unpaid Accounts	65
Bridge to Practice: EDI E-Course - English - Hour 1	65
Bridge to Practice: EDI E-Course - English - Hour 2	48
Bridge to Practice: EDI E-Course - English - Hour 3	44
Bridge to Practice: EDI E-Course - Français - Heure 1	3
Bridge to Practice: EDI E-Course - Français - Heure 2	3
Bridge to Practice: EDI E-Course - Français - Heure 3	2
Bridge to Practice: Enhancing Your Client Experience: Reducing Your Risks	92
Bridge to Practice: Top Apps and Tech Tips for the Legal Professional	83
Bridge to Practice: Wills and Estates Refresher 2019	132
Bridge to Practice: Provincial Offences: Practice and Procedure for Paralegals	49

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The Bridge to Practice Campaign Results

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MODULE	DOWNLOADS
Bridge to Practice: Criminal Law Refresher 2019	64
Bridge to Practice: Business Law Refresher 2020	98
Bridge to Practice: Civil Litigation Refresher 2020	96
Bridge to Practice: Real Estate Refresher 2020	94
Bridge to Practice: Family Law Refresher 2020	71
Bridge to Practice: Addressing Harassment and Discrimination in Lawyer and Paralegal Workplaces	64
Bridge to Practice: Back to Basics: Incorporating a For-Profit Business	89
Bridge to Practice: Maintaining Minute Books and Solving Minute Book Problems	61
Bridge to Practice: Back to Planning Act Basics: 90 Minutes on Section 50	64
Bridge to Practice: Legislation Primer for Paralegals	18
Bridge to Practice: Preparing for a Spot Audit	29
Bridge to Practice: What Lawyers Need to Know about Accounting	51
Bridge to Practice: Developing a Niche Practice Area	62
Bridge to Practice: Cybersecurity	44

**All statistics are as of November 12, 2021.*



Comments and Feedback From the Community

Members of the B2P community were asked for their initial feedback 6 weeks after the launch of the project, and responses were favourable (praising the no-cost aspect of program access and relevant and helpful topics on offer).

Additional queries to the students and new calls will be undertaken in 2022, so that future uploads of content remain relevant to what member of the community want to watch.

Registrations at a Glance

As of November 12, **323 Licensees** have registered to watch **at least one** of the programs in **Bridge To Practice**.

Here is a snapshot of B2P registrants at a glance:

54.8% are female

73.1% are 39 years old and younger

41.2% of the registrants are in Central Ontario

80.5% of the registrants are new calls

34.1% are Sole Practitioners

36.5% declare that their business size is 1 Sole and 67.2% that the Business Type they work for is “Law Firm”

90.1% are in the 100% LSO fee category

60.4% have not selected a primary practice area

• All registrants have English as their Preferred Language