



Law Society
of Ontario

Barreau
de l'Ontario

Tab 3

Mandatory Minimum Compensation Implementation

Professional Development and Competence Committee

October 27, 2022

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Table of Contents

Motion	2
Context.....	2
Discussion.....	3
A. Statutory Frameworks	3
B. Current Salary Ranges for Licensing Candidates.....	5
C. Comparisons to Other Measures and Jurisdictions	7
D. Setting the Mandatory Minimum Compensation	9
<i>Recommended Option</i>	9
<i>Other Options Considered but Rejected</i>	12
E. Recommending a Framework for an Exemption Policy	13
Other options regarding exemptions	15
F. Monitoring and Review	17
Next Steps.....	19

Motion

That Convocation:

1. Adopt a mandatory minimum compensation for lawyer licensing candidates during articling and the work placement component of the Law Practice Program (LPP) / Programme de pratique du droit (PPD) of \$620 per week;
2. Maintain the existing mandatory minimum compensation for a period of three years, followed by a review of the policy; and
3. Approve the recommended exemption framework to the mandatory minimum compensation policy.

Context

In November 2021, the Professional Development and Competence Committee (the Committee) brought a report to Convocation that sought to replace the Law Society’s mandatory minimum compensation policy for lawyer licensing candidates, which had been approved in December 2018 but never implemented. The November report sought to replace mandatory minimum compensation with a new best-practices approach that would encourage, rather than mandate, a minimum level of compensation.

At Convocation, many Benchers noted a desire for further consultation on this issue prior to making a decision, and the debate in Convocation was deferred pending consultation. In response, the Law Society put out a call for submissions on this issue and received one hundred and sixty-five submissions. The submissions came from a broad array of licensees and prominent legal organizations. The distribution of these submissions is outlined in the following table:

<i>Submissions on Mandatory Minimum Compensation for Lawyer Licensing Candidates</i>			
	Organizations	Individual	Total
<i>Submissions in Favour of Mandatory Minimum Compensation</i>	22	133	155
<i>Submissions Opposing Mandatory Minimum Compensation for Articling Students</i>	2	4	6
<i>Neutral or Alternative Positions to Mandatory Minimum Compensation</i>	0	4	4
<i>Total submissions</i>	24	141	165

Once these submissions had been received and reviewed, Convocation continued its deferred debate on mandatory minimum compensation at its April 2022 meeting. During the debate, there was a broad consensus among Benchers that licensing candidates should be paid, and that no one should have to work for free. Many Benchers also expressed concern for those with high levels of student debt, and the importance of ensuring the profession is accessible to all, regardless of financial circumstances. At the same time, Benchers recognized the importance of these training opportunities, and some were concerned that the implementation of a mandatory minimum compensation policy would reduce the number of articling and LPP positions. They were reluctant to take steps that could deny training opportunities to students who might choose to take them. Following the debate and in a close vote, Convocation confirmed the policy to establish a minimum level of compensation for articling candidates and LPP/PPD placements, effective May 2023. Convocation was advised that the Committee would consider the issues involved in implementing the decision, such as the establishment of the minimum compensation amount, an exemption framework, and an enforcement policy, and return to Convocation for approval of these items.

This report proposes an initial amount to establish the mandatory minimum level of compensation, as well as a framework for an exemption policy, in order to fulfil the policy goals outlined in the Motion from the December 2018 Options for Lawyer Licensing report¹. This report also proposes a review of the policy in three years time, to ensure that the policy is effectively meeting its goals. Details related to potential enforcement measures, will be considered in a future report.

Discussion

A. Statutory Frameworks

The Law Society Act

The province has delegated the regulation of the practice of law to the Law Society through the *Law Society Act, 1990 (LSA)*. The *LSA* grants the Law Society broad by-law making powers and provides that any by-law made by Convocation shall be interpreted as if it formed part of the *Act*. Furthermore, the *LSA* directly empowers Convocation to make by-laws “governing the employment” of articling and LPP students.²

The *LSA* also establishes the Law Society’s duty to ensure the competence of licensees. [Section 4.1\(a\) of the LSA](#) provides that the Law 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.”

¹ The Motion from the report, found on page 2 read as follows: 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: paid articling and LPP/PPD work placements, in accordance with Law Society requirements (required salary), with limited exceptions

² *LSA* subsections 62(0.1) and (2), subparagraph 62(0.1) (19)i.

This duty requires the Law Society to ensure that newly licensed lawyers meet competence standards for entry-level practice, and that its licensing process enables the development of such competence. Experiential training, through articling or the LPP/PPD, is a key component of both the Law Society's licensing process and the development of competence. The completion of an experiential training placement is a requirement for licensure. Where experiential training is found to be deficient in enabling the development of competence, the Law Society has the authority to address those deficiencies pursuant to section 4.1(a).

Furthermore, the Law Society's public interest mandate has been interpreted by the Ontario Courts and the Supreme Court of Canada to include ensuring equal access to legal professions based solely on merit, and "eliminating inequitable barriers to legal training and the profession".³ When viewed through this lens, unpaid work placements are a barrier to the completion of legal studies and entry to the profession for candidates from most economic circumstances, regardless of merit.

The Employment Standards Act

The Employment Standards Act, 2000 ("ESA") regulates employment relationships in Ontario, and it applies to most Ontarians, including both legal professionals and students-at-law. It provides the minimum standards for most employees working in Ontario and sets out the rights and responsibilities of employees and employers in most Ontario workplaces. It is a well-known and well-established benchmark for minimum standards in employment situations.

However it is important to note that, through regulation, the Lieutenant Governor in Council ("LGIC") has exempted legal professionals and students-at-law from two key ESA provisions: minimum wage protections, and overtime protections⁴.

The Law Society's Authority to Implement Mandatory Minimum Compensation

The Law Society's authority to implement and enforce a mandatory minimum compensation policy for licensing candidates flows from its statutory public interest mandate, as well as its authority to establish by-laws that govern the licensing process, including a required period of experiential training. The Law Society's purpose for bringing forward such a policy must be directly linked to eliminating inequitable barriers to the legal profession and to ensuring the quality of experiential training. The purpose of the policy cannot be an attempt to regulate the employment relationship between principals and licensing candidates because the province continues to have the primary legislative authority over this area.

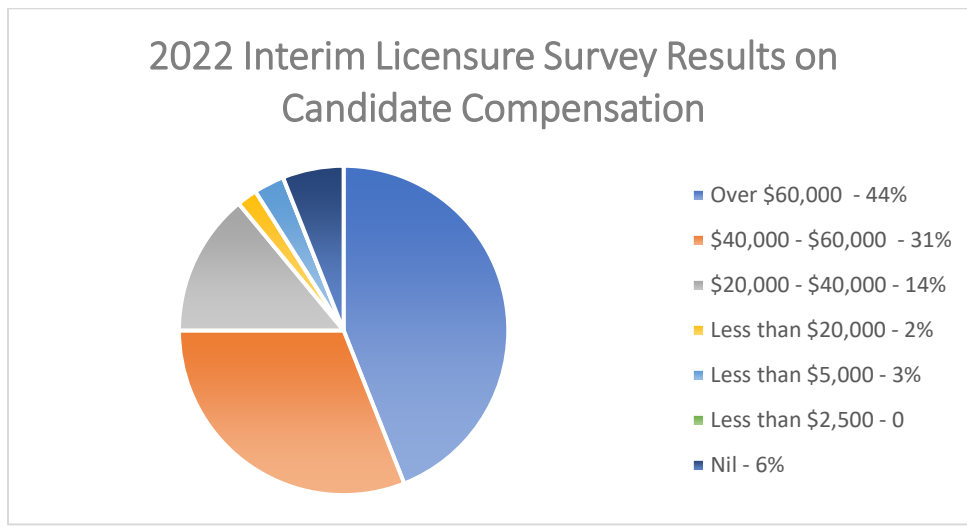
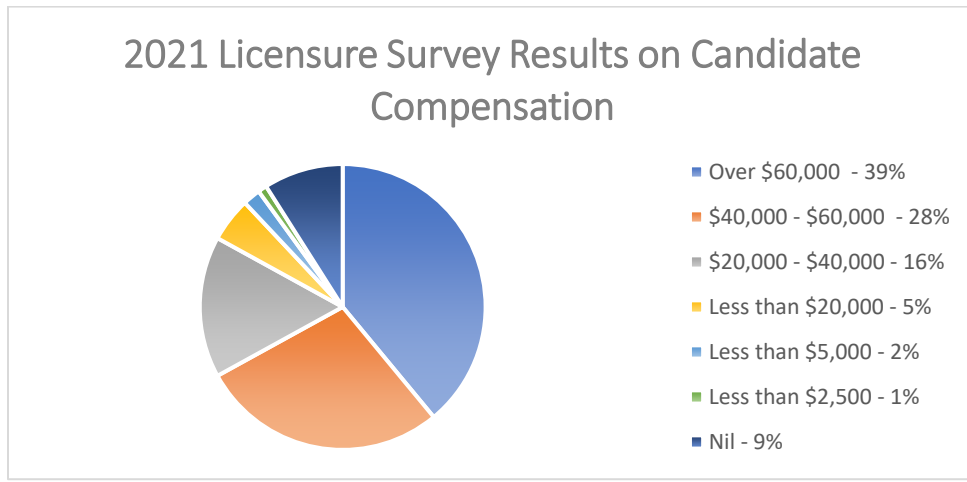
Any application of the Law Society's authority to regulate the legal professions must be clearly connected to that statutory mandate, and not to the regulation of labour relations. As a result, for the Law Society's mandatory minimum compensation policy to be durable to challenge, all aspects of the policy must be designed to reflect the Law Society's valid purpose in removing inequitable barriers to the profession, rather than imposing employment standards.

³ *Trinity Western University v. Law Society of Upper Canada*, 2018 S.C.C. 33, paragraphs 22 & 23, online at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17141/index.do>.

⁴ [Clause 2 \(1\)\(e\) of O. Reg. 285/01 under the ESA](#) exempts articling students from Parts VII to XI of the Act (Hours of Work and Eating Periods, Overtime Pay, Minimum Wage, Public Holidays, and Vacation with Pay)

B. Current Salary Ranges for Licensing Candidates

The following charts show the distribution of salary information collected by the Law Society through the latest Licensure Surveys⁵. The Survey is sent to all licensing candidates from the current cycle, and the information is self-reported at the end of the licensing process. The Survey results are anonymous. These survey results demonstrate that most candidates are currently earning incomes that are significantly higher than the proposed mandatory minimum. At the same time, the proposed mandatory minimum compensation would provide a significant increase for the approximately 25 per cent of reported placements that are currently below the suggested minimum⁶.



⁵ This data is based on the 2021, and interim 2022 voluntary Licensure Surveys, and is the most recent information available. Since the information is collected on a voluntary basis, it may not represent the number of unpaid and marginally paid placements.

⁶ Historically, the Law Society has used \$20,000 as an approximate benchmark for an annual minimum wage. The 25% figure using the 2021 Licensure Survey data estimates an even distribution of incomes between Survey respondents who reported earning between \$20,000-\$40,000. Therefore, the 25% consists of all respondents earning less than \$20,000, and half of those in the \$20,000-\$40,000 group. The number would be 18% using the 2022 data.

While the charts on the previous page are useful in providing a snapshot of the distribution of incomes earned by licensing candidates during their placements, they do not provide clarity on which positions are likely to be most affected by the implementation of the mandatory minimum compensation policy. To help make that determination, the Licensure Survey results have been sorted based on firm size and employment setting in the two tables below. When sorted this way, the Survey results show that positions that remunerate less than the proposed minimum compensation are found most commonly in legal clinics and firms with fewer than ten lawyers.

2021 Licensure Survey

Firm Size / Setting	Number of Placements by Compensation Range						
	Nil	<2.5K	2.5-5K	5-20K	20-40	40-60K	60K+
Sole	31	3	3	14	38	16	0
2-5	24	2	10	21	42	41	6
6-10	7	2	2	6	20	22	13
11-25	2	0	2	1	13	38	29
26-50	0	0	0	0	4	30	31
51-100	0	0	0	0	1	14	37
101-200	0	0	0	0	0	2	35
200+	0	0	0	0	0	10	96
Clinic	5	0	1	1	1	2	0
Government	5	0	0	2	3	36	58
Other	3	0	1	0	5	15	15

2022 Licensure Survey⁷

Firm Size / Setting	Number of Placements by Compensation Range						
	Nil	<2.5K	2.5-5K	5-20K	20-40	40-60K	60K+
Sole	24	0	12	10	35	25	1
2-5	19	0	7	10	56	64	13
6-10	4	0	5	5	23	43	16
11-25	0	0	1	0	11	45	34
26-50	0	0	0	0	3	36	41
51-100	0	0	0	0	1	16	35
101-200	0	0	0	0	0	6	37
200+	0	0	0	0	0	19	131
Clinic	6	0	2	0	2	6	1
Government	3	0	0	0	3	23	96
Other	1	0	0	0	2	13	24

⁷ 2022 data is not reflective of a full licensing cycle. Data is reported through this survey as of July 2022.

While the tables on the previous page indicate the employment settings in which underpaid/unpaid placements are the most likely to be located, they do not provide insight into the conditions that led to the offering and acceptance of these placements. As a result, the economic circumstances of the candidate and the employer are unknown, making it difficult to draw conclusions about the impact of the implementation of the Law Society's mandatory minimum compensation policy. As a result, it will be important for the Law Society to monitor the implementation of the policy, and its effect on the availability and distribution of placements. The information gathered during the monitoring period will help the Law Society assess the impact of the policy, and will be useful in assessing whether additional measures will be necessary to ensure the efficacy of the policy.

As noted in the November report to Convocation on Experiential Training Enhancements, the Law Society has estimated that a range of 130-150 placements are unpaid or paid less than \$20,000 annually. The 2021 Licensure Survey reports 148 such positions among the 870 total respondents, 47 of which were reported by the 128 respondents who completed the LPP⁸. Unpaid and underpaid positions are at the highest risk of being lost due to the implementation of the mandatory minimum compensation policy.

C. Comparisons to Other Measures and Jurisdictions

While minimum wage protections, without overtime requirements, apply to law students and licensing candidates in other jurisdictions, the Law Society of Ontario will be the first Canadian law society to implement a mandatory minimum compensation policy. As a result, the Law Society must look to other comparators as benchmarks. There are a number of different measures and indicators that can be examined to establish a method for setting the minimum compensation amount in the policy, and to determine the reasonableness of this figure.

One benchmark is the low income measure of \$26,570/yr. Governments and policymakers use low income measures to make international economic comparisons and estimations in the poverty levels of communities⁹. For example, the Low Income Cut-off (LICO)¹⁰ ranges from \$14,430 for individuals living in a rural community, to \$22,060 for individuals living in cities with a population greater than 500,000 people. The Low Income Measure¹¹ for an individual is \$26,570. These

⁸ The Law Society has traditionally identified placements as underpaid if the candidate earned less than \$20K annually. If the threshold is set at \$30K annually, which is approximately the annual income earned by a minimum wage earner in Ontario, the 2021 Licensure Survey would report approximately 268 unpaid and underpaid positions among the 870 total respondents, 60 of which were reported by the 128 respondents who completed the LPP.

⁹ The Government of Canada does not have an official definition of poverty. However, poverty is often assessed by measuring the number of Canadians with low incomes. The Low Income Cut-off and the Low Income Measure are two different measurements the government uses to assess poverty levels.

¹⁰ The low income cut-offs (LICOs) are income thresholds below which a family will likely devote a larger share of its income on the necessities of food, shelter and clothing than the average family. The approach is essentially to estimate an income threshold at which families are expected to spend 20 percentage points more than the average family on food, shelter and clothing. Found online at: [Low income cut-offs \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/92-627-x/2019001/article/00001-eng.htm)

¹¹ For the purpose of making international comparisons, the low income measure (LIM) is the most commonly used low income measure. In simple terms, the LIM is a fixed percentage (50%) of median adjusted household income, where "adjusted" indicates that household needs are taken into account. The table is Canada-wide, using 2020 dollars. Found online at: [Low income measures \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/92-627-x/2019001/article/00001-eng.htm)

measures can be used to represent the lowest boundary of a potential minimum compensation amount in the policy.

Another benchmark is the comparable peer-group salary of \$40,405/yr. This is based on income earned by individuals in the same age bracket with similar levels of education. This figure can be used to represent the upper boundary of a potential minimum compensation amount. The charts found in the previous section show that approximately three quarters of candidates are earning incomes in excess of \$40,000 when calculated as an annual rate, which is more than the low income measures discussed above and is in-line with the average wages for university graduates from the same age cohort. The table below shows average incomes, separated by age groupings, for individuals with university degrees as well as the entire population.

Statistics Canada: Average earnings by age group and highest degree in Ontario (2016)¹²

Geography	Age Group	Highest Degree	Income
Ontario	15-64	All Groups	\$49,310
Ontario	15-64	University degree	\$71,737
Ontario	20-24	All Groups	\$17,022
Ontario	20-24	University degree	\$18,469
Ontario	25-29	All Groups	\$35,101
Ontario	25-29	University degree	\$40,405
Ontario	30-34	All Groups	\$46,969
Ontario	30-34	University degree	\$57,626

Assuming the average candidate falls within the 25-29 age group, the Statistics Canada information shows an average income for individuals with a university degree to be \$40,405, although it should be noted that this data is from 2016. According to Indeed.com, the average starting wage for a new university graduate in Ontario falls between \$44,593 in Toronto and \$60,251 in Ottawa, depending on the region of the province¹³. While the income earned by the top three quarters of licensing candidates compares well using this measure, it does not compare as favourably for the candidates in the lowest quartile.

Comparisons to other Canadian jurisdictions

Similar to Ontario, Manitoba and British Columbia exclude articling candidates from provisions related to hours worked and payment. However, the Law Society of British Columbia is currently in the process of developing a mandatory minimum level of compensation policy, as well as establishing limits on hours worked for articling candidates in the province. To support this initiative, the Law Society of British Columbia conducted a survey on articling salaries that concluded in 2020. The survey indicated that one third of those surveyed reported salaries in excess of \$48,000 per year, while one quarter of respondents reported earning less than \$30,000,

¹² Statistics Canada dataset: Average earning or employment income by age group and highest certificate, diploma or degree. Found online at: [Average earnings or employment income, by age group and highest certificate, diploma or degree \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/92-625-x/2017001/article/00001-eng.htm)

¹³ Data gathered on August 23, 2022. Found online at: [New Graduate salary in Toronto, ON \(indeed.com\)](https://www.indeed.com)

which was the figure used to approximate a minimum wage earner in British Columbia¹⁴. Three per cent of respondents reported earning no income during their articles.

Other provinces, including Alberta, Saskatchewan and Nova Scotia, exempt articling candidates only from overtime-related provisions but not from statutory minimum wage standards. Articling candidates in those provinces earn a minimum of \$15.00, \$13.00, and \$13.35 per hour, respectively. Weekly rates in those provinces would be \$600 in Alberta, \$520 in Saskatchewan, and \$534 in Nova Scotia, assuming a 40 hour work week. While Quebec does not specifically exempt articling candidates from either category, unpaid internships and apprenticeships are permitted for individuals who participate in professional training programs. The most recent data from Quebec shows an average weekly wage of \$749.39 for articling candidates, with 57 unpaid placements (5.2% of total placements).¹⁵

D. Setting the Mandatory Minimum Compensation

Recommended Option

The recommended option for articling and LPP/PPD students is payment of \$620 per week. It is also recommended that this mandatory minimum compensation be in place for three years and reassessed toward the end of that time period. This amount falls between the benchmarks and is consistent with a minimum wage position for a 40 hour work week in Ontario. It is also in line with minimum compensation in other jurisdictions and an appropriate minimum for a learning placement. Although it relies to an extent on the ESA, it does not conflict with the ESA.

Under the *ESA*, the general minimum wage is currently \$15.50 per hour. This rate applies to most employees, irrespective of region. Section 17(1) of the *ESA* also establishes maximums of eight hours of work per day and 48 hours of work per week, unless the employer and employee have a signed agreement that states otherwise. Law Society data collected through the annual Licensure Survey demonstrates that a majority of respondents work between 35 and 50 hours per week. Since this data is collected in bands¹⁶, it is not possible to determine the average number of hours worked by candidates during their placements. It is recommended that the formula for mandatory minimum compensation be based on a standard 40 hour work week, rather than an assessment of the actual hours worked, for the following reasons:

- A standard work week is considered to be 40 hours in most Canadian jurisdictions;¹⁷
- Given the wide variety of employment settings for articling positions and LPP/PPD work placements, it is impossible to generalize across all positions and establish an average

¹⁴ Lawyer Development Task Force Report. Recommendation Concerning Remuneration and Hours of Work for Articled Students. Pages 8 & 9. Online: [Recommendations Concerning Remuneration and Hours of Work for Articled Students \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/Recommendations%20Concerning%20Remuneration%20and%20Hours%20of%20Work%20for%20Articled%20Students)

¹⁵ École du Barreau. Rémunération des stagiaires. Online : [remuneration-stagiaires-2020.pdf \(ecoledubarreau.qc.ca\)](https://ecoledubarreau.qc.ca/remuneration-stagiaires-2020.pdf)

¹⁶ Candidates are asked if they worked fewer than 35 hours per week, between 35 and 50 hours a week, or more than 50 hours per week.

¹⁷ A standard work week is set at 40 hours by Canada, British Columbia, Saskatchewan, Manitoba, Quebec, Newfoundland, Yukon, Northwest Territories, and Nunavut; 44 hours in Alberta and New Brunswick; and 48 hours in Ontario, Prince Edward Island, and Nova Scotia.

number of hours worked that is reflective of each situation without creating further inequity¹⁸;

- The Law Society’s mandatory minimum compensation policy is intended to address issues related to exploitation and inequity during experiential training placements. It does not preclude employers from offering more than the required salary, as circumstances dictate;
- Law firms do not work on an hourly payment model for professional staff;
- If the minimum level of compensation is based on hours worked, planning and administration would be challenging in law firms and compliance would be difficult to monitor for the LSO; and
- 40 hours falls within the range of hours worked reported by the majority of candidates on recent Licensure Surveys.

Given the concern there may be a loss of placements with this new regime, the approach should be as simple as possible and provide maximum flexibility for negotiation to employers and candidates.

Regional Variances

Another consideration is whether the mandatory minimum compensation should vary depending on the region of the province in which the placement is located. The *ESA* minimum wage does not vary in accordance with region. The onset of the pandemic has also led to an increase in the number of remote and hybrid positions, which adds an additional layer of complexity to the issue of regional variances and could create fairness issues among firms and candidates if the Law Society chose to implement a policy with different rates for different regions. For clarity and ease of administration, this report recommends that the Law Society adopts a single mandatory minimum compensation policy for all candidates across all regions.

Why a Weekly Amount is Preferred

A mandatory minimum compensation that is to be paid on a weekly basis is a simpler and fairer approach when compared to the alternatives, such as an hourly, monthly or yearly amount. A weekly income carries the benefit of being universally applicable to all placements, which is important due to the flexible term length of articling placements, and the fact that LPP/PPD placements are shorter in length than articling placements. A weekly amount is also preferable to a monthly amount, since the number of days and weeks in a month fluctuates over the course of a year, whereas the length of a week does not. A weekly amount is administratively simple for law firms to implement and consistent with how lawyers are paid. It is most conducive to the learning environment where students can watch other lawyers or spend more time on a project if their learning requires it without requiring approvals for the extra time.

Finally, a weekly rate is preferable to an hourly rate, because the hourly rate closely resembles the structure of the *ESA*, and could run the risk of being challenged on the basis of overlapping jurisdiction with the Province. An hourly approach is also not in keeping with how legal

¹⁸ For example, if the formula were set at 30 hours per week, this could feel unfair for the majority of candidates who are working substantially more hours. On the other side, if it is set at 48 hours, a large number of positions could be “overpaid”, and the salary could appear to be unfair to many employers

professionals are generally compensated. This could complicate implementation, by forcing firms to adopt a compensation model that requires more administration, and could further complicate enforcement. The Law Society is not in a position to monitor the hours worked by candidates, and would not be well positioned to resolve disputes between principals and candidates on these issues. As noted in the Statutory Framework section of the report, found on pages three and four, lawyers and law students are exempt from all provisions of the *ESA*. As a result, the implementation of an hourly wage would drag the LSO further away from its statutory duty under the *LSA* to ensure equal access to the profession for all candidates, and closer to the regulation of an employment relationship, which is under the authority of the *ESA*. An hourly approach is also not conducive to a learning environment where candidates learn by observation, in addition to practicing. For these reasons, it is recommended that the Law Society proceed with a weekly amount.

Setting the Recommended Mandatory Minimum Compensation

Based on these principles, the established benchmarks of \$25K and \$40K and the practices in other provinces, it is recommended that the mandatory minimum compensation be established as a reasonable weekly rate that is consistent with minimum wage income for a standard work week in Ontario which is \$620 per week. It would remain in place for three years, at which time, there will be a reassessment. This weekly rate is the simplest to communicate, has the benefit of being well understood by the general population, is appropriate and fair in a learning placement and effectively balances the risk of placement loss compared to the alternative options.

This approach is straightforward and, since it is a weekly amount, can be used to determine the mandatory minimum level of compensation for any placement. Compensation based on the statutory minimum wage is a well understood and accepted concept by the public, which could help facilitate communication of the policy and make compliance easier. All communications from the Law Society will outline the mandatory minimum compensation as a weekly amount of \$620.

The minimum length of an articling term is eight months long, while LPP/PPD work placement are sixteen weeks (four months) in length. The minimum compensation for articling candidates for an eight-month term would be \$21,700, assuming a placement of 35 weeks. In a ten-month term, minimum compensation would be \$27,280, assuming a placement of 44 weeks. The minimum compensation for LPP/PPD candidates would be \$9,920. On an annual basis, the mandatory minimum compensation would be \$32,240.

The recommended proposal will help to significantly raise the floor for the bottom 25% of candidates, who are currently earning less than the proposed mandatory minimum compensation. This should help address the equity issues identified by the 2018 report. At the same time, the proposed mandatory minimum compensation balances the benefits of implementing a mandatory minimum level of compensation against the risk of position loss. It significantly raises the floor for the lowest 25% and addresses an identified barrier to entering the profession, while also keeping the hiring of candidates more affordable for smaller firms with less financial flexibility, which in turn should help to mitigate the risk of placement loss.

Other Options Considered but Rejected

In addition to the recommended approach, additional options to set the minimum level of compensation were considered but ultimately ruled out. For example, using the Low Income Measure of \$26,570 per year or the average income of individuals aged 25-29 with a university degree, which is \$40,405.

Mandatory Minimum Compensation Based on the Low Income Measure

A mandatory minimum compensation based on the government of Canada's Low Income Measure of \$26,570 per year would ensure that candidates are earning at least 50 per cent of the median adjusted household income. This would ensure that all candidates are earning an income that is higher than the poverty line for Canadians as a whole. For comparative purposes, this is approximately \$511 on a weekly basis. This is approximately \$110 less than the recommended option. It is important to note that, once the statutory minimum wage in Ontario moves to \$15.50 on October 1, Ontario will have the highest minimum wage in Canada. As a result, setting the mandatory minimum compensation based on a Canada-wide measure such as the Low Income Measure would give candidates an income that is almost \$4000 less annually than minimum wage earners in Ontario¹⁹. While this amount would help to address the barrier to entering the profession for the six to nine percent of candidates who are currently not receiving any income, it would still keep the lowest 25% of candidates below the minimum wage. This carries reputational risk for the Law Society, since a mandatory minimum compensation at this level will not be in line with the expectations of law students or the profession. Furthermore, using the Low Income Measure could lead to compliance challenges, as the measure would change annually and is not as well understood as a statutory minimum wage.

Due to the compliance challenges, fairness considerations, and the reputational risk, setting the mandatory minimum compensation in line with the government of Canada's Low Income Measure is not recommended.

Mandatory Minimum Compensation Based on Average Income of Comparable Peer Group

The Law Society could also set the minimum level of compensation for candidates to be in line with their peers, as determined by income data reported through Statistics Canada. This approach would require a higher weekly wage than the recommended option. Under this proposal, the appropriate comparison would be the 25-29 cohort with a university degree, since this age group and level of post-secondary attainment is most comparable to the average candidate. This method would provide for a minimum level of compensation of \$40,405 annually, or \$777 on a weekly basis. This is approximately \$157 more per week than the recommended option.

The benefit of this approach is that it would provide all candidates with a living wage, and an income that is equal to their closest comparative grouping of income earners in Ontario. However, this proposal does have notable draw backs. First and foremost, articling and LPP placements are experiential training placements, not entry-level jobs. While licensing candidates are well-educated, highly-trained individuals, they are still learning and practising the entry-level skills

¹⁹ A full-time minimum wage earner in Ontario would make \$15.50/hr X 37.5 hours per week X 52 weeks per year = \$30,225 per year.

competencies required for licensure under a specialized work arrangement with a supervisor. This means that comparisons to a market-driven, entry-level income earned by a university graduate in another sector of the economy may not be appropriate. In addition, setting the minimum level of compensation at this amount would result in significant increases in employer costs for the approximately one quarter of placements that fall below this threshold. Considering that there are ongoing concerns around reductions in the number of placements, and the lack of tools to control the number of placements available, setting the minimum level of compensation at this level is not advisable.

E. Recommending a Framework for an Exemption Policy

As noted in the Context section of this report, the 2018 Motion that approved the creation of a mandatory minimum compensation policy noted that the policy would apply to articling and LPP/PPD placements with “limited exceptions”. This section outlines a recommended approach for addressing exemptions, an alternative approach that would see the policy implemented without exemptions, as well as a third potential option for a candidate-led process.

Recommended Framework for an Exemption Policy

High quality experiential training placements are an important component of the Licensing process. As a result, any exemption from the mandatory minimum compensation policy must protect a position that represents a high quality learning and practice environment for the candidate. It is also important to note that there are a wide variety of placement settings in the current market. The principles outlined in any exemption framework must be universally applicable to all placement types, to ensure that exemptions are applied fairly and are equally available to all, rather than limited to certain practice settings or contexts. With these core principles in mind, the Law Society’s exemption framework would contain three core elements:

1. A High Quality Training Experience
2. Declaration Regarding an Inability to pay
3. A Clean Discipline History

Each element will now be discussed in greater detail.

1. High Quality Training Experience

Most Licensing and Accreditation policies and regulations, including the ones discussed in this report, are aimed at ensuring that licensing candidates have access to high quality experiential training placements that will enable candidates, upon licensing, to serve their clients competently and ethically. If mandatory minimum compensation diminishes access to such placements, an exemption framework, with a focus on the quality of placements, should be considered.

When considering a method for identifying the quality of a placement, a good model can be found in the placement protocol adopted by an Ontario law school while placing its students. The law school indicated that they look for two key features while assessing whether a new placement will meet the quality standards for the program: the quality of the training plan that is filed, as well as

the allocation of resources in the candidates work environment. Both conditions demonstrate that the employer is willing and able to invest their firm's time and resources into the candidate.

A key indicator in the quality of the training experience is the experiential training plan that is currently filed by all principals when applying to the Law Society for a placement. The training plan outlines how the placement will help the candidate to achieve the entry level competencies that are required by the Law Society as a condition of entry-level practice. A comprehensive training plan is an indicator that the principal has given thought to how a candidate will be utilized over the course of their term. While a comprehensive training plan is not a guarantee of a high quality placement, it is a useful proxy for the Law Society in making this determination. To better determine the quality of the training experience, it is recommended that each principal applying for an exemption be required to respond to a few short questions that are designed to assess the principal's ability to offer a quality training experience. These questions will build on what is covered in the experiential training plan, and will be designed to be manageable for practitioners to complete. For example, asking the principal to briefly summarize their own experience, the types of experiences they have previously offered to candidates, or their goals for the placement in the upcoming cycle.

A second important indicator in the quality of the placement is the quality of the work environment itself. The Law Society is aware of training placements in which candidates are not afforded dedicated space in which to perform their duties. This can lead to challenges which are known to negatively contribute to the quality of a placement, such as a lack of privacy for a candidate to perform their tasks, creating the impression of an unprofessional working environment, and exacerbating the power imbalance that occurs between a principal and a candidate. Appropriately resourced work environments that have dedicated space for the candidate to perform their duties are far more likely to be high quality placements than those without the appropriate space.

To ensure the quality of placements, it is recommended that that the exemption questions include a query about the resources (e.g. dedicated work space) in place to support the candidates.

2. Declaration Regarding an Inability to pay

The second component in the Law Society's recommended exemption framework is a statement from the principal outlining their current situation with a detailed explanation surrounding the firm's inability to meet the conditions imposed by the mandatory minimum compensation policy. The Law Society has experience making assessments in this area. For example, the recently modified [Repayable Allowance Program](#) for licensing candidates includes a similar declaration, where the candidate outlines their financial situation and must demonstrate an inability to pay the costs associated with writing their licensing exams, or their licensing fees themselves.

Ensuring that exemptions to the mandatory minimum compensation policy are only granted to firms with a demonstrable need is an important consideration in ensuring the integrity of the policy. While a detailed explanation and an attestation to those facts will require staff resources to assess and process the requests, it is preferable to requiring principals to supply financial information regarding their firms' earnings. If sharing sensitive financial information were required, the Law Society believes it could have a detrimental effect on the number of principals seeking exemptions, and as a result, could result in fewer placements overall. Furthermore, variances in reporting styles across firms could make the financial evaluations more challenging for the Law Society. While both options for demonstrating financial need will place an additional reporting duty

on the principal seeking the exemption, it is essential that the Law Society gathers this information to ensure that enforcement is possible in situations where there are challenges or disputes.

3. A Clean Discipline History

The third component of the Law Society's recommended exemption framework is an incident-free discipline history for the principal within the past five years. In order to ensure that the placements receiving exemptions are as high quality as possible, any principal with a recent discipline history should be denied the ability to seek an exemption on the grounds that these positions come at a higher risk of being exploitive in nature. The Law Society's mandatory minimum compensation policy is intended to address issues related to exploitation and inequity during experiential training placements, and therefore it would work against the policy's primary objective to permit placements with principals who have been reprimanded for their conduct. A five year period has been chosen because it will facilitate the administration of the policy, and because it is not uncommon for lawyers who are new to the profession to receive complaints. By looking at the recent discipline history, the Law Society would not be excluding principals who may have had a minor challenge in their early years of practice that has no bearing on their abilities as a principal. The eligibility requirement to become an articling principal or work placement supervisor is three to five years of practice experience, and the licensee must be an exemplar of the profession.

Summarizing the Recommended Approach for an Exemption Framework

Articling and LPP placements are experiential training placements, not entry-level jobs. Licensing candidates are still learning and practising the entry-level skills and competencies required for licensure under a specialized work arrangement with a supervisor. As a result, it is crucial that, to the best of its abilities, the Law Society ensures that each placement available is of a high quality and that high quality placements are maintained even where the employer cannot pay according to the mandatory minimum compensation policy. Compensation for articling and LPP/PPD placements has been an unregulated area for an extended period of time. As a result, it is anticipated that there will be challenges for some firms to quickly adjust to the implementation of the mandatory minimum compensation policy. An exemption policy that works to preserve high quality placements can help to mitigate against the loss of placements. Due to the wide variety of placement settings, the Law Society must also ensure that the exemption framework is universally applicable to all placement types.

It is recommended that Convocation consider the adoption of an exemption framework that protects high quality placements in situations where the principal has a demonstrable inability to pay and a clean discipline history.

Other options regarding exemptions

Alternative Option: No Exemptions

An alternative approach could be to implement the mandatory minimum compensation policy without any permitted exemptions. This option would streamline the administration of the mandatory minimum compensation policy, by eliminating what is expected to be the most resource-intensive component of the policy, from a staff resourcing perspective. Staff time that would have been directed at processing exemption applications can instead be redirected to other

licensing activities. This option could also potentially facilitate the Law Society's review process, by removing an additional variable from the analysis and allowing the mandatory minimum compensation policy to be implemented without any limitations. Then, through the review process in 2026, the Law Society could propose potential changes that would modify the existing policy, including the addition of an exemption policy. This approach would ensure that the structure of the exemption policy would be designed based on the feedback received from the profession and law students through the review process, rather than the principles-based approach that is recommended.

However, this option is not recommended for three primary reasons:

- Firstly, implementing a mandatory minimum compensation policy without an exemption framework will lead to a greater reduction in the number of placements available to licensing candidates. This will make it harder for candidates to become licensed, and could create a new barrier to entering the profession for licensing candidates. Without exemptions, placement loss may be more significant due to the abruptness of the policy change. Unpaid placements have been permitted for many years, and so providing exemptions would allow employers to gradually adjust to the new mandatory minimum compensation policy. For example, government-funded agencies would need time to build compensation for licensing candidates into their budgets, and despite a willingness to do so, may not be in a position to make these adjustments before May 2023. If the Law Society does not allow time for employers to adapt to the new policy, those employers may permanently stop hiring candidates.
- Second, moving forward without an exemption policy would represent a departure from the approved 2018 Motion and its April 2022 confirmation. Although Convocation has the power to reverse any decision that it makes, a reversal in this situation could result in a loss of reputation for the Law Society. Convocation made a point of soliciting the views of the profession on the proposed compensation policy, and the profession responded by making a significant number of submissions. Some Benchers voted for a minimum compensation policy on the basis of the profession's response and because there would be exemptions allowed. To approve a policy that deviates from the original proposal could be seen as dismissive of the views of the profession.
- Third, without an exemptions policy, the practice of unpaid placements would not likely disappear but the arrangements would not be disclosed to the Law Society. These underground placements could defeat the purpose of the minimum compensation policy and prevent the Law Society from gaining the required information to both address non-compliance and refine the policy. As noted during the Dialogue on Licensing, there is an inherent power imbalance between licensing candidates and principals. Candidates rely on principals' evaluation of their performance during an experiential training placement as a requirement for licensure. If the Law Society does not monitor and gather data related to the status of unpaid placements, it will not be well equipped to address these situations in the future.

Alternative Option: Candidate-led Process

The recommended approach to exemptions contemplates a principal-led process. In the proposal, the principal would be required to submit information to justify their request for an exemption from the mandatory minimum compensation policy. An alternative approach could be to allow candidates who are comfortable with seeking an articling or LPP/PPD placement that is unpaid to opt out from the policy themselves. It has been noted by individuals and groups who opposed the implementation of a mandatory minimum compensation policy that not all unpaid positions are necessarily exploitative (i.e. law clinics) and that students should have the right to take an unpaid placement if they choose to do so.

For this approach to work without exploitation, a willing candidate would need to declare their interest in seeking an unpaid position to the Law Society well in advance of the start of any placement. The candidate would then be able to proceed through the regular recruiting process. It should be noted that the Law Society does not post unpaid positions on its licensing portal, which may make it challenging for candidates to find an unpaid placement once the mandatory minimum compensation policy is implemented.

This option is not recommended. A policy that gives candidates the responsibility for declaring their willingness to accept unpaid positions, regardless of a principal's ability to pay, could create an environment where candidates feel pressure to opt out of the mandatory scheme to increase their chances of success. Principals could pressure candidates to opt out in order to circumvent the policy and complicate enforcement. An argument that was made in favour of mandatory minimum compensation was that employers place more value on an employee who is paid a fair salary. Under the recommended exemption framework, if a principal cannot pay a fair salary, they must provide a justification for this. In a candidate-led process, the employer is not required to provide this justification, and as a result some employers who could pay may choose not to, especially if they are approached by a candidate who has indicated that they are willing to accept an unpaid position. A candidate-led exemption process undercuts the rationale for implementing a mandatory minimum compensation policy and the recommendation for a cautious approach to exemptions.

F. Monitoring and Review

The Law Society of Ontario will be the first Canadian law society to implement a mandatory minimum compensation policy. At this time, the Law Society is not able to predict how the implementation of this policy will impact the availability of placements, since the Law Society does not control the supply of principals or supervisors. For this reason, it would be prudent for the Law Society to monitor how the implementation of the mandatory minimum compensation policy has affected the availability of placements and re-evaluate the effectiveness of the policy after a predetermined amount of time.

Potential Approach: Automatic Increases tied to the Statutory Minimum Wage

If desired, the Law Society could also choose to increase the mandatory minimum compensation every year. The increases could be tied to increases to the statutory minimum wage or another measure like the Consumer Price Index. The advantage of making automatic increases to the mandatory minimum compensation is that it would ensure that candidates' compensation would not erode over time, relative to the changes in the Consumer Price Index or other Ontarians earning a minimum wage, depending on the preferred indexing method. There is also the advantage that it could be simple for some employers to administer. Employers would be aware they were responsible for increased salaries whenever the minimum wage increased.

The disadvantages of this approach are:

- increased costs for legal employers;
- additional monitoring for legal employers, to ensure their employment offers would continue to align with the Law Society's mandatory minimum compensation; and
- In the short term, challenges with assessing the impact of the policy on the number of placements and the ability and willingness of employers to adapt to the new regime and pay the recommended amount.

It may be premature at this time to recommend automatic increases. While protecting against the deterioration of a candidate's earning power relative to other minimum wage earners is a laudable goal, it is important to note that the effect of implementation on the availability of positions remains unknown. A fulsome review is an important step in ensuring the mandatory minimum compensation policy is effective and has set appropriate thresholds for minimum compensation. By increasing the mandatory minimum compensation automatically, it would complicate the review process as well as lock-in a component of the policy that could lead to increases placement losses ahead of an analysis of the policy's overall effectiveness. Once the Law Society has gathered data on the implementation of the policy and has had an opportunity to review it, it will be in a better position to assess whether automatic increases in line with the statutory minimum wage are an appropriate component of the policy.

Recommended Approach: Ongoing Monitoring and Review in Three Years

Due to the uncertainty involved in the implementation, this report recommends that the Law Society monitor the impact of the implementation of the mandatory minimum compensation policy for the next three Licensing Cycles, and engage in a fulsome review that includes consultation with the public and the profession to determine if the existing policy is meeting its goals, or whether changes to the policy or additional supports are necessary.

Under this scenario, it is recommended that the Law Society keep the mandatory minimum level of compensation static over the next three years, to facilitate comparisons and data analysis, and re-assess the appropriateness of the mandatory minimum compensation as well as the other elements of the policy in 2026. The disadvantage of this approach is that it could result in a deterioration of articling candidates' income, relative to other minimum wage earners.

Next Steps

The Law Society has targeted May 1, 2023, which is the first day of the 2023-2023 Licensing Cycle and the implementation date for the mandatory minimum compensation policy. As a result, the Law Society needs to be in a position to announce the minimum compensation amount to the profession as soon as possible.

If Convocation approves the proposed mandatory minimum compensation policy and exemption framework in principle, the Lawyer Licensing Policies will be amended to reflect the new requirements.

Other necessary steps to implement this change include:

- updating Law Society application materials and other documentation for articling principals to reflect the new requirements;
- working with the providers of the LPP/PPD at Ryerson University and the University of Ottawa to integrate the new requirements into their work placements; and
- proactive communications to articling principals, supervisors, and candidates.

A future report will consider potential enforcement policies to complete the implementation of the mandatory minimum compensation policy.

Providing Clarity to Candidates and Employers

The proposed mandatory minimum compensation policy should be announced by the Law Society and posted on its website ahead of each licensing cycle²⁰, to provide clarity to employers and candidates. Any potential change to the mandatory minimum compensation policy must be announced in advance of the start of a new licensing cycle to give employers adequate notice before they make any hiring decisions.

²⁰ The Law Society's licensing cycle begins on May 1 each year, and ends on April 30 of the following year (E.g. May 1, 2022 – April 30, 2023)