



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

September 22, 2016  
9:00 a.m.

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# CONVOCATION MATERIAL

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## CONVOCATION AGENDA September 22, 2016

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**Convocation Room – 8:45 a.m.**

**Indigenous Peoples Ceremony** [15 minutes]

**Treasurer's Remarks** [10 minutes]

**Consent Agenda - Motion** [Tab 1] [1 minute]

- **Confirmation of Draft Minutes of Convocation** – June 23 and August 9, 2016
- **Motions** – Committee and Other Appointments
- **Report of the Director of Professional Development and Competence** – Deemed Call Candidates

**Report of the Chief Executive Officer** (*R. Lapper*) [15 minutes]

**Professional Development and Competence Committee Report** (*P. Wardle*) [Tab 2] [20 minutes]

- Pathways Project Review, Lawyer Licensing Process

**Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report** [Tab 3] [30 minutes]

- Challenges Faced by Racialized Licensees Final Report (*R. Anand/J. Leiper*)

**LAWPRO Report** (*S. McGrath*) [Tab 4] [15 minutes]

**Treasurer's Report** [Tab 5] [15 minutes]

- Mental Health Strategy Implementation Task Force
- Governance Task Force 2016

*For Information:*

- Treasurer's Committee Memoranda
- Treasurer's Appointments Advisory Group

**Audit and Finance Committee Report** (*C. Bredt*) [Tab 6] [15 minutes]

- Amendment to the Lawyers Compensation Fund Fund Balance Management Policy
- Cheque Signing Authority

*For Information:*

- Law Society of Upper Canada Financial Statements for the Six Months ended June 30, 2016
- LibraryCo Inc. Financial Statements for the Six Months ended June 30, 2016
- LAWPRO Financial Statements for the Six Months ended June 30, 2016
- Investment Compliance Reporting
- Other Committee Work

**Compensation Fund Committee Report** (*C. Hartman*) [Tab 7] [15 minutes]

- Increase in the Per-Claimant Limit and Amendment to Fund Guidelines

*For Information:*

- Grants Paid by the Compensation Fund
- Summary of Fund Performance

**Paralegal Standing Committee Report** (*J. Criger*) [Tab 8] [10 minutes]

- Amendments to the Paralegal Rules of Conduct

*For Information:*

- 2016 Paralegal Annual Report
- Amendments to the Paralegal Guidelines

**Professional Regulation Committee Report (W. McDowell) [Tab 9] [30 minutes]**

- Amendments to the Rules of Professional Conduct
- In Camera Item

*For Information:*

- Professional Regulation Division Quarterly Report
- 2016 Lawyer Annual Report

**Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report (T. Donnelly) [Tab 10] [5 minutes]**

- Human Rights Monitoring Group Request for Intervention

*For Information:*

- Human Rights Monitoring Group Update
- Public Education Equality and Rule of Law Series Calendar 2016 – 2017

*REPORTS FOR INFORMATION ONLY*

**Tribunal Committee Report [Tab 11]**

- Tribunal 2016 Second Quarter Statistics

**Report from The Action Group on Access to Justice (TAG) [Tab 12]**

Lunch – Benchers' Dining Room

**Tab 1**

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 22, 2016

MOVED BY:

SECONDED BY:

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

**Tab 1.1.1**

DRAFT

MINUTES OF CONVOCATION

Thursday, 23<sup>rd</sup> June, 2016  
9:00 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), Anand, Banack (by telephone), Beach, Bickford, Boyd (by telephone), Braithwaite, Bredt, Burd, Callaghan, Chrétien, Clément, Conway, Cooper, Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Falconer, Ferrier, Furlong, Galati, Go (by telephone), Goldblatt, Gottlieb, Groia, Haigh, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem (by telephone), Lerner, Lippa, MacKenzie, MacLean, McDowell, McGrath, Merali, Mercer, Minor, Murchie, Murray (by telephone), Nishikawa, Papageorgiou, Pawlitz, Porter, Potter, Richardson, Richer, Rosenthal, Ross, Sharda, Sheff, Sikand, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg, Swaye, Troister, Udell, Vespri, Wardle, Wright and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed everyone joining by webcast

The Treasurer acknowledged that the meeting is occurring on the traditional territory of the Mississauga of New Credit First Nations and thanked the First Nations and Métis for sharing their lands with us.

### ELECTION OF TREASURER

The Secretary announced the results of the first ballot:

Raj Anand	14
Howard Goldblatt	15
Susan McGrath	4
Paul Schabas	26

The Secretary announced the results of the second ballot:

Raj Anand	14
Howard Goldblatt	16
Paul Schabas	29

The Secretary announced the results of the third ballot:

Howard Goldblatt	21
Paul Schabas	38

The Secretary declared Mr. Schabas elected as Treasurer.

It was moved by Mr. Goldblatt, seconded by Mr. Mercer that the vote in the Treasurer's election be made unanimous.

Carried Unanimously

Former Treasurer Minor congratulated the new Treasurer and addressed Convocation.

Treasurer Schabas thanked Ms. Minor for her service as Treasurer.

The Treasurer invited Mr. Anand, Mr. Goldblatt and Ms. McGrath to address Convocation.

Mr. Goldblatt congratulated the new Treasurer and addressed Convocation.

Mr. Anand congratulated the new Treasurer and addressed Convocation.

Ms. McGrath congratulated the new Treasurer and addressed Convocation.

Treasurer Schabas addressed Convocation.

### TREASURER'S REMARKS

The Treasurer welcomed Jeff Hirsch, President of the Federation of Law Societies of Canada, to Convocation.

The Treasurer thanked Diana Miles and her staff for their work in organizing the calls to the bar this month.

The Treasurer congratulated the recipients of the 2016 honorary LL.D. at the calls to the bar.

The Treasurer congratulated The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, on her call to the bar at the Ottawa call on June 14, 2016, and thanked her for her keynote address.

The Treasurer congratulated the new Attorney General of Ontario, Yasir Naqvi, on his recent appointment.

The Treasurer reminded benchers of the upcoming Indigenous Peoples Event, "What Does Reconciliation Mean to You?" later today in the Lamont Learning Centre at 3:00 p.m.

The Treasurer acknowledged the recent events around the world that have created a heightened awareness of the importance of human rights and the right to personal safety.

The Treasurer reminded benchers of the Pride event on June 28, 2016 hosted by the Law Society and SOGIC, the Sexual Orientation and Gender Identity Law Section of the Ontario Bar Association, on the subject of LGBTQ inclusions in sport.

The Treasurer advised benchers that committee appointments will be made at a special Convocation to be held later this summer.

The Treasurer referred benchers to the information report in the material from the Priority Planning Committee and the Chief Executive Officer's Report, which will be spoken to at September Convocation.

#### REPORT ON THE FEDERATION OF LAW SOCIETIES OF CANADA COUNCIL AND RELATED MEETINGS

Ms. Pawlitza presented the report for information.

#### MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Murchie, seconded by Ms. Corsetti, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of May 26, 2016 were confirmed.

Tab 1.2 – AUDIT & FINANCE COMMITTEE REPORT

Re: Law Society Auditor

That Convocation appoint PriceWaterhouseCoopers LLP (PwC) as auditor for The Law Society of Upper Canada, the Fund of the Pension Plan for the Employees of the Law Society and LibraryCo Inc. for the 2016 financial year.

Carried

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

MOTION

Re: Professional Regulation and Proceedings Authorization Committee Appointments

It was moved by Mr. Wardle, seconded by Mr. Mercer, that Jacqueline Horvat be appointed a Vice-Chair of the Professional Regulation Committee to replace Paul Schabas and that Jacqueline Horvat be appointed Chair of the Proceedings Authorization Committee, to replace Paul Schabas, who will continue as a member of that Committee.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: By-Law Amendments – Surrender of a Professional Corporation Certificate

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation amend By-Law 7 as set out in the motion at Tab 2.1.1 to remove the requirement that a professional corporation provide an accountant's certificate when surrendering a certificate of authorization.

Carried

Re: Advertising and Fee Arrangements Issues Working Group Report

Mr. Mercer presented the report for information.

*For Information*

- Report of the Advertising and Fee Arrangements Issues Working Group
- In Camera Item

#### ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Corsetti presented the Report.

#### Re: Request for Renewal of Law Society Support in Principle for the Mandate of the Law Commission of Ontario

It was moved by Ms. Corsetti, seconded by Mr. Goldblatt, that Convocation approve the Law Commission of Ontario's request for renewal of the Law Society's support in principle for the mandate of the Law Commission of Ontario.

Carried

#### EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Donnelly presented the Report.

#### Re: Human Rights Monitoring Group Request for Interventions

It was moved by Ms. Donnelly, seconded by Mr. Falconer, that Convocation approve the letters and public statements in the cases set out at Tabs 4.1.1 to 4.1.5 of the Report.

Carried

#### *For Information*

- Human Rights Monitoring Group Responses to Interventions
- Equity Legal Education and Rule of Law Series Calendar 2016

#### TRIBUNAL COMMITTEE REPORT

Ms. Murchie presented the Report.

#### Re: Proposed Amendments to the Law Society Tribunal Hearing Division and Appeal Division Rules of Practice and Procedure

It was moved by Ms. Murchie, seconded by Mr. Wardle, that Convocation approve the proposed French and English amendments to the Law Society Tribunal Hearing Division and Appeal Divisions Rules of Practice and Procedure set out in the motion at Tab 5.1.1 of the report.

Carried

#### Re: Tribunal 2015 Annual Report

Mr. David Wright, Law Society Tribunal Chair, presented the report for information.

Mr. Wright thanked Grace Knakowski, who will be leaving the Law Society shortly, for her outstanding work in the Tribunal Office.

#### *For Information*

- Tribunal 2015 Annual Report
- Tribunal 2016 First Quarter Statistics

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Leiper presented the Report

Re: Indigenous Legal Issues Specialty

Ms. Leiper presented the report for information.

Ms. Leiper thanked the staff in the Professional Development and Competence Division for their hard work on this initiative.

Re: Appointments to the Certified Specialist Board

Ms. Leiper presented the report for information, setting out the names of the new appointees to the Certified Specialist Board:

David J. Bannon  
May Cheng  
Douglas Downey  
Donna Shier

REPORT OF THE CHIEF EXECUTIVE OFFICER

Mr. Lapper presented the report for information.

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*REPORTS FOR INFORMATION ONLY*

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

REPORT OF THE CHIEF EXECUTIVE OFFICER

AUDIT & FINANCE COMMITTEE REPORT

- Financial Support for the Law Commission of Ontario
- LibraryCo Inc. First Quarter Financial Statements 2016
- Other Committee Work

GOVERNMENT RELATIONS AND PUBLIC AFFAIRS COMMITTEE REPORT (IN CAMERA)

PRIORITY PLANNING COMMITTEE REPORT

- Progress Report on the Law Society's Strategic Plan 2015-2019

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

- Indigenous Legal Issues Specialty
- Appointments to Certified Specialist Board

REPORT ON THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

TREASURER'S ENGAGEMENT REPORT

CONVOCATION ROSE AT 12:51 P.M.

**Tab 1.1.2**

DRAFT

MINUTES OF CONVOCATION

Tuesday, 9<sup>th</sup> August, 2016  
9:00 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), \*Banack, Beach, \*Bickford, \*Boyd, \*Braithwaite, \*Bredt, \*Burd, Callaghan, \*Chrétien, \*Clément, Cooper, \*Corbiere, \*Corsetti, \*Criger, \*Donnelly, \*Earnshaw, \*Epstein, \*Evans, \*Ferrier, \*Finkelstein, \*Furlong, \*Goldblatt, Groia, \*Haigh, \*Horvat, \*Krishna, Lawrie, \*Leiper, \*Lem, \*Lerner, \*Lippa, \*MacKenzie, \*MacLean, McDowell, \*McGrath, \*Mercer, \*Murchie, \*Murray, \*Nishikawa, \*Papageorgiou, \*Potter, \*Richardson, \*Rosenthal, \*Sheff, \*Sikand, \*Spence, \*Spurgeon, C. Strosberg, \*H. Strosberg, \*Swaye, \*Troister, Udell and Walker.

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\* By Telephone

Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

MOTION – ELECTION OF BENCHER

It was moved by Mr. Udell, seconded by Mr. Beach, that, –

WHEREAS Paul B. Schabas who was elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer; and

WHEREAS upon being elected Treasurer, Paul B. Schabas ceased to hold office as an elected benchner in accordance with subsection 25(2) of the *Law Society Act*, thereby creating a vacancy in the number of benchers elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors.

THAT under the authority contained in By-Law 3, Tanya C. Walker, having satisfied the requirements contained in subsections 43(1) and 45(1) of the By-Law, and having consented to the election in accordance with subsection 45(2) of the By-Law, be elected by Convocation as benchner to fill the vacancy in the number of benchers elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of the votes cast by all electors.

Carried

MOTION – CONSENT AGENDA – Tab 2

It was moved by Mr. Braithwaite, seconded by Mr. Groia, that Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

Tab 2.1 – AMENDED MINUTES OF CONVOCATION

The amended minutes of Convocation of May 26, 2016 were confirmed.

Tab 2.2 – MOTION – RULES OF PRACTICE AND PROCEDURE

THAT Convocation amend the French version of Law Society Tribunal Hearing Division Rules of Practice and Procedure, made by Convocation on March 12, 2014, and amended by Convocation on May 22, 2014, September 24, 2014, October 30, 2014, February 25, 2016, April 28, 2016 and June 23, 2016 by replacing Rule 13.01(1) with the following:

13.01 (1) Les motions sont présentées par voie d'avis de motion (formulaire 13A) sauf si l'avis n'est pas nécessaire en raison des circonstances ou de la nature de la motion.

Carried

MOTION

Re: Committee and Other Appointments

It was moved by Ms. MacLean, seconded by Ms. Chrétien, –

THAT Convocation approve the appointments under **Schedule A**.

THAT Isfahan Merali be appointed to the Law Foundation of Ontario Board of Trustees to replace Paul Schabas.

THAT Convocation recommend that Jerry Udell be nominated to the LAWPRO Board of Directors.

THAT Teresa Donnelly be appointed to the Proceedings Authorization Committee to replace Paul Schabas.

## SCHEDULE A

### COMMITTEE, TASK FORCE, WORKING GROUP AND EXTERNAL/OTHER APPOINTMENTS August 9, 2016

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*Not included in the list of appointments in Schedule A are entities whose memberships are not currently changing or appointments or reappointments not currently required based on terms for appointment that have not yet expired.*

#### COMMITTEES

##### Access to Justice

Howard Goldblatt (Chair)  
Janet Leiper (Vice-Chair)  
Gina Papageorgiou (Vice-Chair)  
Raj Anand  
Fred Bickford  
Robert Burd  
Cathy Corsetti  
Robert Evans  
Avvy Go  
Marian Lippa  
Malcolm Mercer  
Susan Richer  
Baljit Sikand  
Anne Vespry

##### Audit & Finance

Christopher Bredt (Chair)  
Teresa Donnelly (Vice-Chair)  
Suzanne Clément (Vice-Chair)  
Peter Beach  
Paul Cooper  
Janis Criger  
Seymour Epstein  
Michelle Haigh  
Vern Krishna  
Jan Richardson  
Rocco Galati  
Andrew Spurgeon  
Gina Papageorgiou  
Catherine Strosberg  
Tanya Walker

##### Compensation

Paul Schabas (Chair)  
Christopher Bredt  
Teresa Donnelly  
Gerald Sheff  
Peter Wardle

Compensation Fund

Carol Hartman (Chair)  
Michelle Haigh (Vice-Chair)  
Gisèle Chrétien  
Joseph Groia  
Jan Richardson

Equity and Aboriginal Issues

Dianne Corbiere (Co-Chair)  
Julian Falconer (Co-Chair)  
Sandra Nishikawa (Vice-Chair)  
Gina Papageorgiou (Vice-Chair)  
Marion Boyd  
Suzanne Clément  
Robert Evans  
Avvy Go  
Howard Goldblatt  
Marian Lippa  
Isfahan Merali  
Sidney Troister  
Tanya Walker

Government and Public Affairs

John Callaghan (Chair)  
Marion Boyd (Vice-Chair)  
William McDowell (Vice-Chair)  
Jack Braithwaite  
Paul Cooper  
Ross Earnshaw  
Julian Falconer  
Marian Lippa  
Virginia MacLean  
Susan McGrath  
Julian Porter  
Jonathan Rosenthal  
Joanne St. Lewis  
Catherine Strosberg

Inter-Jurisdictional Mobility

Michael Lerner (Chair)  
Jacqueline Horvat (Vice-Chair)  
Peter Beach  
Jack Braithwaite  
Ross Earnshaw  
Seymour Epstein  
Robert Evans  
Jerry Udell

Law Society Awards

Paul Schabas (Chair)  
Dianne Corbiere  
Michelle Haigh  
William McDowell  
Sandra Nishikawa  
Andrew Spurgeon  
Catherine Strosberg

Law Society LL.D. Advisory

Paul Schabas (Chair)  
Dianne Corbiere  
Michelle Haigh  
William McDowell  
Sandra Nishikawa  
Andrew Spurgeon  
Catherine Strosberg

Litigation

Jacqueline Horvat (Chair)  
Peter Wardle (Vice-Chair)  
John Callaghan  
Janis Criger  
Seymour Epstein  
Howard Goldblatt  
William McDowell  
Sandra Nishikawa  
Jonathan Rosenthal

Paralegal Standing

Michelle Haigh (Chair)  
Janis Criger (Vice-Chair)  
Marion Boyd  
Robert Burd  
Cathy Corsetti  
Ross Earnshaw  
Brian Lawrie  
Marian Lippa  
Susan McGrath  
Barb Murchie  
Jan Richardson  
Baljit Sikand  
Anne Vespry

Priority Planning

Paul Schabas (Chair)  
Christopher Bredt  
Dianne Corbiere  
Teresa Donnelly  
Julian Falconer  
Michelle Haigh  
Jacqueline Horvat  
Howard Goldblatt  
William McDowell  
Malcolm Mercer  
Sandra Nishikawa  
Catherine Strosberg  
Peter Wardle

Professional Development and Competence

Peter Wardle (Chair)  
Jacqueline Horvat (Vice-Chair)  
Joanne St. Lewis (Vice-Chair)  
Jack Braithwaite  
Dianne Corbiere  
Teresa Donnelly  
Joseph Groia  
Michelle Haigh  
Barbara Murchie  
Sandra Nishikawa  
Andrew Spurgeon  
Catherine Strosberg  
Sidney Troister  
Anne Vespry

Professional Regulation

William McDowell (Chair)  
Jonathan Rosenthal (Vice-Chair)  
Malcolm Mercer (Vice-Chair)  
Fred Bickford  
John Callaghan  
Gisèle Chrétien  
Suzanne Clément  
Seymour Epstein  
Carol Hartman  
Michael Lerner  
Brian Lawrie  
Virginia MacLean  
Susan Richer  
Raj Sharda  
Jerry Udell

Summary Disposition

John Callaghan  
Malcolm Mercer

Tribunal

Barbara Murchie (Chair)  
Isfahan Merali (Vice-Chair)  
Raj Anand  
Larry Banack  
Peter Beach  
Christopher Bredt  
Robert Burd  
Janis Criger  
Paul Cooper  
Rocco Galati  
Baljit Sikand  
Peter Wardle

TASK FORCE

Compliance-Based Entity Regulation

Ross Earnshaw (Chair)  
Raj Anand  
Gisèle Chrétien  
Howard Goldblatt  
Joseph Groia  
Carol Hartman  
Brian Lawrie  
Malcolm Mercer  
Barbara Murchie  
Sidney Troister  
Raj Sharda  
Peter Wardle

WORKING GROUPS

Advertising and Fee Arrangements Issues (Professional Regulation Committee)

Malcolm Mercer (Chair)  
Jack Braithwaite  
Paul Cooper  
Jacqueline Horvat  
Michael Lerner  
Marian Lippa  
Virginia Maclean  
Jan Richardson  
Jonathan Rosenthal  
Andrew Spurgeon  
Jerry Udell

Alternative Business Structures

Susan McGrath (Co-Chair)  
Malcolm Mercer (Co-Chair)  
Fred Bickford  
Marion Boyd  
Suzanne Clément  
Cathy Corsetti  
Janis Criger  
Carol Hartman  
Brian Lawrie  
Jeffrey Lem  
Joanne St. Lewis  
Anne Vespry

Disclosure (Professional Regulation Committee)

Malcolm Mercer (Chair)  
John Callaghan  
Jacqueline Horvat  
Brian Lawrie  
Jan Richardson  
Jonathan Rosenthal

Human Rights Monitoring Group

Teresa Donnelly (Chair)  
Robert Evans  
Julian Falconer  
Avvy Go  
Isfahan Merali  
Judith Potter  
Heather Ross  
Joanne St. Lewis

EXTERNAL/OTHER APPOINTMENTS

Ontario Bar Association Council

Fred Bickford  
Jack Braithwaite  
Barbara Murchie (Treasurer's Nominee)

Carried

CONVOCATION ROSE AT 9:13 A.M.

**Tab 1.2**

## **THE LAW SOCIETY OF UPPER CANADA**

### **MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 22, 2016**

THAT Ross F. Earnshaw be appointed as the Law Society's representative on the Council of the Federation of Law Societies of Canada, effective November 15, 2016.

THAT Jack Braithwaite be reappointed as the Law Society's representative on the Canadian National Exhibition Association for a term of one year commencing October 27, 2016.

**Tab 1.3**

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, September 22<sup>nd</sup> 2016

ALL OF WHICH is respectfully submitted

DATED this 22<sup>nd</sup> day of September, 2016

**CANDIDATES FOR CALL TO THE BAR**  
**September 22<sup>nd</sup> 2016**

**Transfer from another province (Mobility)**

Jesse Aubyn Ahuja  
David John Beaton  
Lauren Emily Cook  
Heather Elizabeth Dawe  
Kelsey Fairway Evaniew  
Roland Lok Wan Hung  
Hannah Claire Kazman  
Peter Michael Kurt Kazman  
Heidi Nicole LeBlanc  
Peter Gordon MacKay  
Andrew James McGarva  
Jordan Andrew Dylan Michaux  
Philip Alexander Seth Milley  
James Robert Coldwell Morse  
Steven Andrew Neal  
Hind Noori  
Jayaweera Liyanage Anita Nalani Perera  
André Yves Poulin-Denis  
Kathryn Patricia Samaras  
Anne Burnham Sedgwick  
Kelly Jay Serbu  
Gwenyth Sheila Stadig  
Stephanie Anna Szczesniak  
Brooklyn Marie Thorpe

**Licensing Candidates**

Caroline Ling-Yu Chen  
Justin Lindsay Milne  
Yanhua Peng  
Noam Pratzer  
Stephanie Marie Samson  
Kai David Nicholas Sheffield  
Nora Széles

**L3**

Robert Thomas Frederick Sharp

**Transfer Candidates (from Quebec)**

Anh Thang Nguyen  
Roger Ying-Kit Yuen

**Academic Candidate (Law School Professor/Dean)**

Jennifer Emma Farrell  
Nicholas Michael Robert Léger-Riopel



The Law Society of  
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**TAB 2**

## **Report to Convocation September 22, 2016**

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### **Professional Development & Competence Committee**

#### **COMMITTEE MEMBERS**

Peter Wardle (Chair)  
Jacqueline Horvat (Vice-Chair)  
Joanne St. Lewis (Vice-Chair)  
Jack Braithwaite  
Dianne Corbiere  
Teresa Donnelly  
Joseph Groia  
Michelle Haigh  
Barbara Murchie  
Sandra Nishikawa  
Andrew Spurgeon  
Catherine Strosberg  
Sidney Troister  
Anne Vespry

**Purpose of Report: Information (September 22, 2016)  
Decision (November 9, 2016)**

**Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)**

## **EXECUTIVE SUMMARY**

### **Introduction**

This Report addresses the evaluation of the Pathways Pilot Project (consisting of the Law Practice Program and the enhanced Articling Program) and the recommended enhancements to the lawyer licensing process.

The licensing issues that the Law Society has addressed over the last number of years, and with which the Committee has been specifically faced, are complex and multi-layered. They have been addressed in the context of increasing numbers of licensing candidates, both from Canadian law schools and the National Committee on Accreditation (“NCA”), a rapidly changing legal landscape, pressure on the articling structure, equity and diversity issues, renewed emphasis within the Law Society around competency and standards, examinations, transitional experiential learning, rising law school tuition, licensing costs and the length of the legal education and licensing process. Moreover, myriad perspectives on the issues have resulted in principled disagreement on an appropriate approach.

### **Pathways Pilot Project**

Convocation directed the Professional Development & Competence Committee (the “Committee”) to conduct an evaluation of the Pathways Pilot Project (the “pilot”) and to make recommendations respecting what should occur at its conclusion. Originally, the Articling Task Force conceived a five-year pilot. It amended the motion in its October/November 2012 Report, which Convocation approved, to reduce the length to three years.

A pilot project is by its very nature a previously untried process whose lifespan is predefined, but whose operation and results are unknown at the outset. It provides an opportunity to investigate a new approach and its merits with all the inherent challenges, understanding that its performance and viability must be the subject of a critical lens and knowing that its permanence is not to be presumed. The Articling Task Force believed that an alternative to articling must be explored, but was reluctant to entrench an approach without an opportunity to weigh the outcomes. It also understood that in three years that exploration would be evaluated to consider its effectiveness as a means of transitional training, the acceptance or otherwise of the alternative and cost and equity issues. By adopting a three instead of five year timeline, Convocation was reflecting a desire to explore without entrenching, while preserving the possibility for extending the evaluation timeline in certain circumstances.

For all the reasons discussed in this Report, the Committee, based on the views of nine of the 14 members, has concluded that the pathway of the pilot known as the Law Practice Program (LPP), despite many positive features, including the excellent program design and delivery by both LPP providers, does not appear to be providing an alternative to articling that has gained acceptance by candidates and the profession and that is sustainable in the long term.

The Committee recommends that the LPP end following the completion of Year Three (2016-2017). The complexity of the decisions to be made were reflected in the Committee’s discussions. Members have held a diversity of, and evolving, views on the issues, some of which are outlined in the Report. Three of the Committee members do not agree with the recommendation and two abstain.

The Committee recommends that the component of the pilot known as the enhanced Articling Program remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.

The Committee has developed a number of additional recommendations for strategies to address issues that continue to exist in transitional experiential training. Serious attention, effort and collaboration in the areas identified below can address some of the issues that the pilot has revealed or confirmed:

- **Continued use of LPP program content, networks, professional placements etc. in other contexts so that the invaluable resources are not lost.** The English and French LPP have each been developed to address their context, size and setting. In the short life of the pilot project each has integrated meaningful program content with impressive physical and human resources and networks of professionals who have supported and assisted the programs and acted as supervisors, instructors and mentors. From the outset, the French LPP has developed a particular focus on the enhancement and broadening of the ability to offer quality legal services in French across the province and to facilitate the development of mentors and role models within the Francophone bar. Based on the recognition of linguistic dualism, the program provider and the Law Society understood from the outset that the French LPP skills content should be developed to support these goals. Similarly, the English LPP has developed a rigorous program with valuable and distinct content and networks of lawyers engaged with the process. It has successfully found work placements for hundreds of candidates. Most of the placements were with those who had not previously taken an articling candidate. Effort should be made to make use of the English and French LPP resources.
- **Consideration of the National Committee on Accreditation (NCA) process, readiness for licensing issues and exploration of bridging programs for internationally-educated candidates.** The Law Society is committed to a vibrant, competent and diverse profession that in turn supports the diversity of the Ontario population. For this to be feasible, in addition to an NCA process that is effective and relevant, internationally-educated candidates must have reasonable expectations about their ability to succeed in the Ontario legal market. They must also be assisted to meet with success through a combination of supports, resources and information exchange that will provide an opportunity to integrate into the legal culture and the ability to prepare to be successful in Ontario's lawyer licensing process. The Law Society has no ability to address issues related to the level of preparedness for licensing that international law degrees provide, but it must have a role in managing expectations of candidates related to what is necessary to succeed in the licensing process and the Ontario market. Indeed, management of expectations is important for all candidates wherever educated. As the market for lawyers continues to change and as pressures on the legal practice model continue, Canadian law school educated and internationally-educated candidates should be provided with meaningful information about the nature of that market as early as possible, so they can make meaningful choices. The LPP has developed a rigorous program whose content may serve other possible purposes, including being utilized in a bridging program for internationally-educated candidates. The Law Society should explore possible approaches to voluntary and robust bridging programs for internationally-educated candidates to enhance their readiness for licensing in Ontario.
- **Attention to issues of fairness, including the Articling Program's impact on equality-seeking candidates and its accessibility and objectivity.** The Committee continues to have concerns with aspects of the Articling Program, some of which the pilot has reinforced. These relate to fairness, including the impact on equality-seeking groups and the hiring process, consistency and coverage of required competencies, working conditions and the dearth of certain types of articling positions, particularly in the field of social justice. Because of low take-up of the LPP, the alternative pathway was unable to convincingly address placement shortages. Post LPP

shortages will continue to be an issue. The Law Society must continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, accessibility and objectivity. The Law Society commitment to serving a diverse Ontario public and to advancing a diverse profession that meets the public's varied needs and access to justice in under-served communities is equally important in the context of transitional experiential training. Development of a fund to be used to support the above mentioned priorities in the context of transitional experiential training should be explored. The exploration will include an analysis of possible sources for funding, such as the Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-served communities and appropriate job locations.

### **Licensing Process Enhancements**

The Law Society's mandate to regulate in the public interest begins with the licensing process. Unlike law school education, licensing is primarily a regulatory process, protecting the public by admitting only those who demonstrate competence. The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest.

The recommendations related to licensing examinations, the formal framework of the licensing process and requirements around articling reflect the Law Society's Strategic Priority #1, which states that the Law Society will focus on enhancing licensing standards and requirements and their assessment. The process for assessing readiness must be fair and defensible, but the Law Society's regulatory priority of competence-based licensing is clear.

In furtherance of this priority, the Committee recommends the introduction of two new licensing examinations. The single Practice and Procedure Examination (PPE) will replace the current Barrister Examination and Solicitor Examination. The focus will be on those competencies in the practice and procedural areas whose frequency and criticality are of the highest importance for entry-level practitioners. It will take place before the articling component of the licensing process and successful completion will be a prerequisite to proceeding to articling. The second licensing examination, to be known as the Practice Skills Examination (PSE), will measure candidates' capability to apply their practice and analysis skills following their completion of articling.

Under the current approach, a candidate is eligible to write each examination up to three times and has three years to complete the entire licensing process. These requirements will remain in place. Candidates who are still unsuccessful by the end of the three-year process will not in the normal course, be entitled to register for the licensing process a second time. All these requirements are subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the Law Society's *Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*.

The validity and defensibility of the licensing process requires a balancing of standards and fairness. Fairness provisions recognize that there are exigencies that may affect candidates' performance or the timing of their completion of the licensing process. At the same time, however, it is essential that the opportunities to complete the licensing process not be so drawn out as to undermine the validity of the assessment or the licensing process overall. The current and proposed approach, all subject to the duty to accommodate, balance these considerations.

The Committee also recommends that internationally-educated candidates licensed in a common law jurisdiction with at least three years of practice experience that addresses the Law Society's articling competencies may be exempted from articling. This is an increase from the current eligibility requirement of 10 months, to reflect a commitment to enhanced standards. The Law Society will continue to track the level of experience of internationally-educated candidates, examination performance data and information that will be gleaned from discussions and exploration of bridging programs, to determine whether the exemption recommendation is effective. Exempted candidates will continue to be required to complete an intensive three-day program on professional conduct and practice management as a mandatory component of the licensing process. All other internationally-educated candidates will continue to be required to complete the articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies, in accordance with the Law Society's protocols. If the new recommendation is approved by Convocation, it would apply on a going forward basis, beginning with the licensing year 2017-2018.

Finally, the Committee recommends that the Law Society explore a process to permit up to a three-month abridgment of articling where prior skills training has been attained in a program the Law Society accredits. Among other factors the exploration will consider the possible risks and benefits of such an approach and the nature of accreditation criteria for eligible programs. In the interim, the 10 month articling requirement will continue. The exploration will include collaborative discussions with interested stakeholders. The place of skills training or experience in the pre-licensing context has been evolving steadily since the late 1970s and early 1980s when many considered it could have no role to play in the development of lawyers, except in the articling context. Few accept that position today, but each stage on the road to licensing, beginning in law school defines how skills training fits its priorities. The recommendation seeks to expand the conversation.

## **Conclusion**

The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest. In respect of lawyer licensing, Strategic Priority #1 states that the Law Society will focus on enhancing licensing standards and requirements and their assessment for lawyers. At the same time, the Law Society seeks to ensure a process that is fair, accessible and objective.

The Pathways Pilot Project has been an important part of the efforts to examine and address licensing requirements and fairness. The evaluation of the project has revealed the complexity of the issues and the difficulties inherent in determining the way forward. All the Committee members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.

The proposed enhancements to the lawyer licensing process reflect the Committee's commitment to address Convocation's Strategic Priority #1 respecting enhanced licensing standards and requirements and their assessment.

## **Motion**

1. That Convocation approve that the pathway of the Pathways Pilot Project known as the Law Practice Program (LPP) end following completion of Year Three (2016-2017.)
2. That Convocation approve that the pathway of the Pathways Pilot project known as the enhanced Articling Program remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.
3. That Convocation approve the following steps:
  - a. The Law Society will explore with the University of Ottawa, the French LPP Advisory Board and other stakeholders who wish to be involved, ways to continue to build on the groundwork laid by the French LPP.
  - b. The Law Society will explore ways that the English LPP resources may continue to be used, including but not limited to,
    - i. adapting work placements developed during the LPP to the articling context wherever possible and appropriate; and
    - ii. integrating relevant human and other resources from the English and French LPP into the Law Society's Coach and Advisor Initiative;
  - c. The Law Society will explore approaches to voluntary and robust bridging programs for internationally-educated candidates who wish to enhance their readiness for licensing in Ontario. This exploration will include attention to uses to which LPP program content can be put.
  - d. The Law Society will explore, within the transitional experiential training context, the development of a fund to be used to support the priorities of a diverse profession that meets the public's varied needs and to enhance access to justice in under-served communities. The exploration will include an analysis of possible sources for funding, such as the Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-served communities and appropriate job locations.
  - e. The Law Society will continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, including the impact on equality-seeking groups and hiring, accessibility and objectivity.

- f. By June 2017 the Professional Development & Competence Committee will provide Convocation with a proposed process plan for addressing issues under a-e.
4. That Convocation approve the following with respect to licensing process enhancements:
- a. The Law Society will explore a process to permit up to a three-month abridgment of articling where prior skills training has been attained in a program the Law Society accredits. Among other factors the exploration will consider,
- i. the possible risks and benefits of such an approach; and
- ii. the nature of accreditation criteria for eligible programs.
- The exploration will include discussions with interested stakeholders. The Committee will report to Convocation on the outcome of this exploration, by June 2017.
- b. Beginning with the licensing year 2017-2018, internationally-educated candidates licensed in a common law jurisdiction, with at least three years of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates will continue to be required to complete an intensive three-day program on professional conduct and practice management as a mandatory component of the licensing process. All other internationally-educated candidates will continue to be required to complete the articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies, in accordance with the Law Society's protocols.
- c. Approved for the licensing year 2017-2018,
- i. to provide a fair opportunity for candidates to satisfy their licensing requirements, candidates will continue to,
- a. be eligible to write each licensing examination up to three times; and
- b. will have three years to complete all licensing requirements;
- ii. to reflect that three years is a fair time frame within which to complete all licensing requirements, candidates will not be entitled to register

for the licensing process a second time following failure to complete the requirement in three years;

- iii. the requirements in (i) and (ii) will continue to be subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the Law Society's *Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*; and
- iv. all candidates will continue to be required to meet good character requirements, as set out in the Law Society application process.

d. Approved for the licensing year 2018-2019,

- i. a new practice and procedure examination (PPE) will be introduced as the first assessment component of the “entrance to licensing” requirement, to replace the current Barrister and Solicitor Examinations;
- ii. to ensure that only candidates who have demonstrated the requisite entry-level competence in practice and procedure advance to the next phase of the licensing process, candidates will be required to pass the PPE Examination prior to beginning transitional experiential training;
- iii. To provide a fair opportunity for candidates to satisfy their licensing requirements, while ensuring that the licensing process assesses entry-level competence, candidates will continue to have three opportunities to pass the PPE Examination. Two examination sittings will be offered prior to the traditional starting dates for transitional experiential training and be held in May and July, and it is anticipated that additional opportunities to write the examination will continue to be offered in October and March of each licensing year.

e. Approved for the licensing year 2018-2019,

- i. a practice skills examination (PSE) will be added to licensing requirements and will be taken after completion of transitional experiential learning. Given the complexity of this assessment component, development of the PSE will begin in 2016 and continue through 2017 and 2018 for introduction in the 2018-2019 licensing year;

- ii. **candidates will be required to pass the PSE Examination prior to being entitled to complete their licensing process; and**
- iii. **to provide a fair opportunity for candidates to satisfy their licensing requirements, while ensuring that the licensing process assesses entry-level competence, candidates will have three opportunities to pass the PSE Examination. Examination sittings will be offered three times per licensing year. The dates of those sittings will be determined in the development process and will coincide as closely as possible with candidate transitional experiential training completion dates.**

### **Context of this Report**

5. Convocation directed the Professional Development & Competence Committee (the “Committee”) to conduct an evaluation of the Pathways Pilot Project (the “pilot”) and to make recommendations respecting what should occur at the conclusion of the pilot. Originally, the Articling Task Force conceived a five-year pilot. It amended the motion in its October/November 2012 Report, which Convocation approved, to reduce the length to three years, for the following reasons:

One of the concerns expressed in discussions was that a five year pilot project, given the time it needs to both develop it and then evaluate it was a very long time for a pilot and might, in fact, have the unintentional effect of entrenching it and not really treating it as the pilot that it was intended to be. It was the intention all along to evaluate as soon as possible and was agreed that if it doesn't take five years, it shouldn't take five years.<sup>1</sup>

6. Pursuant to the motion, the pilot could be extended for up to an additional two years if this was deemed necessary to enable a fair and appropriate evaluation.
7. This Report provides the Committee's analysis and recommendations respecting the pilot and includes material that supports that analysis, including on the two methods of transitional experiential training (Law Practice Program (LPP) and the Articling Program) and on issues around the viability and sustainability of the LPP, including financial implications. The Committee's analysis includes discussion of whether it has sufficient information on which to make recommendations at this time.
8. This Report also addresses recommendations the Committee made in April 2016 respecting enhancements to the licensing process (the “April Report”). Given the

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<sup>1</sup> Transcript. Convocation. November 11, 2012. p. 25.

Committee's recommendations respecting the pilot, the earlier April Report is further contextualized as part of next steps in the licensing process.

9. The licensing issues that the Law Society has addressed over the last number of years, and with which the Committee has been specifically faced, are complex and multi-layered. They have been addressed in the context of increasing numbers of licensing candidates, from both Canadian law schools and the National Committee on Accreditation ("NCA"), a rapidly changing legal landscape, pressure on the articling structure, equity and diversity issues, renewed emphasis within the Law Society around competency and standards, examinations, transitional experiential learning, rising law school tuition, licensing costs and the length of the legal education and licensing process. Moreover, myriad perspectives on the issues have resulted in principled disagreement on an appropriate approach.
10. As is described in this Report, the Committee has concluded that the pathway of the Pathways Pilot Project known as the Law Practice Program (LPP), despite many positive features, including the excellent program design and delivery by both providers, described further below, appears not to be sustainable in the long term and should end following the completion of the pilot in Year Three (2016-2017). The pathway of the Pathways Pilot project known as the enhanced Articling Program should remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training. The Committee makes additional recommendations for strategies to address issues that continue to exist in the Articling Program. Finally, the Committee recommends that, with some changes, the proposed enhancements to the licensing process recommended in the April 2016 Report should be adopted.
11. The recommendations reflect the conclusions of a majority of the Committee members.<sup>2</sup> The complexity of the decisions to be made were reflected in the Committee's discussions. Members have held a diversity of, and evolving, views on the issues, some of which are outlined in the Report.
12. All the members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.

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<sup>2</sup> The specific breakdown of the Committee members' views with respect to the question of sufficiency of evidence to evaluate the pilot and the recommendation respecting the LPP are set out later in the Report.

13. The information underlying and supporting this Report is critically important and the Committee urges that it be used to contribute to the ongoing analysis of and refinements to the licensing process that will continue to be sought, developed and implemented.

## Background

14. Since the fall of 2015, the Committee has been engaged in considering a number of issues related to lawyer licensing, in the context of,
  - a. the Law Society's approved Strategic Priority around lawyer licensing standards; and
  - b. its obligation to evaluate the Pathways Pilot Project.
15. In October 2015, benchers approved the 2015-2019 Strategic Plan establishing priority areas for policy development and governance over the bencher term. Among its top priorities were competence-related matters (Strategic Priority #1), including those respecting the licensing process, as follows:

The Law Society will focus on enhancing licensing standards and requirements and their assessment...for lawyers...
16. In the Priority Planning Committee's Report to Convocation on December 4, 2015, in which it detailed the components of the 2015-2019 Strategic Plan, it noted with respect to licensing,

As newly qualified lawyers and paralegals enter a challenging and evolving professional environment, the Law Society has identified a need to work to enhance entry-level standards and assessment of those standards.

Part of this exercise will involve reviewing and, if required, revising the profile of the entry-level competent lawyer and paralegal and determining the extent to which the threshold for licensing needs to be changed. The adequacy of the entry level examinations for licensing those who meet entry level standards and whether skills testing should be considered are among the issues that may be explored.

This activity would take place contiguously with the evaluation of the current Pathways Pilot Project to ensure that any increased threshold becomes part of the assessment process...
17. In April 2016, following a consideration of licensing examinations and other components of the licensing process, the Committee provided Convocation with a Report on enhancements to the licensing process (the "April Report"), which made a number of licensing-related recommendations, but did not address the evaluation of the Pathways

Pilot Project. In May 2016 Convocation determined to combine consideration of the recommendations with those flowing from the evaluation of the Pathways Pilot Project.

18. The Pathways evaluation was among the recommendations Convocation approved in the October/November 2012 Articling Task Force Report ("Pathways Report"), establishing a pilot project, as follows:
  - a. There will be a transitional training pilot project, proposed to begin in 2014-15, with an articling component and a Law Practice Program ("LPP") component. The pilot project will be for three years, to be extended for up to an additional two years if the Law Society determines that there is insufficient evidence to properly evaluate the pilot project after three years.
  - b. During the pilot project data designed to enable an evaluation of the project will be collected and any necessary refinements or other policy issues related to this will be considered in the Professional Development & Competence ("PD&C") Committee.
  - c. The formal review of the pilot project will commence in the final year of the pilot and be completed by the end of that year with a proposal for next steps provided to Convocation for its consideration. The implementation of the pilot project will continue during the course of the review. Convocation will then determine whether the pilot project should end, become permanent or result in a different approach.
19. Pursuant to By-Law 3, the PD&C Committee's mandate includes providing policy options to Convocation on,

the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing.
20. In exercising its mandate and developing each of its policy recommendations the Committee regularly considers,
  - a. the Law Society's duty to protect the public interest;
  - b. that standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized;<sup>3</sup>
  - c. the professional context within which licensing occurs;
  - d. access to justice for the people of Ontario;

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<sup>3</sup> *Law Society Act*, s 4.2

- e. diversity in the legal profession;
  - f. the Law Society's Strategic Priorities;
  - g. licensing and the legal education continuum;
  - h. the sustainability of licensing options;
  - i. the need for fair, transparent and defensible processes;
  - j. financial considerations; and
  - k. national regulatory initiatives.
21. Approximately 2,350 newly-registered candidates are now participating in the licensing process. Approximately 1,750 are Canadian law school educated licensing candidates. Approximately 600 are internationally-educated candidates, of whom approximately 35% (200+) are Canadian-born candidates who received their law school education outside of Canada and return to become licensed in Ontario.

### **Evaluating the Pathways Pilot Project**

22. A pilot project is by its very nature a previously untried process whose lifespan is predefined, but whose operation and results are unknown at the outset. It provides an opportunity to investigate a new approach and its merits with all the inherent challenges, understanding that its performance and viability must be the subject of a critical lens and knowing that its permanence is not to be presumed.
23. The Articling Task Force believed that an alternative to articling must be explored, but was reluctant to entrench an approach without an opportunity to weigh the outcomes. It also understood that in three years that exploration would be evaluated to consider its effectiveness as a means of transitional training, the acceptance or otherwise of the alternative and cost and equity issues.<sup>4</sup> By adopting a three instead of five year timeline, Convocation was, in the Committee's view, reflecting a desire to explore without entrenching, while preserving the possibility for extending the evaluation timeline in certain circumstances.
24. One of the purposes of the evaluation process approved as part of the pilot was to capture quantitative and qualitative data to assist in determining how well the components of the pilot are achieving their stated goals and to gain insight into the needs and perceptions of candidates, instructors, Articling Principals and others involved in the process.
25. At the same time, however, the evaluation was to consider contextual issues such as candidates' and the profession's acceptance of the approaches to transitional training, costs, long term viability/sustainability of the LPP pathway and readiness of candidates for licensing. The ability of each pathway's content to further candidates' competency development was clearly important, but only one part of the evaluative equation.

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<sup>4</sup> Pathways Report. October 2012, paragraph 37.

**Consultant's Evaluation Report - Years One and Two (the "Evaluation")**

26. The English and French LPP were individually designed and implemented. Both have clearly met the Law Society's specifications related to the competencies to be addressed and assessed, but impressively each design has also specifically and imaginatively determined how best to realize the goals within the context in which the programs operate.
27. **TAB 2.1: LPP Overview**, setting out descriptions<sup>5</sup> of the structure and approach of the English and French LPP, reveal the sophisticated and practical nature of each. But beyond the description of the LLP framework, the Committee has been impressed at how each provider has breathed life into the programs and, remarkably, done so in a very short time. This reflects the expertise the two providers have brought to the design and implementation. The LLP providers have also,
  - a. furthered alliances and partnerships with members of the profession, judges, and lawyers with a view to,
    - i. furthering the advancement of French language legal services in the case of the Ottawa LPP; and
    - ii. developing expanded and new networks for work placements in both the English and French LPP;
  - b. created rigorous programs that provide systematic and consistent exposure to all the required competencies; and
  - c. advanced principles of practice management in practical training, useful to sole or small firm practice.
28. The Law Society retained Research and Evaluation Consulting (RaECon) with Dr. A Sidiq Ali, a scientific psychometrician acting as the Senior Evaluation Consultant, to develop the appropriate tools for capturing the required data. Applying the tools, Dr. Ali has now provided the Law Society with his Report (the "Evaluation") considering the 2014-2015 and 2015-2016 data. The Evaluation is set out at **TAB 2.2: Evaluation**. It reflects the evaluation process Convocation approved in February 2014.
29. The following data collection tools have been developed and implemented for the Pathways evaluation:
  - a. Law Practice Program Entry Survey
  - b. Law Practice Program Withdrawal Survey

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<sup>5</sup> The information appears in the Evaluation at pages 18-21 and is taken from Ryerson University's and the University of Ottawa's annual reporting to the Law Society.

- c. Law Practice Program Focus Group Protocol
  - d. Articling Program Focus Group Protocol
  - e. Law Practice Program Exit Survey
  - f. Articling Program Survey for Candidates
  - g. Articling Program Survey for Principals
  - h. Law Practice Program Post-License Survey for New Lawyers
  - i. Law Practice Program Post-License Survey for Employers of New Lawyers
  - j. Articling Program Post-License Survey for New Lawyers
  - k. Articling Program Post-License Survey for Employers of New Lawyers
30. The Committee's mandate is to evaluate the pilot overall, with the LPP comprising one pathway and the Articling Program comprising the other.
31. The Evaluation speaks to both the English and French LPP, so that the Committee has been able to examine the similarities and differences. Overall, however, the Evaluation provides collective findings about the LPP.
32. The Evaluation is detailed, relies on relevant information, in keeping with the approved evaluation process, and after two years reflects consistency in data and information that the Committee overall is satisfied is unlikely to be markedly different following the third year.
33. The Evaluation focuses on four questions:
- 1. Does the Law Practice Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
  - 2. Does the Articling Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
  - 3. How does each pathway, LPP and Articling, support the licensing candidates' opportunity to obtain the transitional experiential training requirement of the licensing process?
  - 4. Is one Pathway, LPP or Articling, more effective in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?
34. In answering these questions the Evaluation has kept in mind,
- a. the five goals of transitional training that the Articling Task Force established:
    - 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 candidate to practitioner.
5. Introduction to systemic mentoring;

and

- b. the requirement that each pathway be designed and implemented to be fair, accessible and objective, the meaning of which is defined in the Evaluation.<sup>6</sup>

35. The Evaluation observes that the goals for competency development in each pathway are the same, but the way each aims to achieve the goals differ substantively. Each must be evaluated on its own merit and then compared wherever that may be possible. In particular, the Evaluation has noted that,

it is a challenge to disentangle the sources (program structure and/or delivery) of marked differences in program outcomes (e.g. calls to the Bar, hire-backs, first year practice). Still at this juncture we see some trends in aspects of program delivery and outcomes beginning to emerge.<sup>7</sup>

36. In developing its recommendations, the Committee has paid particular attention to the Evaluation findings under the four questions, summarized here.

### **Effectiveness of Each Pathway to Provide Transitional Training (Questions 1 and 2)**

37. In considering the effectiveness of each pathway to provide transitional experiential training in defined areas and with a focus on fairness, accessibility and objectivity, the Evaluation has found the following:
- a. Both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. The LPP provides more systematic and consistent exposure to all the required competencies than is the case in articling. Thus far, complete competency coverage in articling placements has proven difficult, especially in non-law firm settings and where work contexts may be more limited in their focus.
  - b. Both the LPP and Articling Program show high participant ratings for value and effectiveness of the programs in addressing the five goals of transitional training. Generally, the pathways are seen as delivering fair, objective and accessible transitional, experiential training, though some aspects are not viewed as fair.

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<sup>6</sup> Evaluation, pages 16 and 17.

<sup>7</sup> Evaluation, page 2.

- c. Overall, candidates in both pathways are considered to have met or exceeded competency expectations in the pathways' defined areas, based on LPP provider and Articling Principal assessments. It is however the case that the LPP candidates and program face a number of challenges around fairness, accessibility and objectivity that are greater than those faced within the Articling Program. Given the newness of the program, the Evaluation notes the role that a lack of awareness and understanding may play, but sees some trends emerging. It also notes a certain degree of negative perceptions from candidates.
- d. Respecting *fairness*, there is a perception among candidates and some Articling Principals that the LPP is viewed as second-tier transitional experiential training with stigma attached to those who complete it. It is important to note that this does not speak to the actual quality of the LPP, but about perceptions that exist and persist.
- e. Responses to questions about the LPP work placements, as contrasted with articling, raised a sense of unfairness among around the LPP work placements focusing on,
  - i. the lack of choice in work placements – candidates were offered a single placement;
  - ii. the significantly shorter time for hands-on learning in the “real world” and networking exposure;
  - iii. the reduced opportunity to develop a relationship with supervisors and to prove oneself worthy of responsibility and hire back; and
  - iv. serious discrepancy in percentage of LPP candidates paid for placements (70-73%) as against articling candidates (90%).
- f. The Evaluation states that further perceptions around unfairness of the LPP over articling relate to metrics around,
  - i. withdrawal from the LPP program, particularly among those educated in Canada (15-18% versus approximately 1% for articling). Just short of two-thirds of the withdrawal survey respondents are candidates educated in Canada; only one-third of the respondents to the LPP Entry Survey received their legal education in Canada. The Evaluation posits that “at this point, Canadian law school graduates in the LPP (less than half the LPP population over two evaluation cohorts) withdrew from the LPP at almost twice the proportion as their internationally-educated counterparts.”

- ii. fewer LPP candidates were called to the bar in June 2015 (59% of LPP candidates versus 91% of articling candidates) and June 2016 (57% of LPP candidates versus 92% of articling candidates.) Just under 60% of candidates in the LPP reported that they expect to be called to the Bar in their originating licensing year, compared to just over 90% of the candidates in the Articling Program. So, almost a third fewer candidates by proportion in the LPP than in the Articling Program planned to be called to the Bar during their originating licensing year.
  - iii. lower hire-back statistics exist for those in the LPP. Of those who expected to be called to the Bar in their originating licensing year, about one-third of candidates in the LPP expected to be hired back, compared to almost half of the candidates in the Articling Program (34% of those who responded to a survey in Year One; 32% Year Two) versus articling (48% in Year One; 47% in Year Two).
- g. Accessibility to a pathway is defined in the Evaluation as being “reachable, attainable, easily understood, and meeting the needs of people from a variety of backgrounds and a variety of characteristics, including: ethnicity, race, abilities, disabilities, age, gender, language abilities; and preferred learning styles and abilities:”<sup>8</sup>
- i. The Evaluation notes that the LPP was not the first choice for almost two-thirds of the LPP candidates in Year One and for almost three-quarters of the candidates in Year Two.
  - ii. Despite this, the LPP is serving proportionally more candidates than the Articling Program from each of the following demographic categories: internationally-educated, racialized, age 40+ and, at least in Year One, Francophone.<sup>9</sup> In Year One the LPP had one-third (33%) of its enrolled candidates identifying as racialized as compared to just over one-fifth (21%) of the enrolled candidates in the Articling Program (a difference of 12%), and the *Age 40+* category with 17% of candidates in the LPP and just 2% of the candidates in the Articling Program identifying themselves this way (a difference of 15%). These discrepancies grew in Year Two, with 32% of the LPP reporting themselves to be racialized compared to 18% for the Articling

<sup>8</sup> Evaluation, page 17.

<sup>9</sup> For both evaluation cohorts, there are virtually equal proportions of the candidates in the pathways that identify themselves as LGBT. But in Year Two, there are now a greater proportion of Francophones in the Articling Program than the LPP (5% to 2%, respectively), and also there are essentially the same proportion of candidates that describe themselves as Aboriginal (2%) across pathways and both evaluation cohorts.

Program (now a difference of 14%); and 19% of the LPP in the *Age 40+* category compared to 2% for the Articling Program (now a difference of 17%).

- iii. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school, and these respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school graduate colleagues.<sup>10</sup>
- iv. The vast majority (89% in Year One and 91% in Year Two) of the articling candidates graduated law school in same year as their enrollment in the licensing process, while about half (46% in Year One and 58% in Year Two) of the candidates in the LPP graduated in the same year as their enrollment in the licensing process. Further, about one-tenth (11% in Year One and 10% in Year Two) of the candidates in the LPP graduated from law school three years or more previous to their enrollment in the licensing process, compared to just about 1% of those in the Articling Program in both evaluation cohorts.
- v. There are proportionally more lawyers from the Articling Program than from the LPP who are practising law in their first year (82% versus 67%) and 25% (41 lawyers) of the LPP new lawyers are practising as a Sole Practitioner, compared to 6% from the Articling Program (86 lawyers). Further, 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business* as compared to 48% of the new lawyers who articulated and are working in this capacity.<sup>11</sup>
- vi. Given the available data, any negative financial impact would be greatest on the candidates in the LPP, as these candidates earn money for four months, versus their colleagues in the Articling Program who earn for 10 months. Further, there is a considerably greater proportion of placements in the LPP than the Articling Program that are unpaid. Many articling candidates

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<sup>10</sup> Evaluation, page 84.

<sup>11</sup> Evaluation, page 5.

have their licensing process fees paid and are provided paid time off to prepare for and write the licensing examinations. The Focus Group data indicates that many candidates in the LPP had to take part-time jobs to supplement their income during the licensing process and still others in the LPP were told they would not be able to keep a part-time job during the training course, giving up part-time jobs to complete the LPP.<sup>12</sup>

- vii. Articling Program Focus Groups in both cohorts reveal a perception that out-of province or out-of country candidates are disadvantaged in accessibility to articling positions. Candidates also felt that the search process puts those who are interested in social justice/child protection work at a disadvantage, as there is a deficit of paid opportunities and effective job search resources.
- h. Both pathways contain components of objectivity in the performance appraisal of candidates, more so in the LPP than in the Articling Program. However, there is a lack of standardization in how competencies are assessed between each pathway. Moreover, there is a lack of assessment rigour in the process across both pathways, evidenced by the fact that the “sign-off” of readiness for practice in this part of the licensing process is left to Articling Principals and the LPP providers, rather than the Law Society.

### **Supporting Candidates’ Opportunity to Obtain the Transitional Experiential Training Requirement (Question 3)**

- 38. In answering this question the Evaluation highlighted the following findings that to date,
  - a. the LPP has served proportionally more internationally-educated, racialized, Francophone and Age 40+ candidates than the Articling Program. Slightly more than half (51% on average) of the candidates in the LPP are internationally-educated candidates.
  - b. for almost two-thirds of the candidates in the LPP, it was not their first choice for transitional experiential training. Graduates of Canadian law schools, who make up slightly less than half of the LPP candidate population, withdraw from the LPP at twice the frequency of their internationally-educated counterparts.
  - c. about 1 in 7 candidates in the LPP withdraw compared to 1 in 100 in the Articling Program. To the extent information is available on why

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<sup>12</sup> The impact of the tuition fees on all candidates will be discussed below, under financial viability.

candidates withdraw it appears that locating an articling job is a significant reason, as are financial obligations. There continue to be perceptions of stigma related to completing the LPP rather than articling, but there is little data yet from employers and post-licensed graduates on whether the perception is correct.

- d. Complete competency coverage in articling is difficult, especially in non-law firm placements. The LPP is more consistent and complete in its coverage.

#### **Effectiveness of One Pathway over the Other (Question 4)**

39. Each pathway has its own structure, delivery and assessment tools. However, the Evaluation has made some important findings under effectiveness:

- a. Within each pathway candidates over the two years are overall meeting or exceeding expectations in their respective programs. However, “a lack of performance assessment commonality makes a comparison of pathway effectiveness based on candidate performance in the defined areas of skills and tasks invalid. In other words, it is very difficult, if not impossible, under the current measurement model to make an apples to apples comparison between the two pathways of candidate performance in the competency areas.”<sup>13</sup>
- b. The Evaluation also notes that “to judge the effectiveness of one *pathway* over the other in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice will rely not just on perceptual measures, which are subjective, but on some key performance metrics such as hire-back rate and rate of being called to the Bar, which are measures of the purposeful end-products of the licensing process. Ultimately, this *purpose* of the pathways delivery we believe cannot be extricated from the delivery itself. Therefore, these metrics are the goal of the licensing process and the only common metrics in this vein between the programs. Having said that, it is then clear that after two years of the *Pathways* project, data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice.”<sup>14</sup>
- c. The Evaluation then concludes by noting,

However, we do not have to make this determination now, especially since we have post-licensing data from just one cohort at this juncture. But would it be surprising if we made the same

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<sup>13</sup> Evaluation, page 140.

<sup>14</sup> Evaluation, pages 140-141.

determination after three years of this study? This evaluator's opinion is no, based on the common, key metrics. How much of an advantage do candidates in Articling have over their LPP colleagues in being prepared for the call to the Bar and being hired-back, based on the structure of the pathways and not on competency development within each pathway? It is very difficult to disentangle these data to conclusively determine how many more candidates from articling than from the LPP we should expect to be called to the Bar and hired back, based on the advantages of the structure of their pathway versus the structure of the LPP. So perhaps, we need to re-visit the wording of this evaluation question, Question #4 from our Evaluation Framework, or at least define more clearly how, or with what data, we may best answer this question."<sup>15</sup>

## Committee Analysis

### Sufficiency of Information on Which to Evaluate the Pilot Project

40. The Committee's first consideration is whether it has sufficient evidence to properly evaluate the pilot project, such that an extension for up to an additional two years is not necessary.
41. After careful consideration of the information received in the course of the Committee's fact gathering, ten of the 14 members are of the view that there is sufficient evidence to properly evaluate the pilot. The Committee feels it is essential to reflect some of the discussion around this issue and the different perception of, or at least questions around, sufficiency, expressed by four of its members.
42. If, as Convocation decided, the pilot was to be evaluated in its third year, the evaluation would have to be based on two years of evidence and information. The question the Committee has asked is whether conclusions can reasonably be drawn from this amount of evidence or whether more time is required to be in a position to do so.
43. With two years of information, the Committee is unanimously of the view, discussed in greater detail below, that both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. The Committee agrees that it does not require further information on either pathway to be able to evaluate those components of the pilot.
44. The more complex discussion to be undertaken as part of the evaluation is whether the LPP is likely sustainable in the longer term and whether it is accomplishing the outcomes for which it was introduced. The Committee members have canvassed the factors that speak to the issue of sustainability and outcomes.

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<sup>15</sup> Evaluation, page 141.

45. For four Committee members, the information currently available appears insufficient to allow for conclusions to be reached. In their view it is necessary to ask more questions and allow more time for the LPP pathway of the pilot to operate so as to better determine whether some of the concerns around sustainability and outcomes can be resolved by the passage of time. To the extent there are doubts about the sustainability of the LPP they think that as the data suggests that candidates for equality-seeking groups are continuing to encounter difficulty accessing the Articling Program,<sup>16</sup> and that for some equality-seeking candidates the LPP allows them entrance to the licensing process, that it would be advisable to consider, explore and possibly put in place alternatives before ending the current pilot. They are also of the view that more weight should be given to the positive features of the LPP pathway, by allowing more time to consider them.
46. The Committee's recommendations in this Report, however, reflect the significantly more prevalent view of 10 of its 14 members that there is already sufficient evidence around the important contextual issues that must be considered in evaluating the pilot. The patterns and preliminary findings that are emerging after two years are consistent from year to year. Early data available from the third year, such as registration, is also consistent with the pattern. The likelihood of substantially different information being available if the pilot were to be extended a year or even two is minimal. Given the serious implications of extending the pilot, discussed below, it is prudent and advisable to provide recommendations to Convocation now.
47. Convocation must be taken to have known that any evaluation of a three-year pilot program would face the reality that the program did not have a long time to establish itself. Nonetheless, it directed such an evaluation and the Committee has assumed responsibility to assess the pilot as it exists.

### **Evaluation of the Pathways Project**

48. The recommendation to end the LPP pathway at the conclusion of the pilot is that of nine members of the 14 member Committee. Three members disagree and two abstain.

#### **a) Effectiveness as Transitional Experiential Training**

49. While focus groups in each of the pathways revealed some discontent on aspects of the administration and substance of the programs, overall the Evaluation has concluded that both pathways provide exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback. Candidates in both pathways rate generally high levels of effectiveness and value of their program.

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<sup>16</sup> See paragraphs 139-140 of this Report.

50. As mentioned at the outset, the Committee has paid particular attention to the noteworthy efforts both providers of the LPP, Ryerson University for the English program and the University of Ottawa Faculty of Law (Common Law) for the French program, made to develop well-designed, coherent and interesting programs in a very short period of time and their willingness to respond to feedback for the second year of the program. Similarly, a significant number of lawyers, law firms, judges and provider staff have assumed significant roles as mentors, advisors, teachers and work place supervisors and offered support for the LPP in numerous ways. There has also been positive feedback among candidates, lawyers, mentors, lecturers and others. The LPP has demonstrated that transitional experiential training can be delivered effectively in ways that differ from the traditional articling format. Indeed, in some ways the LPP delivery is superior to the Articling Program for consistency and attention to sole and small firm practice realities.
51. The Committee has considered the role that the enhancements and new evaluative measures to the Articling Program have played in the pilot. While candidates and principals have been critical of the usefulness of the enhancements the Committee has noted that the use of BARS-based measurement tools<sup>17</sup> is providing a more systematic understanding of the competencies being addressed, the gaps in coverage and the reasons for these. Moreover, Articling Principals appear to be more engaged in the actual assessment of candidates in Year Two than in Year One. As well, some new information is emerging through the surveys about why lawyers participate in the Articling Program.<sup>18</sup> Unfortunately, however, low response rates in certain areas minimize the usefulness of the data.
52. Given the fundamentally different structure of each pathway, however, it is not possible to determine, based on content and implementation alone, whether one provides that exposure, growth and access significantly more effectively than the other or results in candidates who are better and competently equipped to serve the public. Moreover, since it is not the Law Society, but the LPP providers and their assessors and Articling Principals who determine whether candidates meet the competencies, there is an absence of standardization in how competencies are assessed, as well as subjectivity in how performance is evaluated. Articling candidates are also spread out over more than 1000 settings, in contrast to the LPP, which for at least part of the time is confined to two locations, lending itself to more consistent observation.

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<sup>17</sup>The Behavioural Anchored Rating Systems (BARS) were developed with the assistance of exemplars from the profession, who came from a variety of practice areas and practice settings (private law firm, in-house, government, etc.). The BARS provide a scale of expected achievements in each critical skill or task for five key skills competency areas. Raters, or principals and their designates, are asked to assess each articling candidate's completion of the skill or task based on the rating system. The system includes a "not applicable" response for those situations in practice where a particular skill or task may not be achievable as it is not a common activity in that milieu.

<sup>18</sup> *Recruitment*, as firms utilize the candidates in articling positions to fill their hiring needs for entry to practice lawyers at post-call; *Responsibility*, as respondents felt they had a duty to help train and deliver new lawyers into the profession; and to a much lesser extent *Rates*, as the pay rate that candidates are remunerated at are below what a first-year associate lawyer earns, so it makes economic sense to some firms to hire articling candidates to perform many of the tasks a first-year lawyer would be expected to complete.

53. Finally, while candidate perception of the value of the skills training and experiences to the development of their competency is a critically important component of the evaluation, and one Convocation sought to address, it remains a subjective measure with all the limitations that implies.
54. However, the program content is only one aspect of the factors the Committee must consider. In the Committee's view, the Evaluation's finding that performance metrics are relevant in assessing the two pathways, is correct. It is clear that after two years of the pilot, performance metrics data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice.
55. In addition, as the Committee has sought to evaluate the pathways, it has had to recognize and pay attention to certain critical realities around sustainability and pilot outcomes that have presented themselves in the pilot over the first two years.

**b) "Second-Tier" Perception**

56. One of the fears about creating an alternative pathway for transitional experiential training – the LPP - was that it would not be accepted as an equal path to licensing. The Articling Task Force addressed concerns on how the profession might treat the program and its graduates. There was concern that to the extent certain categories of candidates were over-represented in the LPP, their careers could be stigmatized as a result.
57. At the same time there was a sense among many that without trying an alternative pathway, the Law Society and others would miss an opportunity to find innovative solutions to intractable problems. Overall, the Task Force agreed to try an alternative approach, understanding that stigma and second-tier perceptions would have to be among the relevant factors in evaluating the pilot.
58. The Committee observes at the outset of the analysis of second-tier perception that over the last two years there has been positive feedback about the LPP pathway and the performance and competence of the candidates emerging from it. This has come from a variety of sources including work placement supervisors, lecturers, lawyers and mentors in both the English and French LPP. Although the LPP has been the second choice for the majority of candidates in it, it is true that for a percentage of the candidates it was the first choice. For those who have now completed the LPP and been licensed it was a path to licensing.
59. Despite this, after two years, and at the outset of the third, in the Committee's view there is evidence that the alternative pathway of the LPP is *perceived* as second tier. The Committee strongly emphasizes the language of "perception," because there is no evidence to suggest that the LPP is *in fact* second-tier or merits the perception. Indeed, as the Committee has discussed above, the LPP is to all observation of very high quality and may, in fact, excel over articling in a number of areas.

60. One of the most telling aspects of the evidence of second-tier perception and perhaps most significant, is that the majority of candidates in each licensing cohort <sup>19</sup> appear to consider the LPP alternative as a second choice or, indeed, no choice at all.
61. When the Law Society established the dual pathways, it was estimated that there would be in the range of 400 candidates in each licensing cohort in a position to take advantage of the opportunity – essentially the number of candidates in the process who were estimated to be without an articling placement at the usual starting dates of placements (July/August). There was consideration that there could be as many as 600 candidates who might wish to take the LPP in its first year – made up of the 400 unplaced candidates from the immediate cohort and additional unplaced candidates from the previous two years of cohorts.
62. The LPP failed to interest a significant portion of licensing candidates who could have chosen this path. In the two years of the LPP, there have been approximately 220 candidates in each of the two years in the English program and 14 in the French program. As of September 6, 2016 registration numbers for 2016-2017 are 241 in the English LPP and 25 in the French LPP. In the previous two years, approximately 50 candidates between the two programs have also withdrawn within the first four weeks. The final number of registrants in each of the LPP programs will, therefore, not be known until the end of September.
63. As of the traditional starting dates of experiential learning (August) in each year of the pilot, and based on all candidates moving through the process<sup>20</sup> 15-18% of the members of the group have indicated they are still actively searching for articles or have not advised the Law Society of their choice of pathway, despite the LPP being available to them. By the spring of each of the licensing years, approximately 10% of the group are still searching or not selecting, with the others having found articling positions in the interim.
64. A declining percentage (38% in Year One and 27% in Year Two) of candidates in the LPP reported that it was their first choice for transitional experiential training. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school. These respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school educated colleagues.

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<sup>19</sup> The cohort is all candidates in a licensing year.

<sup>20</sup> Approximately 3,400 candidates during the three-year cycle.

65. In Year Two, most of the almost three-quarters (73%) that indicated they did not choose the LPP as their first choice for transitional experiential training had reasons that were related to three main themes:
- a. Candidates prefer articling because it is paid, longer in duration and providing more income than the LPP, thus “disadvantaging” those in the LPP.
  - b. Candidates prefer articling because it is “traditional,” and are wary of the “perception of the legal community,” which sees the LPP as the lower of a “two-tier” system of experiential training, creating a “stigma” around the LPP and its candidates, which may be “detrimental” in finding post-call employment.
  - c. Many respondents declared they could not find an articling placement, so enrolled in the LPP as a result.
66. In both evaluation cohorts, almost all (99%) of the respondents to this question, indicated that they had searched for an articling placement. In a Year Two LPP Focus Group there was consensus sentiment that candidates in the LPP were not in the “pipeline of law school, to summer at a big law firm, to Bay Street.”<sup>21</sup>
67. Some candidates in the LPP surveyed on the admission process to the LPP raised concerns that everyone who applied for admission into the LPP was admitted. While this method of entry may seem to be an equitable process, many candidates preferred a “vetting” process so not all applicants were admitted. The implication is that a non-competitive entrance structure feeds the potential for stigma for those in the process. This is discussed below, under Readiness for Licensing, because to the extent some LPP candidates have greater difficulty completing the licensing process it may feed the perception of second-tier.
68. The Evaluation noted second-tier concerns raised in focus groups as follows:
- Some of the LPP Focus Group participants expressed that this notion of stigma is linked to nomenclature, for example, “LPP candidate” versus “articling candidate,” when both could be “students at law.” In any case, there seems to be a difference between the two types of candidates in the eyes of the profession. In some instances, the notion that candidates in the LPP are still in school, because they attend the training course at Ryerson University or the University of Ottawa, contributes to a general feeling of inequality among the pathways. Also, some of the LPP Focus Group participants suggested that marketing and branding of the LPP and its association with Ryerson, which does not have a law school, is partially to

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<sup>21</sup> Evaluation, page 127.

blame for the sense of inequality among the pathways, contributing to the stigmatization of the LPP. However, survey data was not representative of the Focus Group comments about marketing or branding of the Ryerson LPP. On a small-scale but very real basis, a candidate in one of the Year One LPP Focus Groups who was completing a work placement in the same organization and at the same time as an articling candidate became visibly upset at the way s/he was treated at the placement organization compared to the articling candidate in terms of remuneration and responsibilities given.<sup>22</sup>

69. As noted above, there is only very limited data on post-licensing employment, but it indicates that there are proportionally more lawyers from the Articling Program than from the LPP who are practising law in their first year: 82% versus 67%; and 25% (41 lawyers) of the LPP new lawyers are practising as a Sole Practitioner, compared to 6% from the Articling Program (86 lawyers). Further, 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business* as compared to 48% of the new lawyers who articulated and are working in this capacity.
70. The issue is further exacerbated by another consideration. The Committee recognizes that demographic data depends upon candidates from the various demographic categories self-identifying. As such, what is drawn from the data is illustrative, but should not be presumed to be definitive of all or even the majority of equality-seeking candidates in each cohort. Nonetheless, the Committee has been concerned by the information it does have.
71. The LPP is serving proportionally more candidates than the Articling Program from each of the following demographic categories: internationally-educated, racialized, Age 40+ and, at least in Year One, Francophone. Significantly, many of these candidates, particularly those educated in Canada, are in the LPP by other than first choice. The details of this are set out above.
72. Part of the discussion during the Articling Task Force focused on concerns that certain demographic categories were over-represented among those candidates who were unable to secure articling jobs and that racialized and older candidates were particularly affected.
73. For some, the alternative pathway was seen as a possible way to,
  - a. provide a means for those unable to secure articles to nonetheless have the opportunity to become licensed; and

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<sup>22</sup> Evaluation, page 134.

- b. to develop a true choice for candidates with a different focus on practice skills, the development of readiness for small firm practice and the availability of work placements in non-traditional areas.
74. For others, however, creating an alternative pathway was viewed as a convenient way to remove pressure from an articling process that was discriminatory, by diverting scrutiny away from the issues. The Articling Task Force characterized the concerns as follows:
- Many of the submissions from equality-seeking groups concluded that given the issues surrounding placements for equality-seeking groups any proposal for alternative pathways that retained articling as an option would be problematic for a number of reasons. These include the possibility of creating two classes of lawyers with the preferred group being those who articulated, the difficulty of adding debt to those already bearing a burden from law school expenses, and the belief that by providing an alternative to articling the profession would be able to mask the uneven treatment of equality-seeking groups.<sup>23</sup>
75. If indeed a number of candidates from equality-seeking groups already experienced stigma at earlier stages of their legal education and training, the introduction of a program that could be seen as channeling them out of the mainstream would not necessarily assist.
76. A few members of the Committee have expressed concern that a focus on second-tier perception may not be fair to a program that is so new and that for all the considerations set out here has nonetheless garnered positive feedback in a number of quarters and has offered an alternative for a number of candidates.
77. The Committee is nonetheless of the view that all of these factors suggest that there are compelling reasons to be concerned that the LPP is perceived as second-tier, notwithstanding the positive feedback about the LPP that exists. Moreover, the Committee does not believe the depth of this attitude can be attributed to the fact that this is a pilot project and that if the LPP were made a permanent program that perception would disappear.
78. Would the perception of second-tier status change if the LPP were extended for up to two more years? The Committee cannot, of course, provide a definitive answer on this and a few of its members believe or ask whether, in addition to the reasons listed above, it is worth continuing for another year or two to find out if there is greater acceptance of this pathway in the legal community.

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<sup>23</sup> Pathways Report to Convocation. Paragraph 85.

79. However, the Committee does not think the evidence after two years of the pathway has shown signs that the perception of second-tier status is diminishing. The Committee accepts that there is little concrete evidence yet about law firm attitudes toward hiring the graduates, but the perceptions of candidates themselves reveals a deeply held view about which pathway is preferable. The Committee is strongly of the view that another year or two will not make the difference.

### **c) Financial Sustainability of the LPP**

80. At the commencement of the pilot, all candidates in the licensing process, not just those in the LPP, were assessed an increased licensing fee of an additional \$1900 per candidate above the then fee, to support the LPP pathway of the pilot. This fee is currently supporting final registrations of approximately 230 licensing candidates per year.
81. Lawyer licensees are also supporting the cost of the LPP by contributing \$1 million annually as part of their licensing fees, although this amount has been allocated in years preceding the pilot project for other licensing-related matters.
82. Given the lower than expected numbers in the LPP, the per-candidate cost of the program is significantly greater than was expected. This also raises issues of fairness to all candidates and debt load issues. The majority of this pathway expenditure is currently being financed by all licensing candidates to support an average of fewer than 230 of their colleagues – or only 10% of each cohort.
83. While attention has properly been focused on the financial issues that affect LPP candidates (lower or no payment in work placements, lack of financial support for examination study, etc.), the fact remains that many non-LPP candidates who are subsidizing the LPP candidates are also under financial strain, carrying high debt loads, responsible for families, or receiving modest articling remuneration, etc. The Committee would be remiss if it did not consider the impact the alternative path has also had on those not actually in it, but supporting it.
84. While this approach was considered appropriate for the duration of the pilot project, the Committee questions whether it is sustainable or fair to extend the pilot or make the LPP permanent on this same basis. On the other hand, were the subsidy to be removed, based on the average number of candidates who have been in the LPP over the last two years, the unsubsidized cost per candidate in the LPP could be as high as \$17,000. This would lead to a variety of other issues around fairness:
  - a. Is it fair to have a licensing process whose fees are determined by the pathway to licensing chosen, particularly if the choice is not voluntary?

- b. Given that there are fewer candidates in the French than the English LPP, making the cost per candidate higher, would this result in a further set of differential fees?
  - c. What would the impact of unsubsidized fees be on the number of candidates who can in fact afford the cost? If the number of candidates drops further the cost per candidate will inevitably rise.<sup>24</sup> Given the discussion above about the perception of second-tier status and the implications of that perception on the numbers within the LPP now, how do the two factors (second-tier and cost) affect the likelihood that the LPP is sustainable?
85. Financial sustainability is also raised by the inability of the program, at least to date, to secure more than approximately 70% paid work placements, with at least some of these whose payment is no more than a nominal stipend. The French LPP has offered paid placements in both years, but the significantly lower number of required work placements has likely made that more feasible. A number of articling candidates have also received paid time off to prepare for and write the licensing examinations, which appears not to have been available to LPP candidates.
86. These realities may have implications for candidate success if they are unable to properly support themselves. Moreover, they point to a systemic issue that the alternative pathway has to date been unable to overcome. While the alternative pathway may be accomplishing the objective of providing appropriate exposure to transitional experiential training competencies, growth in practical skills development and access to mentors and their feedback and of addressing the five goals of transitional training, the external influences and contexts potentially undermine both the pathway and its candidates, through no fault of their own.
87. The Committee finds that these financial burdens and inequalities cannot help but have a significant impact on the long term sustainability of the LPP pathway. A few members of the Committee have suggested that an extension of the pilot would provide a further opportunity to investigate reduced costs for the LPP. In the Committee's overall view, however, the financial issues and the perceptions of second-tier and stigma, discussed above, make the LPP unsustainable. Deferring the decision for a year or two will not, in the Committee's view, likely change that reality.

#### **d) Readiness for Licensing**

88. On the basis of the perceptions of second-tier, the impact of this on equality-seeking groups and the financial realities of the LPP, the Committee is of the view that the pathway is not sustainable. But the Committee has also considered the issue of

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<sup>24</sup> If the proposed changes to the licensing examinations, discussed below, are approved, this would likely reduce the number of candidates eligible to enter the LPP.

readiness for licensing in the two pathways, as in its view this too is a relevant part of a discussion of the pilot.

89. It is important to contextualize this discussion with two points:
  - a. The first is that there are hundreds and hundreds of candidates in both pathways from a broad array of experiences, demographic categories, educational background and countries of origin who will complete the licensing process in a single licensing period, without have to rewrite any examinations and with no other difficulties. By passing the licensing requirements, including the completion of the transitional experiential training requirements in both pathways, they will have demonstrated the entry-level competency required for licensing.
  - b. The second is that it is clear that neither pathway is intended to serve a licensing examination preparatory function. Indeed most candidates will have written the licensing examinations prior to beginning the transitional experiential training phase, although as will be seen below a number of them may have failed one or both examinations on the first attempt and will have to rewrite these examinations and pass them before being licensed. It is nonetheless important in the Committee's estimation to consider examination data to assess whether it provides any additional insight into either pathway and in particular the readiness of some candidates for licensing.
90. As mentioned above, securing an articling position is the result of a competitive process. By design and for valid reasons in the context of a pilot project, entrance to the LPP is guaranteed to anyone who applies, having completed their education in a Canadian common law school or obtained an NCA certificate. In the longer term, however, it is important to consider what this means for the sustainability of the LPP pathway, both in terms of the second-tier status issue and issues of candidate readiness for licensing.
91. The Evaluation has highlighted the following, that may speak to issues of readiness of some of the candidates to proceed with licensing:
  - a. The vast majority (89% in Year One and 91% in Year Two) of the articling candidates graduated law school in same year as their enrollment in the licensing process, while about half (46% in Year One and 58% in Year Two) of the candidates in the LPP graduated in the same year as their enrollment in the licensing process. Further, about one-tenth (11% in Year One and 10% in Year Two) of the candidates in the LPP graduated from law school three years or more previous to their enrollment in the licensing process, compared to just about 1% of those in the Articling Program in both evaluation cohorts.

- b. Just under 60% of candidates in the LPP reported that they expect to be called to the Bar in their originating licensing year, compared to just over 90% of the candidates in the Articling Program. So, almost a third fewer candidates by proportion in the LPP than in the Articling Program planned to be called to the Bar during their originating licensing year.
  - c. As discussed above, a significant proportion of the LPP cohort is made up of NCA candidates, both those Canadian-born candidates who were educated in law schools outside of Canada and international candidates. In Year One, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school, and these respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for transitional experiential training than the Canadian law school graduates. In Year Two, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for transitional experiential training than their Canadian law school graduate colleagues. Many of these candidates are completely outside the acculturation process that Canadian educated law students experience over three years of law school with its approach to legal education and exposure to legal networking and ability to observe Canadian legal practice in action. This applies to both internationally born and Canadian born NCA candidates.
92. In addition, the Committee has considered the two-year comparative data on licensing examination performance to round out the information available to it on which to inform its recommendation-making process. The current examinations in the licensing process are standardized objective assessments. They require candidates to study, comprehend, analyze and then apply their knowledge, skill, ability and judgment to situational test questions. The ability to successfully complete these objective assessments requires candidates to exhibit a functional practice capacity that meets the level of minimal competence at entry to the profession.
93. Candidates have three opportunities to pass the objective examinations. Some candidates will fail the first writing of examinations, but will go on to rewrite and be successful. However, the results on the first writing of examinations are an important indicator of capability in the licensing process requirements and readiness for the transitional experiential learning component of licensing and in future law practice.
94. Importantly, they are also the only statistic in the licensing process that is capable of being reliably compared as between LPP and articling candidate groups. The results on the first attempt at the licensing examinations provide insight into the performance capacity of the candidates, based on,

- a. legal education (Canadian law school or international law school through the NCA); and
  - b. a further breakdown by the current dual pathways for transitional experiential training – the Articling Program or LPP.
95. The calculations for failure rates are based on all examination results of all candidates who wrote licensing examinations for the first time between March 2014 and March 2016 (7 sittings of both licensing examinations).

<b>Legal Education –<i>Canadian or International with NCA</i></b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All Licensing Process Candidates	18.7%
Canadian law school JD/LLB only	13.0%
NCA Certificate of Qualification only <sup>25</sup>	47.1%

<b>Pathway – <i>Articling or LPP</i></b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
Articling Candidates only	16.1%
LPP Candidates only	43.0%

96. Approximately 7% to 10% of the candidates in the same cohort who have attempted the examinations will also fail the second attempt at the licensing examinations.
97. Following the completion of the first year of the LPP (2014-15 licensing year commencing May 1, 2014 and ending April 30, 2015), and one full year thereafter, 20% of the LPP candidates have still not been called to the bar due either to an inability to pass the licensing examinations or having exhausted their three opportunities to do so. In the comparator non-LPP group, 10% of candidates from the same entry licensing year have yet to be called to the bar due to lack of success on the examinations.
98. The LPP candidate groups across the two years of the program to date have been comprised of 50% Canadian law school educated candidates, and 50% internationally-educated candidates.
99. The following chart provides the performance results of those LPP candidates who have completed a first sitting of the examinations, prior to commencing the LPP.

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<sup>25</sup>Of these, the failure rate of Canadian born candidates educated abroad on the first attempt of the licensing examinations is 35.4%.

100. The relative performance of the LPP candidates in the licensing process is significantly lower than the average performance for all candidates in licensing, with a 24.3% higher failure rate. In addition, Canadian law school educated LPP candidates, have a 26.4% higher failure rate than all Canadian law school educated candidates in the licensing process. Internationally-educated candidates in the LPP have a 9.1% higher failure rate than all internationally-educated candidates in the licensing process.

<b>Legal Education – LPP Candidates Only</b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All LPP Candidates	43.0%
Canadian law school JD/LLB LPP group	39.4%
NCA Certificate of Qualification LPP group	56.2%

101. The relative performance on the objective licensing examinations of the candidates who found articling placements also differs considerably depending upon the candidates' legal education. Internationally-educated candidates who were in the Articling Program have a 27.4% greater failure rate than the Canadian-educated articling candidates.

<b>Legal Education – Articling Candidates Only</b>	<b>Failure Rate on First Attempt of Licensing Examinations</b>
All Articling Candidates	16.1%
Canadian law school JD/LLB Articling group	10.0%
NCA Certificate of Qualification Articling group	37.4%

102. The Committee is aware that “readiness” of candidates for the licensing examinations may consist of a number of influencing factors, including time and opportunity to prepare, but in evaluating the dual pathways it is incumbent on the Committee, and in its view Convocation, to consider the possible link between examination performance, readiness of some candidates for licensing and the implications for the Pathways evaluation. In particular, this feeds into the issue of perception of second-tier status for those in the LPP, regardless of whether the candidate is part of the group that completes the licensing requirement with no difficulty.

#### **e) The Enhanced Articling Program**

103. As part of the pilot, the 10-month Articling Program was to continue with its administrative structure, but with an additional focus on developing measures designed to enable a more useful evaluation of the Articling Program merit at the end of the pilot. This was to include enhanced documentation for Articling Principals and candidates to complete during the articling period.
104. The focus of this aspect of articling enhancements has been on monitoring the exposure of articling candidates to the critical articling goals and objectives for entry-level practice

(taken from the official Articling Goals and Objectives Lawyering Skills Listing). The reporting and tracking mechanisms in the program were enhanced by adding behavioural ratings systems (BARS) for scoring purposes on the depth of exposure achieved. As well, there continues to be a requirement to complete a formal Training Plan. The Evaluation sets out an Overview to the Articling Program during the pilot.<sup>26</sup> The Evaluation's findings related to articling are discussed above. Articling continues to be the first choice of candidates by a wide margin. Like the LPP it provides exposure to experiential training competencies, growth in practical skills development and access to mentors and their feedback.

105. Complete competency coverage in articling placements has been difficult to achieve, especially in non-law firm settings where work contexts may be more limited in their focus.
106. While the respondents to the Articling Program Candidates' Survey were generally positive in their ratings of value for the Articling Program, they were not as positive as their colleagues who responded to the LPP Exit Surveys. The ratings for "of great value" actually dropped considerably from Year One (43%) to Year Two (32%) in the Articling Program. Seventy-five (75%) of articling candidates rated the Articling Program as "of good value" or "of great value" in Year One, but this number also dropped to 69% in Year Two.
107. Fairness of the articling placement search process and accessibility of the Articling Program continue to show the least satisfaction among candidates in the Articling pathway. An emergent theme uncovered from Articling Program Focus Groups in both evaluation cohorts about the articling placements search is that out-of province or out-of country candidates are disadvantaged in access to articling positions. Candidates also felt that the search process puts those who are interested in social justice/child protection work at a disadvantage, as there is a deficit of paid opportunities and effective job search resources. The over-representation of certain demographic categories of candidates in the LPP, particularly racialized and over 40 candidates, coupled with the data that the LPP was a second choice for most candidates overall also has ramifications for the Articling Program.
108. When the articling candidates were asked what is the least valuable aspect of the Articling Program, responses could be slotted into three main themes. Much of the commentary on least valuable was aimed at various pieces such as the "Experiential Training Plan," "RET" (Record of Experiential Training), the "PRP" (Professional Responsibility and Practice online modules) or "Ethics" course, and the "Bar Exams." Each of these topics was considered a "waste of time," "outdated" or "useless." The next emergent theme was the "administrative tasks" or "menial tasks" candidates felt they had to perform in their articling placement. The third emergent theme could be categorized as the "high costs," "low wages," and "long hours" respondents reported as representing

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<sup>26</sup> Evaluation, page 22.

“unrealistic standards” and the “stressful environment” to which they were subjected in the Articling Program.

109. In both Year One and Year Two, many comments were made to suggest that the Experiential Training Program should be more individualized to each articling experience. Respondents felt that it was too broad and many competencies were not applicable to the professional setting.
110. The three planning and performance statements that represent the enhancements to the Articling Program (*Preparation and filing of the Experiential Training Plan, Appraising the performance of the candidate on the five specific tasks related to the performance appraisal competencies, and Preparation and filing of the Record of Experiential Training in Articling Program*) were rated more positively in Year Two than in Year One. The perception that the new reporting requirements were a waste of time was fairly prevalent among the respondents to the Principals’ and candidates’ surveys in both years.
111. Importantly, however, from the Law Society’s perspective and interpreting the objective success of the enhancements, the following is significant. In Year One, there was a very good level of participation by Articling Principals in the performance appraisal of candidates, as over three-quarters (76%) of respondents reported it was their Articling Principal who completed the performance appraisal. In Year One, over 27% more Articling Principals were responsible for the respondents’ performance appraisal than were active in the training of the respondents. In Year Two, there was even more participation by Articling Principals in the performance appraisal of candidates, as over four-fifths (81%) of respondents reported it was their Articling Principal who completed the performance appraisal. In Year Two, over 26% more Principals were responsible for the respondents’ performance appraisal than were active in the training of the respondents.
112. Although the response rate in both years is too low (44%) to state this is representative of the entire population of placements, the requirement of performance management in a specified manner, regardless of the opinion of the measurement tools themselves, appears to have prompted increased commitment of Principals to participate in the appraisals.
113. As noted in the Evaluation, a lack of performance assessment commonality makes a comparison of pathways effectiveness based on candidate performance in the defined areas of skills and tasks invalid. In other words, it is very difficult, if not impossible, under the current measurement model to make an apples to apples comparison between the two pathways of candidate performance in the competency areas. But the Evaluation notes that the *purpose* of the pathways delivery cannot be extricated from the delivery itself.
114. After two years of the pilot, data also suggests the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice, based on certain

preliminary metrics discussed in the Evaluation and summarized above. Articling also remains the preferred pathway for the vast majority of candidates.

115. Does this mean the Committee can be satisfied that the Articling Program is consistently administered across all placements or that all candidates are exposed to all the required competency areas or that the process is entirely fair and transparent? It does not and there still appears to be much about the Articling Program that requires further analysis going forward. Moreover, there are other structural and attitudinal aspects of articling that continue to be of concern, as discussed below.
116. The Committee is satisfied, however, that despite a lack of enthusiasm among the participants for the enhancements, they are providing useful information and appear to be changing certain patterns of behaviour. The enhanced Articling Program should remain in place and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.

**f) Recommendation Respecting the Pilot Project**

117. The Committee's mandate has been twofold:
  - a. to determine whether it has sufficient evidence to evaluate the pilot; and
  - b. to determine whether the pilot project should end, become permanent or result in a different approach.
118. For all the reasons discussed here, the Committee, based on the views of nine of the 14 members, recommends that the LPP pathway of the pilot end at the completion of Year Three (2016-17). Three members do not agree it should end, although as discussed above, they too recognize a number of issues that in their view should be explored with a view to addressing them during a further period of time. Two members abstain from making a recommendation. The Committee recommends that the enhanced Articling Program should remain and continue to be evaluated for effectiveness, consideration of further enhancements and as part of future considerations respecting transitional experiential training.
119. The Committee acknowledges that were its mandate to simply evaluate the content of the programs, its recommendation respecting the LPP might well be different. Moreover, it is important to emphasize that candidates who have or are taking the LPP and are successfully licensed are equally qualified to their colleagues who articulated.
120. If Convocation approves the Committee's recommendation respecting ending the LPP at the conclusion of the pilot, the licensing fee per candidate going forward will be reduced. The Committee does not suggest that it will simply revert to what it was before the pilot began as there are other considerations, including the examination costs relating to the

proposals discussed below, to take into account. But it does anticipate a lower fee, further details of which would be provided in the coming months.

### **Strategies Going Forward**

121. The Committee has considered strategies for moving forward following the end of the pilot. In particular, it has asked what lessons could be taken from the pilot? What strategies might be explored to capture and retain many of the valuable resources, advancements, infrastructure and innovations that have revealed themselves and to address the continued issues that affect components of the Articling Program?
122. It is clear to the Committee that many of the issues that prompted the pilot remain. This fact would not justify continuing the LPP, which in its view is not sustainable, but it does require that the Law Society continue to examine articling as the remaining transitional experiential training system.
123. The Committee has considered a number of recommendations in the following areas:
  - a. Continued use of LPP program content, networks, professional placements etc. in other contexts so that the invaluable resources are not lost.
  - b. Consideration of the National Committee on Accreditation (NCA) process, readiness for licensing issues and exploration of bridging programs for internationally-educated candidates.
  - c. Attention to issues of fairness, including the Articling Program's impact on equality-seeking candidates and the hiring process, accessibility and objectivity.

#### **a) LPP Legacy**

124. As discussed earlier in this report, each of the English and French LPP have been developed to address their context, size and setting. In the short life of the pilot project each has integrated meaningful program content with impressive physical and human resources and networks of professionals who have supported and assisted the programs and acted as supervisors, instructors and mentors.
125. From the outset the French LPP has developed a particular focus on the issues surrounding the enhancement and broadening of ability to offer quality legal services in French across the province and to facilitate the development of mentors and role models within the Francophone bar. Based on the recognition of linguistic dualism, the program developers and the Law Society understood from the outset that the French LPP skills content should be developed to support these goals.

126. An Advisory Board was established to ensure that the French LPP design and implementation would be undertaken in a manner that would result in candidates learning to respond to the needs of the Franco-Ontarian community. As a result of a collaborative and focused developmental approach with the University of Ottawa, the program designers and a community of lawyers, judges, advisors, lecturers, mentors and work placement supervisors, the LPP is impressive.
127. Despite the Committee's recommendation to end the LPP, it considers it essential that effort be made to adapt components of the French LPP to other contexts. In the Committee's view, for example, there is an invaluable opportunity for the Law Society, the University of Ottawa, the Advisory Board and others to come together to explore possible ways to continue to build on the groundwork laid by the French LPP.
128. Similarly, the English LPP has developed a rigorous program with valuable content and developed networks of lawyers engaged with the process. It has successfully found work placements for hundreds of candidates, as has the French LPP for a smaller number. Most of the placements were with those who had not previously taken an articling candidate. The Law Society should undertake to pursue these relationships and develop innovative ways to enhance the available articling positions from these sources wherever appropriate.
129. As the Law Society moves forward with its Coach and Advisor Initiative, which Convocation approved in January 2016, it should integrate relevant human and other resources from both the English and French LPP.

#### **b) Internationally-Educated Candidates**

130. The Federation of Law Societies of Canada administers the National Committee on Accreditation ("NCA") process for determination of equivalency of international credentials. In the discussion above respecting readiness for licensing, the Committee has observed that for a proportion of internationally-educated candidates, it appears more challenging to meet the licensing requirements than for those educated in Canadian law schools. In particular, passage of the NCA examinations does not equate, in many cases, to ability to demonstrate the competency required in the Law Society's licensing examinations.
131. The provincial and territorial law societies have recently agreed to an in-depth review of the NCA assessment process. This analysis must consider aligning the NCA assessment process for competence and capacity in licensing, rather than to the competence equivalencies comparable to those expected at the completion of a Canadian law degree, as is currently the case.
132. It is in the best interest of the public and the internationally-educated candidates to be presented with an appropriately configured equivalence assessment prior to applying to be licensed in Ontario.

133. Given that a significant proportion of NCA candidates seek admission to the Law Society and given the information that is available on examination licensing results, the Committee urges the Law Society's active engagement with the NCA review process.
134. The Committee is also of the view that the Evaluation reveals other challenges that internationally-educated candidates face by having been educated outside the Ontario context and not having had the opportunities that exposure to that context offers.
135. The Law Society is committed to a vibrant, competent and diverse profession that in turn supports the diversity of the Ontario population. For this to be feasible, in addition to an NCA assessment process that accomplishes what is set out above, internationally-educated candidates must have,
  - a. reasonable expectations about their ability to succeed in the Ontario legal market; and
  - b. be assisted to meet with success through a combination of supports, resources and information exchange that will provide an opportunity to integrate into the Canadian landscape and the ability to prepare to be successful in Ontario's lawyer licensing process.
136. The Law Society has no ability to address issues related to the level of preparedness for licensing that international law degrees provide, but it must have a role in managing expectations of candidates related to what is necessary to succeed in the licensing process and the Ontario market. Indeed management of expectations is important for all candidates wherever educated. As the market for lawyers continues to change and as pressures on the legal practice model continue, law school candidates and internationally-educated candidates should be provided with meaningful information about the nature of that market as early as possible, so they can make meaningful choices.
137. The LPP has developed a rigorous program whose content may serve other possible purposes, including being utilized in a bridging program for internationally-educated candidates. The Law Society should explore possible approaches to voluntary and robust bridging programs for internationally-educated candidates to enhance their readiness for licensing in Ontario.

### **c) The Articling Program**

138. Despite the Committee's recommendations respecting the LPP, it continues to have concerns with aspects of the Articling Program, some of which the pilot has reinforced, as set out above. These relate to fairness, including the impact on equality-seeking groups and the hiring process, consistency and coverage of required competencies, working conditions and the dearth of certain types of articling positions, particularly in the field of social justice. Because of low take-up of the LPP, the alternative pathway was

unable to convincingly address placement shortages. Post LPP shortages will continue to be an issue.

139. As stated above, the Committee remains concerned about the data that suggests that candidates from equality-seeking groups are continuing to encounter difficulty accessing the Articling Program.<sup>27</sup> Competent candidates ready for licensing must have fair access to the licensing process, including transitional experiential training opportunities.
140. The Law Society must also continue to monitor the Articling Program and address the issues that have emerged from the pilot respecting fairness, accessibility and objectivity.
141. The Law Society is committed to serving a diverse Ontario public and to advancing a diverse profession that meets that public's varied needs and enhances access to justice in under-served communities. This is important not only for licensees, but also for candidates for licensing as they undergo transitional experiential training. The Committee recommends that within the transitional experiential training context, the Law Society explore the development of a fund to be used to support these priorities. The exploration will include an analysis of possible sources for funding, such as Law Foundation of Ontario grants and the continuation of the lawyer licensee contribution to the licensing process, criteria for eligibility, relevant under-served communities and appropriate job locations.

## **Licensing Process Enhancements**

### **a) Licensing Examinations**

142. The April 2016 PD&C Report to Convocation on licensing process enhancements addressed issues related to the examination process, the administrative rules for the licensing process and procedural components of the articling requirements. Convocation determined in May that consideration of the recommendations should occur at the same time as those related to the pilot, with the Committee examining those recommendations in that larger context.
143. The Committee has completed this work and has adapted some of its earlier recommendations and reiterates others. In both cases it has benefited from additional information and data that has emerged from the Pathways evaluation, in particular relating to readiness for the licensing process.

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<sup>27</sup> The Evaluation notes: "Generally speaking, the Articling Program and LPP are comparably similar in: (1) proportion of males and females, though the Articling Program has more females, and the LPP more males; (2) English and French; (3) Aboriginal; (4) persons with a disability; and (5) LGBT. However, there are a greater proportion of internationally-educated, *Racialized*, and *Age 40+* candidates are in the LPP in each of the evaluation cohorts. The Year Two evaluation cohort has decreased proportions of French candidates and those self-identifying as Francophone in the LPP, where in Year One, the proportions of such were greater in the LPP. We see in the Year Two evaluation cohort an equal proportion of French in each pathway and a greater proportion of reported Francophones in the Articling Program."

144. The goal of the Law Society's lawyer licensing process is to license those who have demonstrated entry-level competence, by satisfying established requirements. The Law Society's mandate to regulate in the public interest begins with the licensing process. Unlike law school education, licensing is primarily a regulatory process, protecting the public by admitting only those who demonstrate readiness. The process for assessing readiness must be fair and defensible, but the Law Society's regulatory priority of competence-based licensing is clear.
145. The Committee's April 2016 Report emphasizes the important role that enhanced licensing standards and competence play in Convocation's Strategic Priority #1, also discussed at the outset of this Report.
146. In developing its approach, the Committee considered the following factors:
  - a. The lawyer licensing process consists of a number of components that together are intended to address an integral part of the Law Society's mandate to ensure that all persons who practise law in Ontario meet standards of learning, professional competence and professional conduct.
  - b. To ensure that each of the components of the lawyer licensing process promotes competence, candidates should only move through the process if they have successfully completed the requirements of each step. In this way the Law Society is better able to measure the effectiveness of the process and the meaningful demonstration of competence.
  - c. A fair licensing process allows for reasonable opportunity for candidates to successfully complete the licensing requirements over a reasonable period of time. At the same time, it is essential that the number of times a candidate may attempt to complete requirements and the allowable period within which to do so do not negatively affect the validity and defensibility of the process.
  - d. As licensing processes develop to reflect an evolving understanding of competence measurement, the role of experiential learning and assessment of skills in licensing processes continue to gain importance. Entry-level competence can be enhanced by experiential learning and exposure to the Canadian legal practice context.
147. Licensing examinations have a unique place in the continuum as the critical point-in-time assessment by which the Law Society determines who has met minimum entry requirements for licensure.
148. An examination of the Law Society's licensing assessment process over a number of years reveals an evolutionary approach to assessment methodology and formats. The recommendations in the April 2016 Report continue that approach, in keeping with a

commitment to a standards-based approach that has been evolving over the last decade and is fair, validated, defensible and transparent.

149. On December 5, 2003 Convocation approved the recommendations of the Task Force on the Continuum of Legal Education for a competence-based licensing regime for lawyers, to begin in the spring of 2006. Under this regime, lawyer candidates were to be required to meet pre-determined standards of competence in substantive and procedural law and professional responsibility and ethics, articulated as “competencies” and defined as a “knowledge, skill, ability, attitude or judgment required for entry-level practice.”
150. The development of the new Barrister and Solicitor examinations was based on competencies developed in an extensive consultation with the profession to identify the concepts, principles and skills necessary for competent entry to the legal profession. This was a very different approach to examinations than the Law Society had previously undertaken and required an intense development process. The process took place over several months in 2004 and 2005 and involved hundreds of practitioners. The new summative examinations were introduced in 2006 with candidates receiving self-study materials, sample questions and other information.
151. By retaining a barrister and a solicitor categorization in examinations at that time, continuity with the earlier substantive subject matter examinations was retained to enable users to become familiar with a new assessment approach. Moreover, given that the competencies development process was new, it was useful to retain a somewhat familiar frame of reference with which practitioners could work to assist in the development process.
152. The current Barrister and Solicitor Examinations have been in place for a decade. The practitioner subject matter experts work in conjunction with the Law Society examination experts to continue to refine and hone the examination process and continue the evolution of effective assessment. They are an integral and increasingly sophisticated part of the item-writing process for examinations.
153. From the Committee’s perspective, if the Law Society’s commitment to Strategic Priority #1 is to be meaningful, the point-in-time assessment of candidates must be open to new development and to learning from experiences over years of the licensing process. The April 2016 Report’s recommendation for the development of the Practice and Procedure Examination (PPE) reflects a commitment to refinement of the approach.
154. The current Barrister Examination and Solicitor Examination were developed when the Law Society moved away from its earlier examination process. The Committee considers that it is now appropriate to evolve the assessment approach. In place of the Barrister Examination and the Solicitor Examination, the Law Society will develop a single Examination. Like the two current Examinations the focus will remain on practice and procedure, but the parameters will be revalidated to establish and confirm the appropriate benchmark to be achieved for entry-level competence. The focus will be on

those competencies in the practice and procedural areas whose frequency and criticality are of the highest importance for entry-level practitioners. It will be known as the Practice and Procedure Examination (PPE) and will take place before the experiential component of the licensing process.

155. The Committee is aware of a concern expressed by some stakeholders that by moving from two examinations to one the rigour of the assessment process is being diminished. The Committee is satisfied, however, that a refined assessment will be even more sophisticated and better assess relevant material. In its view, it is incorrect to assume that because two examinations lasted a total of 14 hours and one examination will last perhaps six or seven hours that this means the assessment is too simple and less effective. The Committee notes that the Law Society's move from eight substantive law examinations in 2006 to the two Barrister and Solicitor Examinations has not shown any evidence of a loss of rigour.
156. The April 2016 Report also recommends a second and new examination to be known as the Practice Skills Examination (PSE). The PSE is specifically intended to measure the candidates' capability to apply their practice and analysis skills following their completion of transitional experiential training, during which time they should have been exposed to and received further opportunity to develop those skills.
157. The development of the PSE reflects a growing understanding within law schools and among law students and the profession of the importance of lawyers being able to demonstrate skills-based competence from the outset of their careers, albeit at an entry-level. The Law Society's competence profile and the Federation of Law Societies of Canada's National Admissions Standards Project National Entry-Level Competence Profile include appropriate skills and tasks.
158. Candidates will successfully complete the transitional experiential training requirement before attempting the PSE. Its purpose will be to assess whether candidates have acquired the skills to complete complex multi-dimensional legal work, including,
  - a. ability in problem-solving;
  - b. aptitude and decision-making;
  - c. identification and resolution of ethical dilemmas;
  - d. legal research;
  - e. written communication;
  - f. client communication; and
  - g. organization and management of legal issues and tasks.
159. The examinations, as proposed, assess (a) a point of entry to the licensing process with the PPE and (b) a post-transitional experiential training point in time assessment with the PSE.

160. In the Committee's view, these point-in-time assessments are an important tool for determining whether candidates have demonstrated entry-level competence necessary for licensing. By adapting and enhancing the nature and type of assessment on an ongoing basis, the Law Society demonstrates a commitment to a meaningful process that addresses developments in professional assessment.
161. As was the case with the development and ongoing monitoring of the current Barrister and Solicitor Examinations, the proposed PPE and PSE will undergo a rigorous developmental, review and validation process. Advisory Groups, made up of exemplary practitioners from a cross-section of practice areas and firm sizes in Ontario will assist the process to ensure fair and defensible licensure.
162. Licensing examinations are, and should be undertakings of high significance. They attest to a candidate's competence to enter the profession and begin to provide services to the public of Ontario. They send a message to the public that someone who has successfully completed the licensing process is competent. As such they should be rigorous and reflect state of the art assessment techniques.
163. As is currently the case for examination preparation, candidates will receive a comprehensive package of materials for the PPE for study purposes and an examination preparation package that will include practice examinations and supporting explanations. Similarly for the PSE, candidates will receive a comprehensive package of materials for study and preparation purposes, including sample examination questions and responses.
164. Both the PPE and the PSE will be introduced for the 2018-2019 licensing year.
165. Funding respecting the licensing examination process will be integrated with the annual budgeting process. No funding is required for the balance of the 2016 budget year. An additional examination writing session to enable the opportunity to rewrite and be prepared to begin the transitional experiential learning component will be included in the current operational expenses and will not require any additional funding. Given the complexity of the practice skills examination (PSE) development will begin immediately. Additional funding required to support this development will be included in the 2017 and 2018 budgets and is estimated to be \$500,000 to \$700,000.

#### **b) Licensing Process Framework Enhancements**

166. An effective examination process is not only about the content of what is assessed, but about the formal framework of the process. In committing to an enhanced licensing process, Convocation determined to examine, among other things, the extent to which the threshold for licensing needs to be changed.
167. The proposed licensing process framework enhancements focus on the number of times a candidate will be eligible to sit each of the PPE and PSE licensing examinations and the length of time within which the candidate must complete the entire process. They

also address a stepped approach to the licensing requirement, based on successful completion of each stage.

168. Under the current approach a candidate is eligible to write each examination up to three times and has three years complete the entire licensing process. The Committee is of the view that these requirements should remain in place. The proposal recommends, however, that candidates who are still unsuccessful by the end of the three-year process, should not, in the normal course, be entitled to register for the licensing process a second time. All these requirements are subject to the duty to accommodate based on conditions that arise from an enumerated ground listed in the *Human Rights Code* and reflected in the Law Society's *Policy and Procedures for Accommodations for Candidates in the Lawyer and Paralegal Licensing Processes*.
169. The validity and defensibility of the licensing process requires a balancing of standards and fairness. Fairness provisions recognize that there are exigencies that may affect candidates' performance or the timing of their completion of the licensing process. At the same time, however, it is essential that the opportunities to complete the licensing process not be so drawn out as to undermine the validity of the assessment or the licensing process overall. The current and proposed approach, all subject to the duty to accommodate, balance these considerations.
170. The Committee further recommends that successful completion of each stage of the licensing process should be a prerequisite to moving to the next stage of the licensing process. This means that beginning in the 2018-19 licensing year successful completion of the PPE should be a prerequisite to moving to the next stage of the licensing process, namely transitional experiential training.
171. The current approach, which entitles candidates to advance to the transitional experiential training phase, even though they have failed the licensing examination or not yet attempted it, undermines the competence-based philosophy that should underpin the process. The discussion above under Readiness for Licensing has further solidified the Committee's views that successful completion of each licensing examination should be a foundation for the steps that follow.
172. Currently in the licensing process there are candidates who complete transitional experiential training but have yet to, and may never, pass the licensing examinations. The profession has indicated, and the Law Society concurs, that all candidates should be capable of successfully addressing entry-level practice and procedural issues before they embark upon their transitional experiential training activities.
173. This new system will require candidates for licensing to demonstrate the capability to become a lawyer qualified to practice through a process of assessment that builds upon the necessary knowledge, skills, abilities and judgment expected of an entry-level practitioner in a sequential process.

174. To assist candidates' ability to move forward through the process there will be an additional sitting of the examination in the time period after the first writing, but before the traditional period that transitional experiential training begins. This will enable those who fail on the first attempt an opportunity to write again and is a new component to facilitate movement through the process.
175. This new approach to the PPE validates Convocation's commitment to competence by viewing the licensing requirements as a staged process, with a prerequisite of successful completion at each stage. Given the importance of licensing based on competence, this is an appropriate approach for Convocation to approve.

### **c) Articling and Law School Experiential Learning**

176. The April 2016 Report recommended an adjustment to the length of the articling requirement from 10 months to nine months and approval of a developmental process to permit up to a three-month abridgment of articling, reducing the placement to six months in length, available in circumstances in which prior skills training has been attained in a program the Law Society accredits.
177. This recommendation was not intended to introduce a mandatory requirement or shift the responsibility for transitional training onto the law schools. Moreover, there was no requirement that firms, employers, law schools or candidates integrate or pursue this credit. Indeed there would likely be reasons related to institutions' mandates or employer or candidate perception of their unique needs that would militate against using this option and this is entirely valid.
178. The Committee also understands that skills training at law schools is a significant investment of time, expertise, resources and an area that requires particularized teaching expertise. Law schools have priorities and directions that determine where they best devote their resources and nothing in the proposal would interfere with this. Most schools already have a range of skills programs that under the recommendation they might or might not wish to consider for accreditation. Equally, Articling Principals would be free to agree to or reject involvement as they design their articling program based upon their own needs and their training priorities for their students.
179. The place of skills training or experience in the pre-licensing context has been evolving steadily since the late 1970s and early 1980s when many considered it could have no role to play in the development of lawyers, except in the articling context. Few accept that position today, but each stage on the road to licensing, beginning in law school defines how skills training fits its priorities. The proposal in the April 2016 Report was not intended to hamstring any stage's autonomy, but rather to expand the conversation and integrate flexibility into the process.

180. However, since it introduced the recommendation the Committee has undertaken the evaluation of the pilot, which in its view broadens the scope of the discussions around articling, as discussed in the previous sections of this report.
181. Moreover, on reflection, the Committee agrees that without a more serious collaborative discussion with a variety of stakeholders, a definite recommendation is premature. It does however believe that there is merit to further exploration of the idea. It recommends that the Law Society explore a process to permit up to a three-month abridgment of articling where prior skills training has been attained in a program the Law Society accredits. Among other factors, the exploration should consider the possible risks and benefits of such an approach and the nature of accreditation criteria for eligible programs. The exploration should include discussions with interested stakeholders and the Committee should report to Convocation on the outcome of this exploration. In the interim, the 10-month length of the articling requirement should remain unchanged.

**d) Articling Exemption for Internationally-Educated Candidates**

182. Currently, the following are the provisions related to exemptions and abridgments from the articling requirement, applicable to internationally-educated candidates:
  - a. Internationally-educated candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day program on professional conduct and practice management as a mandatory component of the licensing process.
  - b. All other internationally-educated lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.
183. Pursuant to the April 2016 Report, the Committee recommended the end of the exemption in subparagraph a. As noted in that Report, however, a number of Committee members expressed the different view that there may be circumstances in which the extensive experience and number of years of practice of an international candidate in a common law jurisdiction are such that it would be appropriate to consider an exemption from articling. The Committee has also considered the external feedback it received, which addressed both the substance of the recommendation and whether, if adopted, it would apply to those currently in the licensing process.
184. In further considering the issue, the Committee has examined the background to the 2008 recommendations that introduced the current provisions. Prior to 2008, seven years of previous experience was the threshold for consideration of an exemption. The Committee has also examined Law Society data, set out below, on the actual practice

experience of those who have received an exemption because they currently meet the 10 month threshold.

**Practice Experience of Exempted Candidates  
May 2013 – May 2016**

Jurisdiction	Average Experience (Years)	Experience Midpoint (Median in Years)	Most Common Length of Experience (Mode in Years)
USA (181)	6.32	4.39	5
India (112)	7.39	5.19	2 and 3
England and Wales (36)	5.68	5.59	N/A
Nigeria (32)	12.5	11.2	N/A
Pakistan (23)	5.12	4.5	N/A
Australia (10)	2.52	2.25	N/A
<b>TOTAL</b>	<b>6.58</b>	<b>4.86</b>	<b>N/A</b>

Jurisdiction	Years of Practice Experience May 2013 - May 2016							
	1 to 4	4 to 7	7 to 10	10 to 15	15 to 20	20 to 25	25 to 30	30+
USA (181)	93	48	16	13	4	3	2	2
India (112)	45	22	17	17	9	0	2	0
England/Wales (36)	19	5	8	3	1	0	0	0
Nigeria (36)	10	6	8	4	6	1	0	1
Pakistan (25)	11	6	2	3	2	1	0	0
Australia (14)	11	3	0	0	0	0	0	0
<b>TOTAL (404)</b>	<b>189</b>	<b>90</b>	<b>51</b>	<b>40</b>	<b>22</b>	<b>5</b>	<b>4</b>	<b>3</b>

185. The Law Society's experience with internationally-educated candidates from locations such as India, Pakistan, Nigeria and other centres in the African continent and Indian sub-continent has been that many refuse a full exemption, even though they have been assessed to be eligible for one, opting instead for an abridgment of a few months. These candidates prefer to find an articling placement and gain Ontario experience prior to being licensed, for reasons including personal development and financial considerations, but predominantly reasons related to making connections in the legal market through a job search and placement process. Overall, the number of requests for exemptions and abridgments from internationally-educated candidates has decreased by 20% annually over the last two years.

186. Some experiential training in the Canadian context to enhance competence and offer greater assurance of transitional experiential training that contributes to the candidates' acculturation to the Canadian legal context is, in the Committee's view, helpful. At the same time it recognizes that removing any possibility for an exemption may not be necessary or, indeed, fair. The Committee recommends amending the exemption threshold for those licensed in a common law jurisdiction from 10 months practice experience that addresses the Law Society's articling competencies to three years, to provide some flexibility on this issue. The Law Society will continue to track the level of experience of internationally-educated candidates, examination performance data discussed above and information that will be gleaned from discussions and exploration of bridging programs to determine whether the exemption recommendation is effective.
187. If the new recommendation is approved by Convocation, it would apply on a going forward basis, beginning with the licensing year 2017-2018.

## Conclusion

188. The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest. In respect of lawyer licensing, its Strategic Priority #1 states that the Law Society will focus on enhancing licensing standards and requirements and their assessment for lawyers. At the same time the Law Society seeks to ensure a process that is fair, accessible and objective.
189. The Pathways Pilot Project has been an important part of the efforts to examine and address licensing requirements and fairness. The evaluation of the pilot has revealed the complexity of the issues and the difficulties inherent in determining the way forward.
190. As the Committee has stated above, all its members recognize that the recommendations, if approved, will not end the discussion around lawyer licensing, nor do they intend that they should. Indeed, the Committee's recommendations reflect both the need for ongoing work and commitment in this area and an understanding that law schools, the Law Society as regulator, the profession and the delivery of legal services continue to be in a period of flux and change. As was the case within the Committee, different perspectives will inevitably affect views of and response to the recommendations the Committee provides here for Convocation's consideration.
191. The information underlying and supporting this Report is critically important and the Committee urges that it continue to be used to contribute to the ongoing analysis of and refinements to the licensing process that will continue to be sought, developed and implemented.

## TAB 2.1

**Overview of the Law Practice Program <sup>1</sup>**

The following information has been taken from Ryerson University's and The University of Ottawa's annual reporting to the Law Society.

**Law Practice Program - English**

The English LPP, held at Ryerson University, consists of 17 weeks of training (late August to mid-December), followed by a 16-week work placement (January to April). The training consists of three (3) weeks in person plus 14 weeks interactive online all based on developing necessary skills by "working/completing tasks" on files developed by subject matter experts (specially trained actors often play the clients). The candidates are organized into virtual law firms "VLFs", have a principal acting as a mentor, and are assessed in different ways on the over 100 different tasks they undertake. The LPP makes the assessment whether they have met the Law Society standard. The training helps them "hit the ground running" in their work placement, which has the same status as an articling placement. It is assessed, initially by the Principal (Work Placement Supervisor), and ultimately by the LPP.

Each firm is paired with a Mentor, who is a member of the legal profession in Ontario. Mentors come from across the province, average about 15 years of practice, and cover all areas of practice and workplace settings (clinics, government, private practice of all sizes, in-house counsel). To ensure that all VLFs obtain access to more than one "voice", mentors are rotated mid-way after the second in-person week, to ensure firms have the benefit of different perspectives and experiences. These Mentors act as "Supervising Lawyers" for the VLFs, meeting with the entire firm once weekly for 17 weeks via webinar, and then bi-weekly with individual candidates. During these interactions, Mentors and firms review the case file work that the candidates have been working on that week, or have coming up, as well as discuss specific themes of Professionalism and Ethics, Practice and Client Management. Candidates can get additional assistance from Subject Matter Experts, or the LPP, in addition to their Mentor, when they have questions.

Candidates meet at Ryerson three (3) times a week at a time. These three in-person weeks offer candidates the opportunity to engage in intensive workshops or panels (eg Trial Advocacy, Corporate Counsel), be assessed in-person by the bench and bar, develop and expand their professional network with each other, as well as members of the profession. The rest of the 14 weeks they are "working" in a simulated environment, responding to lawyer and client requests on a rapid, regular, intense basis. Their work is "delivered" via case files in the subject areas mandated by the Law Society of Upper Canada:

- Administrative Law (Year One a Landlord/Tenant matter; Year Two an Immigration matter)
- Business Law
- Civil Litigation
- Criminal Law
- Family Law
- Real Estate Law
- Wills & Estates Law

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<sup>1</sup> This outline appears in the Evaluation at pages 18-21.

In addition to their file work, VLFs also work together to develop a Business Plan for their firm.

This Plan includes the areas in which they intend to practice, the business structure they propose to implement, their plans to develop a client base, and a financial pitch to a bank to secure financing. In addition to the Business Plan, firms also develop an Access to Justice Innovation Challenge, which is an idea/concept to help promote the delivery of justice faster, more efficiently and in a more cost conscious manner. Seven of the 60 firms are selected to make a “pitch” of their idea to a panel of judges, with one firm ultimately winning the Challenge. Each year the winning team’s prize has been a one-on-one lunch and audience with Chief Justice Strathy at Osgoode Hall to discuss the winning Proposal.

Candidates move on to the four-month Work Placement only after they have successfully completed the Training Component. Work Placements span the range of practice areas and office settings across the province. Candidates are prepared for both general and more focused practice areas for their Work Placements.

The LPP continuously seeks additional feedback from all who have been involved in the LPP. The LPP conducts several surveys aimed at the candidates and the Mentors and in 2016, of the 2014-15 Alumni, to obtain feedback about various aspects of both the Training Component and Work Placements. Employers’ feedback has been collected through numerous conversations. All feedback collected is being analyzed with a view to further strengthening the program.

### **Law Practice Program - French**

The French LPP is an eight-month program, including a four-month intensive in-person practice program in a simulated law firm followed by a four-month placement in a legal workplace. Ottawa LPP’s innovative practice program has been designed in consultation with experienced lawyers. Its objective is to allow students to master all the skills necessary to offer quality French legal services and to succeed in their professional careers. The practice program consists of eight practice modules:

1. civil litigation;
2. administrative law;
3. commercial law;
4. criminal law;
5. family law;
6. real estate law;
7. wills and estates law, and
8. establishing and managing a firm.

Within a simulated law firm, candidates familiarized themselves with all aspects of the legal practice including communicating with clients, legal researching and drafting, strategic decision-making, oral argument, computerized firm management, time management, billing, professional responsibility, developing a business plan, and networking.

During the 2015-2016 training component, the LPP candidates accomplished over 90 tasks testing more than 80 skills in seven (7) areas of law. They were also exposed to all the aspects of practice management, including respect for professional obligations, development of business acumen, initiation in the practice of law in a rural environment, and community engagement. In the work placement component, candidates had the opportunity to implement

their new skills acquired during the LPP training component by working in a variety of legal environments, like national unions, governmental agencies, small firms, and government.

In addition, candidates presented a business case they had developed to assess the viability of opening satellite firms in Hawkesbury, Timmins, and Sudbury. This project also addressed the development of skills relating to law firm management. The candidates addressed the following subjects during their presentations:

- Offers of and demand for legal services in each community;
- Cost of living in each community;
- Availability and cost for renting space in each community;
- Availability of qualified labour in each community;
- Start-up fees and operational costs of a firm.

Lawyers and representatives of each region joined us by webinar to make observations about and comment on the presentations. Practising-trainers and an accountant were on site to assess the business cases.

The French LPP added three supervising lawyers to its team for the 2015 training component. Their role was to moderate work groups every other week with the candidates. The goal of those small groups was to closely follow the candidates' progress and give them more individualized feedback on legal drafting, practice management, and file management. Also, the discussion groups were used as a forum to discuss and share on issues relating to the professional obligations of a lawyer.

Based on the feedback received from the 2014-2015 candidates, the French LPP created a mentoring program for candidates in Year Two. In that program, each candidate is offered a chance to be matched with a member of the legal community as their mentor during the program. The goal is to give the candidates contact with lawyers and members of the legal profession in formal or informal settings, and to learn more about the practice of law from the solid experience of their mentors.

In accordance to reporting expectations stipulated by the Society, the University of Ottawa has conducted surveys of the candidates in order to obtain feedback about various aspects of the Law Practice Program, including:

- Modules and practising trainers, including assessment
- Professional development days
- Resources offered by the LPP
- Services offered by the University

#### Linguistic test

In order to ensure a certain quality of the French-Language within the program, the University of Ottawa's LPP created a linguistic test for candidates who did not study law in French but would like to register in the French LPP. The passing mark established by the LPP, in consultation with two legal writing experts, was 65%. Three candidates wrote the linguistic test for Year One: one candidate passed and two candidates failed and were therefore denied entry into the program. In Year Two, none of the candidates had to write a test because they all did their law studies in French.

# Pathways Evaluation Interim Results: Years One and Two

The Law Society of Upper Canada Pathways to the Profession Pilot  
Project 2014-2015 to 2015-2016  
30 June 2016



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## Executive Summary

The Pathways to the Profession Pilot Project or *Pathways* is a response to the Law Society of Upper Canada's Articling Task Force's Final Report of October, 2012. One alternative pathway to traditional articling, and enhancements to traditional articling were created to address the issues brought forth in this report. Together, the Law Practice Program (LPP) and the enhanced Articling Program are the *Pathways to the Profession* pilot project. Work on each *pathway* commenced in early 2013; this evaluation commenced in December of the same year.

It is important to note that at this juncture, the year two evaluation of the 2015-2016 LPP and enhanced Articling program is not yet complete as there are post-call data collection scheduled for this cohort and their employers in the spring 2017. Still, with accumulated data from the year one evaluation (2014-2015), and now the year two licensing year evaluation data, we are beginning to solidify our findings.

Further, it is imperative to consider that even though both programs or pathways exist to address similar competency development in order to prepare candidates for entry-level practice – that is transitional, experiential training - the LPP and the Articling Program are substantively different in terms of their structure and delivery. Structurally, the LPP on the one hand is eight months in length, consisting of a four-month course in a mostly virtual environment with a four-month work placement; the Articling Program on the other hand, consists of a 10-month work placement. From a delivery perspective, we see the LPP has the largest proportions of their work placements in small firms or sole-practices, with a good proportion of these placements unpaid; the Articling Program has the largest proportions of their placements in medium-sized practices, with the vast majority of the placements reported as being paid. We also note that the largest proportion of candidates in the LPP are exposed to Corporate/Commercial Law practice in work placements, and the largest proportions of candidates in the Articling Program are exposed to Civil Litigation, either Defendant and Plaintiff, in their placements. However, in addition to similar foci in competency development and outcomes for such, further parallels in delivery exist as well, as proportionally, the placement locations are predominantly in the Toronto area, followed by the East (Ottawa). So, it is fair to say that the goals for competency development in each pathway are the same, but how they aim to achieve those goals differ substantively.

Each *pathway* is evaluated on its own merit and then compared with the other, where possible. However, any variances in the results when comparing the two pathways may be attributable, at least in part, to the difference in structure and delivery of the two programs. It is a challenge to disentangle the sources (program structure and/or delivery) of marked differences in program outcomes<sup>1</sup> (e.g., calls to the Bar, hire-backs, first-year practice). Still, at this juncture we see some trends in aspects of program delivery and outcomes beginning to emerge.

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<sup>1</sup> Intended program outcomes are the production of competent lawyers for entry level practice – See Appendix 1. Calls to the Bar and hire-backs are key performance indicators of such. Post-call practice areas and types are not direct, intended outcomes of the Pathways project, but these data are helpful in contextualizing program effectiveness.

**The interim year two evaluation is based on the following cohorts of candidates:**

*Table i - The Evaluation Cohorts*

Category	Articling Program		Law Practice Program	
	Year One	Year Two	Year One	Year Two
Program Enrollment <sup>2</sup>	2,019	1,878	281 (260 EN/21 FR)	280 (262 EN/19 FR)
Less those articling candidates who began their placement after August 6 and before April 30 <sup>3</sup>	- 632	- 452	-	-
Less those candidates who withdrew from the Articling Program, or from the LPP after program start dates, have not completed, or were licensed prior to May	- 22	- 34	- 41 <sup>4</sup> (38 EN/3 FR)	- 50 (42 EN/8 FR)
<b>Evaluation Cohorts</b>	<b>1,455</b>	<b>1,392</b>	<b>238</b> (221 EN/17 FR)	<b>230</b> (219 <sup>5</sup> EN/11 FR)

*The Law Practice Program*

- 281 licensing candidates were enrolled in the LPP on the start date of the programs in August 2014; one candidate was not successful in completing the program, 41 (15%) withdrew from the program, and one candidate had yet to begin a work placement at the time of receipt of final reporting from the LPP providers; therefore, the **Year One** cohort of LPP candidates for the evaluation is 238.
- 280 licensing candidates were enrolled in the LPP on the start date of the programs in August 2015 and 50 (18%) withdrew from the program; therefore, the **Year Two** cohort of LPP candidates for the evaluation is 230. Six of the 230 candidates in Year Two have not completed their work placement as at June 30, 2016.
- All 238 LPP candidates received work placements, with 71% of the work placements being paid in **Year One**; All 230 LPP candidates received work placements, with 73% of the work placements being paid in **Year Two**. All eleven (11) of the French placements through the University of Ottawa were paid.
- The LPP is made up mostly of candidates that did not choose the LPP as their first choice for transitional, experiential training. The population of the LPP is 50% internationally-educated and 50% Canadian-educated, most candidates are English-speaking; and the LPP has greater proportional representation in candidates that identify themselves as “Racialized,” “Francophone,” “People with a Disability,” “Aboriginal,” and “Age 40+” than the Articling Program population.

<sup>2</sup> Number of candidates who started an articling placement or the LPP in the Licensing Process year (May 1 to April 30)

<sup>3</sup> Number of candidates who started an articling placement after August 6 and on or before April 30. For the evaluation purposes, only those candidates who started an articling placement between May 1 and August 6, and were therefore expected to complete the Articling Program prior to June of the following year, are included in the evaluation cohorts.

<sup>4</sup> One (1) candidate did not successfully complete the LPP

<sup>5</sup> As at June 30, 2016, six (6) of the English LPP candidates have not yet completed their work placement.

### The Articling Program

- 1,477 licensing candidates began an articling placement between May 1, 2014 and August 6, 2014; 22 of these candidates either withdrew from articling or were licensed before June 2015; therefore, the **Year One** cohort of articling candidates for the evaluation is 1,455.
- 1,243 Articling Principals supervised the 1,455 articling candidates in the **Year One** evaluation cohort.
- 1,426 began an articling placement between May 1, 2015 and August 6, 2015; 34 of these candidates either withdrew from articling or were licensed before June 2016; therefore, the **Year Two** cohort of articling candidates for the evaluation is 1,392.
- 1,221 Articling Principals supervised the 1,392 articling candidates in the **Year Two** evaluation cohort.
- Articling Program survey results tell us that about 97% of the articling placements are paid for both Year One and Year Two.
- The Articling Program is comprised mostly of recent graduates of Ontario-based, Canadian law schools and are mostly English-speaking. Most of the articling placements are in law firms, with medium-sized firms accounting for the greatest proportion of articling placements.

### Development of the pathways:

- Goals for transitional, experiential learning were articulated, incorporating *fairness*, *accessibility* and *objectivity* and each pathway is founded on the same core competencies for entry-to-practice level lawyers.
- Enhancements to the Articling Program were developed and implemented for the 2014-2015 Licensing Process.
- The LPP was delivered for the first time at Ryerson University beginning in August 2014 and at the University of Ottawa in September 2014 for French-language candidates.
- Tools for measuring candidates', and Principals' perceptions have been developed and used, including surveys to target post-call candidates' perceptions and their employers' perceptions.
- The various enhancements to the Articling Program, focusing on behaviourally-anchored rating scales (BARS) for task-exposure and performance assessment in articling were all developed and are being utilized. A related training component, including emailed instructions and directions in a video on how to use the BARS to Articling Principals and articling candidates has been delivered; the effectiveness of these instructions is yet to be determined.

### Evaluation of the pathways - Findings

- Various user perceptions in both the LPP and Articling Program have been measured, but there is more measurement to be completed, based on our evaluation framework (see Appendix 2). Generally, the pathways are seen as delivering fair, objective and accessible transitional, experiential training. Though some aspects of each pathway are not viewed by candidates to be fair, such as search for work placement in the LPP and the articling placement hiring process. Still, we see further negative perceptions of the LPP from candidates, due to its relative newness and speculation regarding its value in aiding

candidates to secure employment after licensing. Also, most of the candidates in the LPP report that it was not their first choice for experiential training.

- Candidates in the LPP have been assessed for their learning in defined areas of skills and tasks; all were meeting or exceeding the competency expectations. The vast majority Candidates in the Articling Program show they are meeting or exceeding expectations in the five competency-based tasks.
- Articling Principals showed almost universal compliance in submitting the new Experiential Training Plan, and performance assessment of candidates in articling and their task-exposure has occurred. Competency coverage in articling placements is generally very high, with the exception of *Transactional/Advisory Matters, Negotiation* and *Advocacy*. It is noted, however, that relevancy of competencies across types and areas of practice is not universal. Further, about half the articling placements focus on one to four areas of law practice.
- Candidates in both *pathways* and Articling Principals rate generally high levels of effectiveness and value for the *pathways*, however there were some specific areas that drew their ire, such as: the work placement process in the LPP, remuneration in the LPP work placements, and the purpose and act of completing the new reporting requirements from both candidates' and Principals' perspectives in the Articling Program.
- There seems to be some substantive differences in the scales and metrics for candidates' performance assessment between the two pathways. These differences make valid inter-pathway comparison of candidate performance on the specified competencies extremely difficult.
- The candidates in the Articling Program are being called to the Bar, hired back, and are practising law in their first year post-license at greater proportions than candidates in the LPP. For example, about 60% of those in the LPP expected to be called to the Bar in June of their licensing year, compared to just over 90% of those in the Articling Program; of those who expect to be called to the Bar, 34% of those in the LPP expected to be hired back by their placement organization compared to 48% of those in the Articling Program. Additionally, there are proportionally more lawyers from the Articling Program than from the LPP who are practising law in their first year: 82% versus 67%. Further, one-quarter (41 lawyers) of the LPP new lawyers are Sole Practitioners, compared to 6% from the Articling Program (86 lawyers). Finally, only 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business*, when 48% of the new lawyers who articulated are working in this capacity. However, these practice findings are based on just the first cohort of candidates to go through the LPP and Articling Program during the *Pathways* Project.
- At this juncture, based on the key metrics of expectations to be called to the Bar, hire-backs and first-year practice, the Articling Program is out-performing the Law Practice Program. To separate program structure and delivery from competency development and related outcomes will be difficult, but must be taken into account when judging the effectiveness of each pathway.

In summary, at this juncture of the program operation, we see indications that each pathway is supporting the licensing candidates' opportunity to obtain transitional experiential training as required by the Licensing Process in part by delivering fair, objective and accessible experiential

training, though there are some aspects of each that are not considered fair by the candidates. The experiential training in each pathway is developing the competencies of candidates necessary for entry-level practice, as deemed by the competency development assessment tools. These tools, however, are incongruent between pathways, so comparing the effectiveness of the pathways based on these tools is not advised.

Comparison of the effectiveness of competency development for entry-level practice is made through various perceptual measures of *value* and *effectiveness*, which indicated each pathway thus far is valuable and effective experiential training. However, since a stated, intended outcome of the pathways is the production of competent entry-level lawyers, we must look to key performance metrics such as calls to the Bar and hire-backs as indicators of pathway effectiveness. At this point in time, the Articling Program is out-performing the Law Practice Program, based on these metrics. But given the different structures, and some key delivery disparities of each pathway, one should expect the Articling Program to produce a greater relative number of competent entry-level lawyers. A key question becomes, “By how much more should we expect the Articling Program to outperform the LPP based on the structures of each pathway?” To answer this question, we must disentangle the pathway structures and delivery from competency development, or at the very least be mindful of this entanglement. In other words, for example, as we move into Year Three of the *Pathways*, how much weight do we put on the structure of the LPP versus the competency development within the LPP in producing relatively fewer competent entry-level lawyers than the Articling Program?

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## 1. Background

Having acknowledged that experiential training is an integral part of the Licensing Process for lawyers, and having accepted that the current experiential training pathway, articling, is no longer able to provide sufficient opportunities to support all candidates for licensing, the Law Society of Upper Canada has embarked upon a three-year plan of redevelopment in the Licensing Process that will address the expanded provision of transitional experiential learning.<sup>6</sup>

The response, the **Pathways to the Profession Pilot Project** (*Pathways Project*), will be to develop an additional path to licensing, a Law Practice Program (LPP), and to concurrently enhance the existing Articling Program. The goal of the *Pathways Project* will be to gather evidenced-based information on the implementation and outcomes of the two *pathways* through formalized, systematic program evaluation methods, with a view to measuring the effectiveness of those pathways to produce competent lawyers for entry into the profession. Ultimately, Convocation of the Law Society will use this information to assess the continuation of either or both of the pathways.<sup>7</sup>

Throughout this report, the *Pathways Project*, which commenced in earnest in early 2013, and its two component programs (*pathways*), which began operation in the 2014-2015 Licensing Process year, is considered to be a professional credentialing program. A program can be thought of as a group of related activities that is intended to achieve one or several objectives, of which specified outcomes are included. Programs are means-ends relationships that are designed and implemented purposively (McDavid & Hawthorn, 2006).

Research & Evaluation Consulting Inc. (RaECon) was contracted to use its resources of nationally-recognized evaluation expertise in conducting the evaluation of the *Pathways Project*, to provide the Society with external, objective information required to make sound, insightful judgements on the relevance and effectiveness of *Pathways*. RaECon's work on the evaluation of *Pathways* commenced in the fall of 2013.

**This report summarizes program activities and evaluation results, which are as current as of June 30, 2016.**

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<sup>6</sup> As a result of the Articling Task Force's Final Report, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* (October 25, 2012): The Law Society of Upper Canada.

<sup>7</sup> From the Pathways Purpose and Objectives Statements (December 2013) based on *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*: The Law Society of Upper Canada.

## 2. Approach to the Evaluation

At RaECon we pride ourselves on our general approach to program evaluation, upholding the *Program Evaluation Standards*<sup>8</sup> for our industry. We stress the utility of the evaluation findings for our clientele and take a collaborative approach, inviting input from the client throughout the evaluation process, whilst upholding a strict professional code of ethics. Details on our approach to evaluation are presented next.

### *Utilization-Focused*

Following the general approach of utilization-focused evaluation (Patton, 2008), we are aware that the process of conducting an evaluation is just as important as the end product, the evaluation report itself. The focus on providing information that is useful and contributes to learning is particularly important for the continued operation of the programs, and is one of our core beliefs. We work with the *Pathways* team at the Law Society to ensure that that we are examining the relevant documents and data, engaging the appropriate stakeholders and identifying the findings that will result in recommendations that will help Convocation make informed decisions.

### *Participatory*

This evaluation has been carried out in a participatory manner (see Cousins & Earl, 1992, 1995), as this embodies a collaborative process that leads to interaction between the evaluator(s) and the community or stakeholders in order to make the results fully comprehensible and useable. Much work in conjunction with the Law Society *Pathways* team, under the leadership of the Society's Executive Director of Professional Development and Competence, has occurred throughout the evaluative process and in preparation of this report.

### *Ethical*

We apply the Canadian Evaluation Society's (CES) guidelines for Ethical conduct,<sup>9</sup> focusing on competence, integrity and accountability, as our operating standards for ethical evaluation service delivery. Our general approach is also consistent with the principles outlined in the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*<sup>10</sup>, including respect for human dignity, respect for free and informed consent, respect for vulnerable persons, respect for privacy and confidentiality, respect for justice and inclusiveness, recognizing the potential for harm and maximizing benefits for all who are involved.

<sup>8</sup> Yarborough, D.B., Shulha, L.M., Hopson, L.M., & Caruthers, F.A. (2011). *The program evaluation standards: A guide for evaluators and evaluation users* (3rd ed.). Thousand Oaks, CA: Sage.

<sup>9</sup> Available at <http://evaluationcanada.ca/ethics>

<sup>10</sup> Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, 1998 (with 2000, 2002 updates) from <http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>

### **Evaluation Questions**

The Evaluation Questions presented next are aimed at relevance and effectiveness of the *Pathways* Program:

1. **Does the Law Practice Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?**
2. **Does the Articling Program provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?**
3. **How does each pathway, LPP and Articling, support the licensing candidates' opportunity to obtain the transitional experiential training requirement of the Licensing Process?**
4. **Is one Pathway, LPP or Articling, more effective in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?**

### **Licensing Process Candidates in the Pathways**

For the first year of Pathways, approximately 77% of the licensing candidates selected the Articling Program and approximately 13% of licensing candidates opted for the Law Practice Program. The remaining licensing candidates are either exempted from the Experiential Training Requirement or have not yet informed the Law Society of their choice of *pathway* for experiential training.

For the second year of Pathways, approximately 79% of the licensing candidates selected the Articling Program and approximately 12% of licensing candidates opted for the Law Practice Program. The remaining licensing candidates are either exempted from the Experiential Training Requirement or have not yet informed the Law Society of their choice of *pathway* for experiential training.

### Evaluation Cohort

Table 1 below presents the *Pathways* statistics of enrollment and withdrawals from each program arriving at the number of candidates in the *Year One and Two evaluation cohorts* for each *pathway*. The evaluation cohorts are the group of candidates that are being studied for the purposes of the evaluation of *pathways*. As presented below, we see a slightly smaller cohort for Year Two than Year One.

**Table 1: Year One and Year Two Evaluation Cohorts**

Category	Articling Program		Law Practice Program	
	Year One	Year Two	Year One	Year Two
Program Enrollment <sup>11</sup>	2,019	1,878	281 (260 EN/21 FR)	280 (262 EN/19 FR)
Less those articling candidates who began their placement after August 6 and before April 30 <sup>12</sup>	- 632	- 452	-	-
Less those candidates who withdrew from the Articling Program, or from the LPP after program start dates, have not completed, or were licensed prior to May	- 22	- 34	- 41 <sup>13</sup> (38 EN/3 FR)	- 50 (42 EN/8 FR)
<b>Evaluation Cohorts</b>	<b>1,455</b>	<b>1,392</b>	<b>238</b> (221 EN/17 FR)	<b>230<sup>14</sup></b> (219 EN/11 FR)

### Perceptual Measures and Instruments Developed and Implemented

Various data collection tools were developed and implemented to aid in the gathering of evaluation data. These tools will be described next.

#### Exposure and Performance Measures for the Articling Program

Behaviourally-Anchored Rating Scales (BARS) tools were developed by an external vendor for the Law Society with the aid of various law practitioners in early in 2014 for first use in the 2014-2015 Articling Program (Year One).

#### Surveys and Focus Group Protocols

Surveys and Focus Group protocols were developed and implemented to gather both quantitative and qualitative perceptual data from candidates, from Articling Principals, and from the newly licensed practising lawyers in the Year One cohorts and their employers, on various aspects of each of the *pathways*.

<sup>11</sup> Number of candidates who started an articling placement or the LPP in the Licensing Process year (May 1 to April 30)

<sup>12</sup> Number of candidates who started an articling placement after August 6 and on or before April 30. For the evaluation purposes, only those candidates who started an articling placement between May 1 and August 6, and were therefore expected to complete the Articling Program prior to June of the following year, are included in the evaluation cohorts.

<sup>13</sup> One (1) candidate did not successfully complete the LPP

<sup>14</sup> Six (6) of the candidates have not yet completed their work placement as at June 30, 2016

The following data collection tools have been developed and implemented for the Pathways evaluation:

1. Law Practice Program Entry Survey
2. Law Practice Program Withdrawal Survey
3. Law Practice Program Focus Group Protocol
4. Articling Program Focus Group Protocol
5. Law Practice Program Exit Survey
6. Articling Program Survey for Candidates
7. Articling Program Survey for Principals
8. Law Practice Program Post-License Survey for New Lawyers
9. Law Practice Program Post-License Survey for Employers of New Lawyers
10. Articling Program Post-License Survey for New Lawyers
11. Articling Program Post-License Survey for Employers of New Lawyers

Year One (2014-2015) cohort's perceptions have been measured by all of the aforementioned instruments. Year Two (2015-2016) cohort's perceptions have been measured by the first seven instruments. All surveys are aimed or targeted at all candidates and in the case of the Articling Program, the candidates' Principals, and at those lawyers in the Year One cohort who are currently practising law and their employers. Focus groups are conducted for a small sample of candidates in each of the pathways.

It should be noted that in the evaluation framework, it was planned to conduct Focus Groups with the newly licensed practising lawyers in the Year One cohorts and their employers. However, efforts to facilitate these data collection activities were not fruitful. Every effort was made to secure the time of Year One LPP and Articling Program new lawyers and their employers to participate in in-person Focus Groups, but after several e-mail and phone call invitations, there was not enough new lawyers and employers who agreed to participate. An inadequate sample size would potentially bias results. The format of the Focus Groups was then changed to an online meeting (using WebEx) in hopes of encouraging more people to participate, but this did not increase uptake of participation. As a result, it was decided to conduct a survey for employers of the new lawyers instead, along with the scheduled survey for new lawyers to gather their feedback.

### *Data Collection Instruments and Response Rates*

#### *The Law Practice Program Entry Survey*

Administered in August, prior to the start of the LPP, this survey is aimed at understanding the LPP candidates' rationale for enrolling in the LPP and their expectations for the program.

**Year One:** 220/277 (79%) responded, which is considered to be an **accurate** snapshot of the targeted population and the data may be viewed as **reliable**.

**Year Two:** 202/310 (65%) responded, which is considered to be **reasonably accurate** snapshot of the targeted population and the data may be viewed as **reasonably reliable**.

### Law Practice Program Withdrawal Survey

Administered in November and February, this brief survey is aimed at the LPP candidates who withdrew from the program, and to understand their rationale for doing so.

**Year One:** 29/40 (73%) responded, which is considered to be an **accurate** snapshot of the targeted population and the data may be viewed as **reliable**.

**Year Two:** 32/50 (64%) responded, which is considered to be **reasonably accurate** snapshot of the targeted population and the data may be viewed as **reasonably reliable**.

### Law Practice Program and Articling Program Focus Groups Protocol

These Focus Group interview protocols are designed to probe deeper into candidates' perceptions of the relative strengths and weaknesses of the experiential training they have received in each program, specifically asking about program value and fairness. The Focus Groups for the LPP are conducted in April both in Toronto and Ottawa, and the Articling Program Focus Groups occur in Toronto during the first week of May. Typically, there are 8 to 12 Focus Group participants per session.

### Law Practice Program Exit Survey

This survey was administered at the end of April in Year One and early in May, immediately following the end of the Program, in Year Two. The survey is sent after the Focus Groups so we may ask questions to a broader audience about any topics raised in the Focus Groups. Additionally, this survey re-visits the concepts of strengths and weaknesses of the experiential training as well as fairness and value.

**Year One:** 185/240 (77%) responded, which is considered to be an **accurate** snapshot of the targeted population and the data may be viewed as **reliable**.

**Year Two:** 163/231 (71%) responded, which is considered to be an **accurate** snapshot of the targeted population and the data may be viewed as **reliable**.

### Articling Survey for Candidates

This survey is administered end of May, after the Focus Groups so we may ask questions to a broader audience about any topics raised in the Focus Groups. Additionally, this survey re-visits the concepts of strengths and weaknesses of the experiential training as well as fairness and value.

**Year One:** 636/1,455 (44%) responded, which is considered to be a **less than accurate** snapshot of the targeted population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

**Year Two:** 614/1,392 (44%) responded, which is considered to be **less than accurate** snapshot of the targeted population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

### Articling Survey for Principals

Administered at the end of May and early June, this survey re-visits the concepts of strengths and weaknesses of the experiential training as well as fairness and value all from the Principals' perspectives.

**Year One:** 487/1,243 (39%) responded, which is considered to be a **less than accurate** snapshot of the targeted population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

**Year Two:** 358/1,221 (29%) responded, which is considered to be **less than accurate** snapshot of the targeted population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

It may be noted that the response rate for Articling Principals is somewhat misleading as, in the interest of gathering as much feedback as possible, law firm administrators had the option completed surveys on behalf of or in addition to their Articling Principal(s) at their firm, and their individual responses may be representative of several placements at their law firm.

#### Law Practice Program Post-License Survey for New Lawyers and Employers

This survey is aimed at practising new lawyers who completed the 2014-2015 LPP and their employers to gauge their views on the relative strengths and weaknesses in the experiential training received by the new lawyers with regards to their preparation for practice. The survey, sent as two separate surveys in one link to maximize distribution, is administered in April of the year post-licensing.

**New Lawyers – LPP English:** 63/119 (53%) responded, which is considered to be **reasonably accurate** snapshot of the targeting population and the data may be viewed as **reasonably reliable**. **New Lawyers – LPP French:** 2/5 (40%) responded, which is considered to be a **less than accurate** snapshot of the targeting population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

**Year One Employers:** We received just one (1) response from an employer of a new lawyer who completed the 2014-15 LPP from 77 potential respondents. The Law Society does not have manager/supervisor contact information for licensees and therefore relied on the new lawyers to forward the survey to their manager/supervisor to complete. **With only one (1) response, there are insufficient data to report on the perceptions of the employers of new lawyers who completed the LPP.**

#### Articling Program Post-License Survey for New Lawyers and Employers

This survey is aimed at practising new lawyers who completed the 2014-2015 Articling Program and their employers to gauge their views on the relative strengths and weaknesses in the experiential training received by the new lawyers with regards to their preparation for practice. The survey, sent as two separate surveys in one link to maximize distribution, is administered in April of the year post-licensing.

**New Lawyers:** 339/1,138 (30%) responded, which is considered to be a **less than accurate** snapshot of the targeted population and the data may be viewed as **unreliable**; and interpretations and findings are made with caution.

**Employers:** We received just 22 responses from employers from 1,048 potential respondents, which is a 2% response rate. The Law Society does not have manager/supervisor contact information for licensees and therefore relied on the new lawyers to forward the survey to their manager/supervisor to fill in. With only 22 responses, these data are considered to be a **less than**

**accurate** snapshot of the targeted population and the data may be viewed as **highly unreliable**; and interpretations and findings are made with caution.

#### Trends and Interpretation

On those surveys that we have comparable data, that is Year One and Year Two, there is an overall **declining response rate trend**. For example, the LPP Entry Survey went from 80% and 71% in Year One to 65% and 62% for English and French, respectively. Similarly, the LPP Exit Survey response rates declined from 77% and 77% to 71% and 64% for English and French, respectively. The Articling Principals Survey response rate declined from 39% in Year One to 29% in Year Two. The only survey that did not have declining response rates was the Articling Program Candidates' Survey, which had an unimpressive 44% response rate in each of Year One and Year Two.

**When there are relatively few data to report because of very low response rates, we cannot reliably report results.** Where we have not reported results for a given group (e.g., French New Lawyers from the LPP, and employers of New Lawyers from the LPP) it is because we do not have the necessary data to do so.

### 3. Keys to Transitional, Experiential Training

Both the Law Practice Program and the enhanced Articling Program were designed and implemented to fulfill the need for transitional, experiential training for lawyer candidates. The Law Society of Upper Canada set the standards for each of the *Pathways* component programs with five goals in mind:

#### *Five Goals of Transitional Training*<sup>15</sup>

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 candidate to practitioner.
5. Introduction to systemic mentoring.

#### *Fairness, Accessibility and Objectivity*

Further, the Law Society of Upper Canada's goals for each of the *pathways* was a need for each to be designed and implemented to be fair, accessible and objective. These three key terms will be defined for context, next.

#### **Fairness**

A process or decision is considered fair in the regulatory context when all of the following are demonstrated:

- *Substantive fairness*: ensuring the fairness of the decision itself. A decision itself must be fair, and to be fair it must meet pre-determined and defensible criteria. A decision must be reasonable and the reasoning behind the decision must be understandable to the people affected.
- *Procedural fairness*: ensuring the fairness of the decision-making process. There is a structure in place to ensure that fairness is embedded in the steps to be followed before, during and after decisions are made. This structure ensures that the process is timely and that individuals have equal opportunity to participate in the registration process and demonstrate their ability to practise.
- *Relational fairness*: ensuring that people are treated fairly during the decision-making process by considering and addressing their perception about the process and decision.<sup>16</sup>

For the context of the *Pathways* programs, fairness also means the removal of unreasonable process barriers, but the goal of the process remains ensuring the competence of those who are licensed. The primary substantive concern is competence and the primary process concern is fairness.<sup>17</sup>

<sup>15</sup> As set out in the Articling Task Force Report - *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, October 2012 (The Law Society of Upper Canada).

<sup>16</sup> From the Office of the Fairness Commissioner, provided by the Law Society of Upper Canada, January 5, 2015.

<sup>17</sup> As set out in the Articling Task Force Report - *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, October 2012 (The Law Society of Upper Canada).

**Accessibility** refers to the *pathways* being reachable, attainable, easily understood, and meeting the needs of people from a variety of backgrounds and a variety of characteristics, including: ethnicity, race, abilities, disabilities, age, gender, language abilities; and preferred learning styles and abilities. The *pathways* will acknowledge that people learn in a variety of ways, being proactive and inclusive ways of designing assessment of competencies, removing barriers to learning before they can affect any candidate. Both the LPP and the enhanced Articling Program will identify and clearly express the essential entry-level competencies, while recognizing that candidates can express understanding of these competencies in multiple ways.<sup>11</sup>

**Objectivity** is judgement based on observable phenomena and uninfluenced by emotions or personal prejudices; and uninfluenced by personal feelings or opinions in considering and representing facts. Data gathered from the reporting requirements in the LPP and the Articling Program will objectively measure whether each *pathway*, as a regulatory requirement, actually accomplishes its goals.

The data should have objective and demonstrable standards to:

- Identify and articulate the goals of the LPP and of the Articling Program;
- Formulate criteria to measure whether those articulated goals are being achieved in each *pathway*;
- Ensure that the articling experience is reasonably consistent for all articling candidates and ensure that the LPP experience is reasonably consistent for all LPP candidates; and
- Assess whether candidates in each *pathway* have demonstrated the practical skills and knowledge necessary for entry-level lawyers.<sup>18</sup>

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<sup>18</sup> Provided by the Law Society of Upper Canada, January 5, 2015.

## 4. Overview of the Law Practice Program

The following information has been taken directly from Ryerson University's and The University of Ottawa's own annual reporting to The Law Society of Upper Canada. The evaluation did not necessarily confirm or assess the merits of the statements made.

### *Law Practice Program - English*

The English LPP, held at Ryerson University, consists of 17 weeks of training (late August to mid-December), followed by a 16-week work placement (January to April). The training consists of three (3) weeks in person plus 14 weeks interactive online all based on developing necessary skills by “working/completing tasks” on files developed by subject matter experts (specially trained actors often play the clients). The candidates are organized into virtual law firms “VLFs”, have a principal acting as a mentor, and are assessed in different ways on the over 100 different tasks they undertake. The LPP makes the assessment whether they have met the Law Society standard. The training helps them “hit the ground running” in their work placement, which has the same status as an articling placement. It is assessed, initially by the Principal (Work Placement Supervisor), and ultimately by the LPP.

Each firm is paired with a Mentor, who is a member of the legal profession in Ontario. Mentors come from across the province, average about 15 years of practice, and cover all areas of practice and workplace settings (clinics, government, private practice of all sizes, in-house counsel). To ensure that all VLFs obtain access to more than one “voice”, mentors are rotated mid-way after the second in-person week, to ensure firms have the benefit of different perspectives and experiences. These Mentors act as “Supervising Lawyers” for the VLFs, meeting with the entire firm once weekly for 17 weeks via webinar, and then bi-weekly with individual candidates. During these interactions, Mentors and firms review the case file work that the candidates have been working on that week, or have coming up, as well as discuss specific themes of Professionalism and Ethics, Practice and Client Management. Candidates can get additional assistance from Subject Matter Experts, or the LPP, in addition to their Mentor, when they have questions.

Candidates meet at Ryerson three (3) times for a week at a time. These three in-person weeks offer candidates the opportunity to engage in intensive workshops or panels (eg Trial Advocacy, Corporate Counsel), be assessed in-person by the bench and bar, develop and expand their professional network with each other, as well as members of the profession. The rest of the 14 weeks they are “working” in a simulated environment, responding to lawyer and client requests on a rapid, regular, intense basis. Their work is “delivered” via case files in the subject areas mandated by the Law Society of Upper Canada:

- Administrative Law (Year One a Landlord/Tenant matter; Year Two an Immigration matter);
- Business Law
- Civil Litigation
- Criminal Law
- Family Law
- Real Estate Law
- Wills & Estates Law

In addition to their file work, VLFs also work together to develop a Business Plan for their firm. This Plan includes the areas in which they intend to practice, the business structure they propose to implement, their plans to develop a client base, and a financial pitch to a bank to secure financing. In addition to the Business Plan, firms also develop an Access to Justice Innovation Challenge, which is an idea/concept to help promote the delivery of justice faster, more efficiently and in a more cost conscious manner. Seven of the 60 firms are selected to make a “pitch” of their idea to a panel of judges, with one firm ultimately winning the Challenge. Each year the winning team’s prize has been a one-on-one lunch and audience with Chief Justice Strathy at Osgoode Hall to discuss the winning Proposal.

Candidates move on to the four-month Work Placement only after they have successfully completed the Training Component. Work Placements span the range of practice areas and office settings across the province. Candidates are prepared for both general and more focused practice areas for their Work Placements.

The LPP continuously seeks additional feedback from all who have been involved in the LPP. The LPP conducts several surveys aimed at the candidates and the Mentors and in 2016, of the 2014-15 Alumni, to obtain feedback about various aspects of both the Training Component and Work Placements. Employers’ feedback has been collected through numerous conversations. All feedback collected is being analyzed with a view to further strengthening the program.

#### *Law Practice Program - French*

The French LPP is an eight-month program, including a four-month intensive in-person practice program in a simulated law firm followed by a four-month placement in a legal workplace.

Ottawa LPP’s innovative practice program has been designed in consultation with experienced lawyers. Its objective is to allow students to master all the skills necessary to offer quality French legal services and to succeed in their professional careers. The practice program consists of eight practice modules:

1. civil litigation;
2. administrative law;
3. commercial law;
4. criminal law;
5. family law;
6. real estate law;
7. wills and estates law, and;
8. establishing and managing a firm.

Within a simulated law firm, candidates familiarized themselves with all aspects of the legal practice including communicating with clients, legal researching and drafting, strategic decision-making, oral argument, computerized firm management, time management, billing, professional responsibility, developing a business plan, and networking.

During the 2015-2016 training component, the LPP candidates accomplished over 90 tasks testing more than 80 skills in seven (7) areas of law. They were also exposed to all the aspects of practice management, including respect for professional obligations, development of business acumen, initiation in the practice of law in a rural environment, and community engagement. In the work placement component, candidates had the opportunity to implement their new skills

acquired during the LPP training component by working in a variety of legal environments, like national unions, governmental agencies, small firms, and government.

In addition, candidates presented a business case they had developed to assess the viability of opening satellite firms in Hawkesbury, Timmins, and Sudbury. This project also addressed the development of skills relating to law firm management. The candidates addressed the following subjects during their presentations:

- Offers of and demand for legal services in each community;
- Cost of living in each community;
- Availability and cost for renting space in each community;
- Availability of qualified labour in each community;
- Start-up fees and operational costs of a firm.

Lawyers and representatives of each region joined us by webinar to make observations about and comment on the presentations. Practising-trainers and an accountant were on site to assess the business cases.

The French LPP added three supervising lawyers to its team for the 2015 training component. Their role was to moderate work groups every other week with the candidates. The goal of those small groups was to closely follow the candidates' progress and give them more individualized feedback on legal drafting, practice management, and file management. Also, the discussion groups were used as a forum to discuss and share on issues relating to the professional obligations of a lawyer.

Based on the feedback received from the 2014-2015 candidates, the French LPP created a mentoring program for candidates in Year Two. In that program, each candidate is offered a chance to be matched with a member of the legal community as their mentor during the program. The goal is to give the candidates contact with lawyers and members of the legal profession in formal or informal settings, and to learn more about the practice of law from the solid experience of their mentors.

In accordance to reporting expectations stipulated by the Society, the University of Ottawa has conducted surveys of the candidates in order to obtain feedback about various aspects of the Law Practice Program, including:

- Modules and practising trainers, including assessment
- Professional development days
- Resources offered by the LPP
- Services offered by the University

#### Linguistic test

In order to ensure a certain quality of the French-Language within the program, the University of Ottawa's LPP created a linguistic test for candidates who did not study law in French but would like to register in the French LPP. The passing mark established by the LPP, in consultation with two legal writing experts, was 65%. Three candidates wrote the linguistic test for

**Year One:** one candidate passed and two candidates failed and were therefore denied entry into the program. In **Year Two**, none of the candidates had to write a test because they all did their law studies in French.

## 5. Overview of the Articling Program

Articling Principals and candidates were informed that new evaluative measures, as part of an enhanced Articling Program, mirror those in the Law Practice Program and over the course of the *Pathways Pilot Project* the Law Society will study the effectiveness of both *pathways* in preparing candidates for entry to the profession. They were also informed via email<sup>19</sup> that in addition to the current Articling Program requirements, there are two new requirements for Principals and one new requirement for candidates effective for placements starting on or after May 1, 2014:

1. The Articling Principal to file an **Experiential Training Plan** for the articling placement before the start of the articling placement or within 10 business days of the start. The purpose of the Experiential Training Plan is to assure that the articling placement will provide the candidate with a meaningful training experience. The preparation of plans will also help promote a level of consistency in application of skills competencies across articling placements.
2. The Articling Principal and the articling candidate *each* file a **Record of Experiential Training in Articling Program** at the end of the articling placement or within 10 business days of end. The Record of Experiential Training in Articling Program is a BARS-based reporting requirement designed to gather information about the candidate's exposure to the experiential training competencies and about the level of the candidate's performance in relation to the performance appraisal competencies, during their placement.

### *Experiential Training Plan Template*

The online experiential training plan template asks Articling Principals the following questions and the answers formulate the training plan:

1. What level of administrative support will be available to the candidate during the placement?
2. How will the articling placement support the candidate's fulfillment of each of the experiential training competencies?
3. How will the Articling Principal appraise the performance of the candidate undertaking the five tasks, based on the performance appraisal competencies?
4. Will there be a process for ongoing provision of feedback to the candidate about the candidate's performance? And an opportunity for the candidate to discuss, in confidence, any problems or areas of concern about the articling placement and to ask for guidance and advice about their work?
5. Any additional information about the placement?

### *BARS-based Measurement Tools, used for Principal and Candidate Reporting*

Skills-based task exposure and performance appraisal in the Articling Program are now measured by Behaviourally-Anchored Rating Scales (BARS). These scales have been developed by The Performance Assessment Group (an external vendor) with input from practising lawyers, the

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<sup>19</sup> Text provided by the Law Society of Upper Canada (December 8, 2014).

*Society*, and other legal professionals, such as student administrators in large law firms and Principals from government and other settings.

The BARS tools are aligned to the experiential training competency areas of the enhanced Articling Program.

Experiential Training Competency Categories:

1. Professional responsibility
2. Interviewing
3. Fact investigation and legal research
4. Drafting and legal writing
5. Planning and advising
6. File and practice management
7. Negotiation
8. Advocacy
9. Transactional/Advisory matters

Performance Appraisal Competency Categories and the Five Tasks:

1. Establishing the Client Relationship - Task: Interview a Client
2. Conducting the Matter: Matter Management - Task: Draft a Legal Opinion
3. Conducting the Matter: Advocacy - Task: Represent a Client in an Appearance or Through Some Form of Alternative Dispute Resolution or Settlement Process
4. Ethics and Professionalism - Task: Professional Responsibility Assessment
5. Practice Management - Task: Use of Law Firm/Legal Practice Management Systems

A section of a BARS tool for **skills task exposure** is provided here.

	2. INTERVIEWING		ANCHORS
	Attend interviews with witnesses and/or experts.	5	Independently conducted witness and/or expert interviews.
		4	Jointly conducted witness and/or expert interviews.
		3	Participated in witness and/or expert interviews.
		2	Observed witness and/or expert interviews.
		1	Not applicable in this context.

A section of a BARS tool for **performance appraisal** is provided here.

Skill Competency	Competency To Be Assessed		BEHAVIOURAL ANCHORS
Interviewing a Client	Determines the client's legal needs.	5	Prioritizes the client's legal needs. Assists the client to refine his or her understanding of his or her legal needs.
		4	Distinguishes between the client's wants and legal needs.
		3	Identifies the client's legal needs accurately, but may identify some of the client's wants as legal needs.
		2	Captures some of the client's legal needs. Does not distinguish between the client's wants and legal needs.
		1	Identifies the client's legal needs inaccurately or not at all.
		N/A	Not applicable in this context

In March 2014, a paper pilot test of the BARS was conducted with a diverse group of Principals and candidates in order to gain a more comprehensive understanding of how this tool will work and to identify areas where it could be improved. The Performance Assessment Group analysed the results of the pilot test and refined the tool, as required.

It is unclear at this juncture whether emailed instructions or directions in a video on how to use the BARS were effective. In the documentation provided by the external vendor, the Performance Assessment Group,<sup>20</sup> a short section is devoted to “Using the Results of the Performance Assessment Tool,” (p.4) but the ever important *How to use the Performance Assessment Tool* was not addressed.

As task exposure measurement and performance appraisal are both enhancements, new to the Articling Program and the Articling Principals, founded on BARS, which require psychometric rigour to develop and validate, adequate instruction and training on how to use the BARS-based tools is an important and necessary piece of the Pathways Project, accounted for in the Outputs of the logic model.

We know training involved a detailed email as well as an instructional video. However, effectiveness of this training has not yet been measured directly.

<sup>20</sup> *Assessment of the Law Society of Upper Canada's Articling Program* (September 2013).

## 6. Evaluation of the Keys to Transitional, Experiential Training

### a. Fairness, Accessibility and Objectivity of the Training

#### *Law Practice Program - English*

Figure 1 shows us that respondents were generally satisfied, that is “Satisfied,” “Quite Satisfied,” and “Most Satisfied” with all of the aspects of the administration of the Law Practice Program listed.

Respondents in **Year One** were the “Most Satisfied” with the *Responsiveness of LPP Administration to Personal Issues* in the greatest proportion (42%) and “Least Satisfied” with *Fairness of the Process to Secure a Work Placement* in the greatest proportion (24%). Respondents in **Year Two** were most “Most Satisfied” with *Fairness of the Admissions Process* (44%) and were also “Least Satisfied” with *Fairness of the Process to Secure a Work Placement* (17%).

The former result is consistent with what was reported in the Law Practice Program Focus Groups, but the low proportion (6%) of “Least Satisfied” with *Marketing/ Branding of the Law Practice Program* is inconsistent with what was reported in the Focus Groups in **Year One**. The **Year Two** Focus Groups also mentioned that branding and marketing of the LPP as well as the nomenclature used to describe candidates in the program (e.g., *candidate* or *student at law* was preferred to *student*) was a sore point among some participants.

Further, the *Manageability of Training Course Workload* and *Manageability of Work Placement Workload* “Least Satisfaction” ratings were also relatively low (3% and 5%, respectively), which is consistent with Focus Group results for **both evaluation cohorts**.

The greatest **changes** in proportion of “Quite Satisfied” and “Most Satisfied” **from Year One to Year Two** were decreases in *Fairness of the Admissions Process* and *Manageability of the Training Course Workload* at 5% and 6%, respectively; and increases in *Fairness of the Process to Secure a Work Placement* and *Accessibility of Work Placements* at 4% and 5%, respectively. The increases, however, were in the two categories with the least amount of satisfaction across both cohorts. *Fairness of the Training*

### SECTION SIX SUMMARY

- ❖ Fairness of the process to secure a work placement remains the aspect of LPP administration with the least amount of satisfaction among candidates.
- ❖ Internationally-educated candidates were generally more satisfied than Canadian-educated on most aspects of LPP administration.
- ❖ Relevance of the work at the placement continues to garner the greatest satisfaction from candidates in the Articling Program.
- ❖ Fairness of the articling placement search process and accessibility of the Articling Program continue to show the least satisfaction among candidates in the Articling Program.
- ❖ The majority of Articling Principals agree that the Articling Program is fair, accessible and objective.
- ❖ There is almost universal compliance in the new reporting requirements of the Articling Program, but the perceived value of these requirements is low.
- ❖ Candidates in the Articling Program continue to receive more exposure to *Fact Investigation and Legal Research* as well as *File and Practice Management*, and least exposed to *Transactional / Advisory Matters* and *Advocacy*.

*Course Assessments and Relevance of the Training Course Work* remained essentially unchanged across the cohorts.

#### Canadian-Educated versus Internationally-Educated

Those respondents who graduated from law schools outside Canada were generally “Quite Satisfied” and “Most Satisfied” in greater proportions than their colleagues who graduated from Canadian law schools on all aspects of Administration of the Law Practice Program, except *Manageability of Training Course Workload* for **both evaluation cohorts**.

In **Year One**, the proportion of graduates of law schools outside of Canada were “Quite Satisfied” and “Most Satisfied” with *Marketing/ Branding of the Law Practice Program* was 20% higher than the proportion of fellow candidates who graduated from Canadian law schools. The proportion of graduates of law schools in Canada were “Quite Satisfied” and “Most Satisfied” with *Manageability of Training Course Workload* and was 3% higher than the proportion of fellow candidates who graduated from non-Canadian law schools.

In **Year Two**, the candidates who graduated from Canadian law schools were four-times more “Least Satisfied” by proportion than their internationally-educated colleagues in *Fairness of the Admissions Process* and *Marketing / Branding of the LPP*.

On average in both **Year One and Year Two**, the proportion of graduates of non-Canadian law schools expressed they were “Quite Satisfied” and “Most Satisfied” was 9% and 8% higher across each of the aspects of the Administration of the Law Practice Program, respectively.

## SECTION SUMMARY Cont.

- ❖ *Interviewing and File and Practice Management* had the highest relevancy for new lawyers from the LPP.
- ❖ *Transactional / Advisory Matters and Use of Law Firm / Legal Practice Management Systems* had the least amount of relevancy for new lawyers from both the LPP and the Articling Program.
- ❖ *File and Practice Management* showed the most growth for candidates in the LPP and *Fact Investigation and Legal Research*, as well as *Drafting and Legal Writing* showed the most growth for candidates in the Articling Program.
- ❖ All the candidates in the LPP and the vast majority of the candidates in the Articling Program met or exceeded the expectations for their competency development as assessed by supervisors or others.
- ❖ *Availability of Mentors to address learning issues* received the most effectiveness rating from candidates in the LPP.
- ❖ *Quality and timeliness of feedback* from Mentors were not as large of a concern in the Year Two LPP Focus Groups as they were in Year One.
- ❖ *Quality of the learning experience* continued to garner the most satisfaction from candidates in the Articling Program.

## Candidates' Satisfaction of Aspects of the Administration of the Law Practice Program (Year One and Year Two)

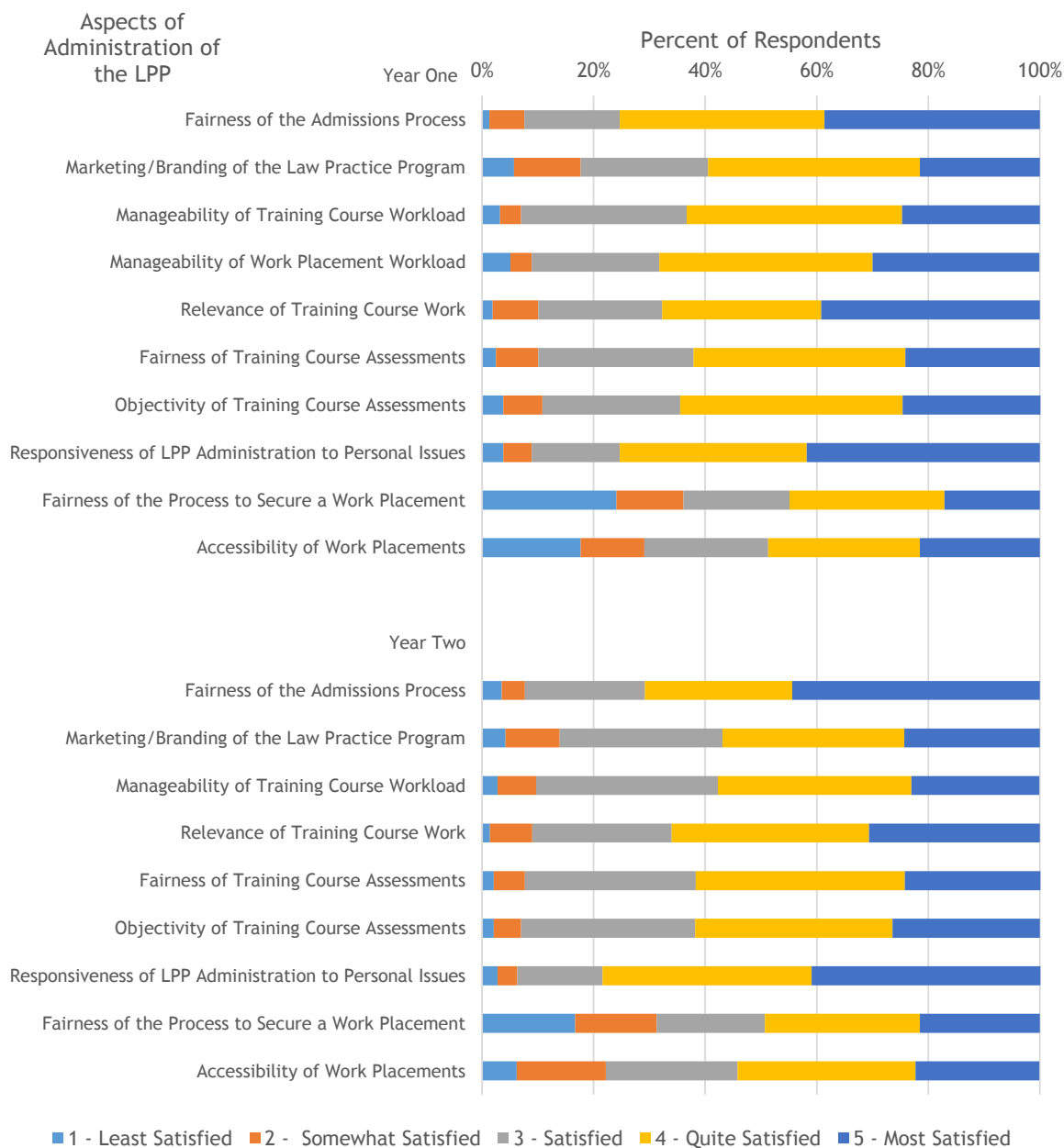


Figure 1. Candidates' Satisfaction Ratings of Aspects of the Administration of the LPP (Year One and Year Two)

LPP English candidates were asked if they had any additional comments about the administration of the LPP and there were 32 responses to this question in **Year One**:

**Numerous themes** were expressed, but none in any great numbers. Some respondents directed compliments to the Ryerson Program Directors and **“LPP Administration team,”** and some mentioned issues with the work placement process, which was **“convoluted,” “should have been arranged earlier,”** and **“... badly needs to be changed.”** The work placement process was also targeted as being **“heavily in the GTA,”** and that placements should be **“paid.”** Others mentioned that the training course workload was **“too light,”** and **“considerably light.”** Many of these themes were also expressed in the LPP Focus Groups.

There were 31 responses to this question in **Year Two**:

The majority of the comments aimed at questioning the **fairness of the admission process**, citing the fact that everyone who applied for admission into the LPP was admitted. So while this may seem to be an equitable process, candidates preferred a **“vetting”** process so not all applicants were admitted. Another theme identified in many responses was focused on critiquing the policy (which many respondents mistakenly perceived to be the Law Society’s policy, when it is an LPP provider policy) of accepting the first placement that is offered. In this light, still, many respondents stated that the **“forced acceptance is unfair.”** Still, several comments were made to highlight **positive** aspects of the administration, specifically regarding the dedication of the **“LPP administration and staff.”**

#### LPP New Lawyer - English

Eighty percent (80%) of the respondents to the New Lawyer Survey from **Year One** cohort, reported they were working in the type of practice they were considering before becoming licensed; 81% of these new lawyers reported they were practising in the areas of law they were considering before becoming licensed; and 88% of these new lawyers reported they were practising in the location they were considering before becoming licensed. These data may be indicative of **accessibility** to desired practice, areas of law and location offered by the LPP.

However, we are reminded here that **only 119** of the **Year One** cohort’s original 238 candidates qualified as New Lawyers (those with a practising status), and the response rate for the New Lawyer Survey was 53%, or just 63 lawyers. So in absolute numbers, 80% of the respondents to this survey translates to just over 20% of the **Year One cohort**, or specifically, **50 lawyers** and 88% is **55 lawyers** or 23% of the **Year One cohort**.

#### Law Practice Program - French

In **Year One**, the greatest proportion of the 13 respondents were “Quite Satisfied” and “Most Satisfied” on *Relevance of Training Program Course Work* (92%) and the smallest proportion of the respondents were “Quite Satisfied” and “Most Satisfied” on *Accessibility of Work Placements* (33%).

In **Year Two**, 100% of the 6 respondents were “Quite Satisfied” and “Most Satisfied” in all aspects of the LPP Administration, except for *Marketing / Branding of the LPP* and *Relevance of the Training Course Work* in which 1 candidate was “Satisfied.”

When comparing the English and French LPP candidates’ ratings on the various aspects of the LPP, *Relevance of the Training Course Work* was rated by a slightly greater proportion (39%) of

the respondents to the English LPP Exit Survey; this relevance aspect garnered only about 17% for “Most Satisfied” ratings from the French respondents to the LPP Exit Survey in **Year One**. *Responsiveness of the articling organization to personal issues* (33%) and *Responsiveness of the LPP Administration to Personal Issues* (42% - English and 33% - French) also received relatively large proportions of “Most Satisfied” from the articling candidates and the LPP candidates, respectively in **Year One**.

This comparison is not made with the **Year Two** data as there were too few respondents in the French LPP to make these comparisons meaningful.

### **The Articling Program**

Figure 2 (next page) shows in the **Year One** and **Year Two** data that the greatest proportion of “Most Satisfied” ratings from respondents to the Articling Program Candidates’ Survey were in the *Relevance of the work at the articling placement* (38% and 35% Year One and Year Two, respectively). The smallest proportion of “Most Satisfied” ratings from respondents was for *Fairness of the articling placement search process* (13% and 9%) followed by *Accessibility of articling placements* (16% and 12%) and *Fairness of the articling program* (19% and 13%). Generally, there are smaller proportions of candidates rating these aspects as “Most Satisfied” from Year One to Year Two.

## Articling Program Candidates' Satisfaction Ratings for Aspects of the Articling Program (Year One and Year Two)

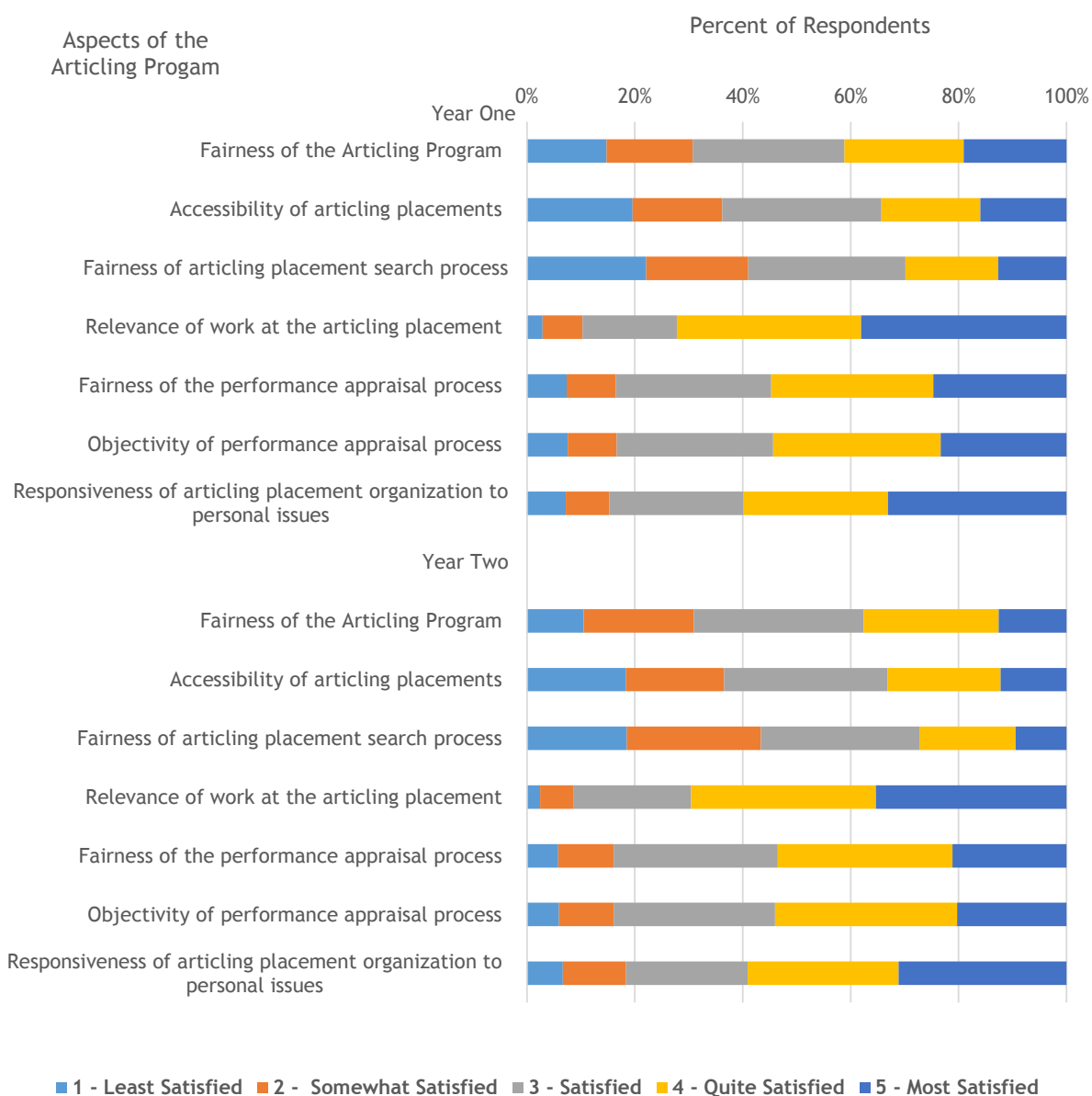
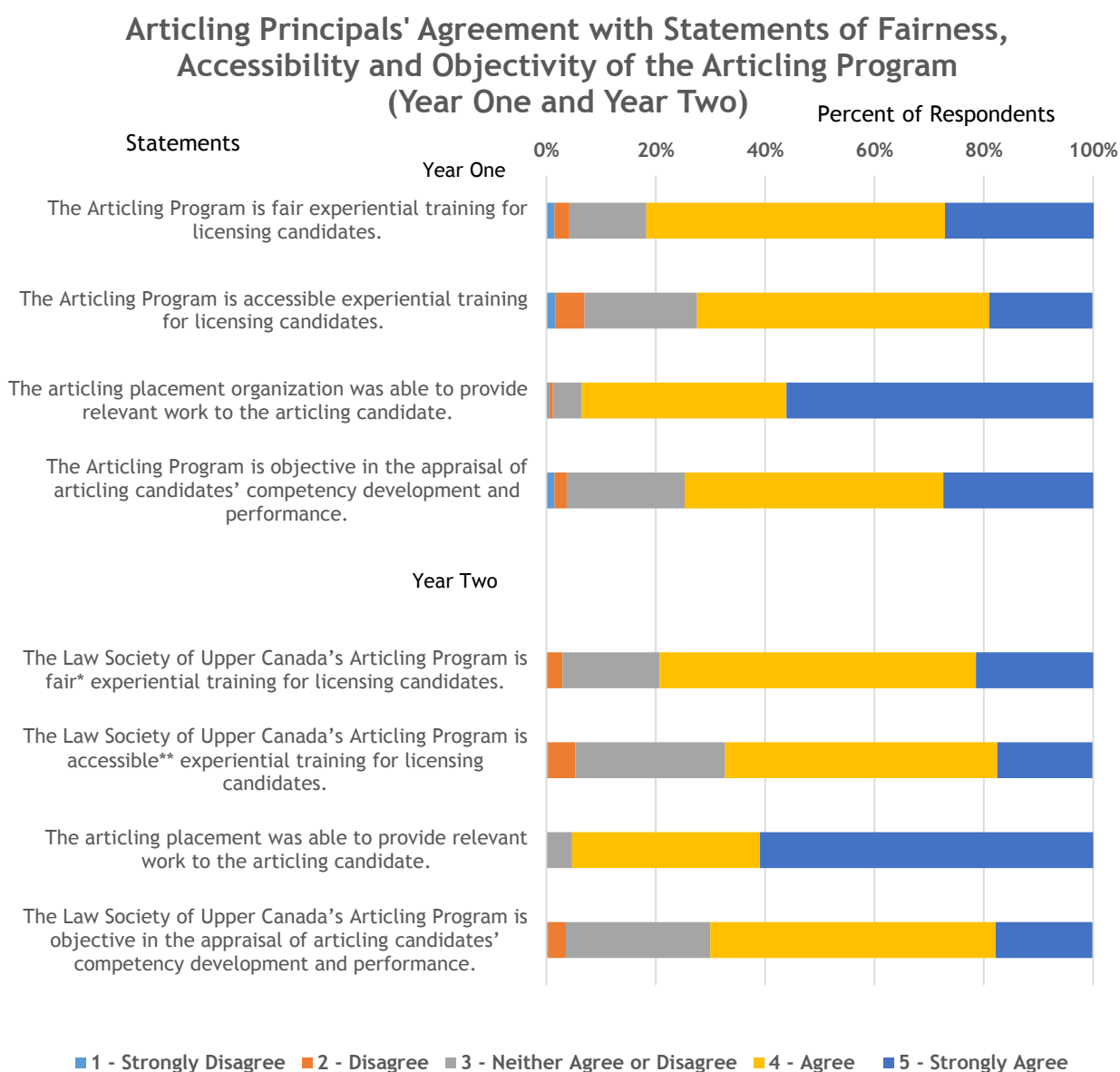


Figure 2. Candidates' Satisfaction Ratings for Aspects of the Articling Program (Year One and Year Two)

### Articling Principals

Figure 3 shows that in **Year One and Year Two**, the majority (72% to 94% and 67% to 95%, respectively) of Articling Principals “Agree” or “Strongly Agree” that the Articling Program is fair, accessible and objective. Many Principals expressed the sentiment that the Articling Program was a necessary step for training lawyers, or that the program itself was good at doing so. However, all of the statements show a smaller percentage of respondents rating “Strongly Agree” from Year One to Year Two, except for the third statement, the one on relevancy of the experiential training.

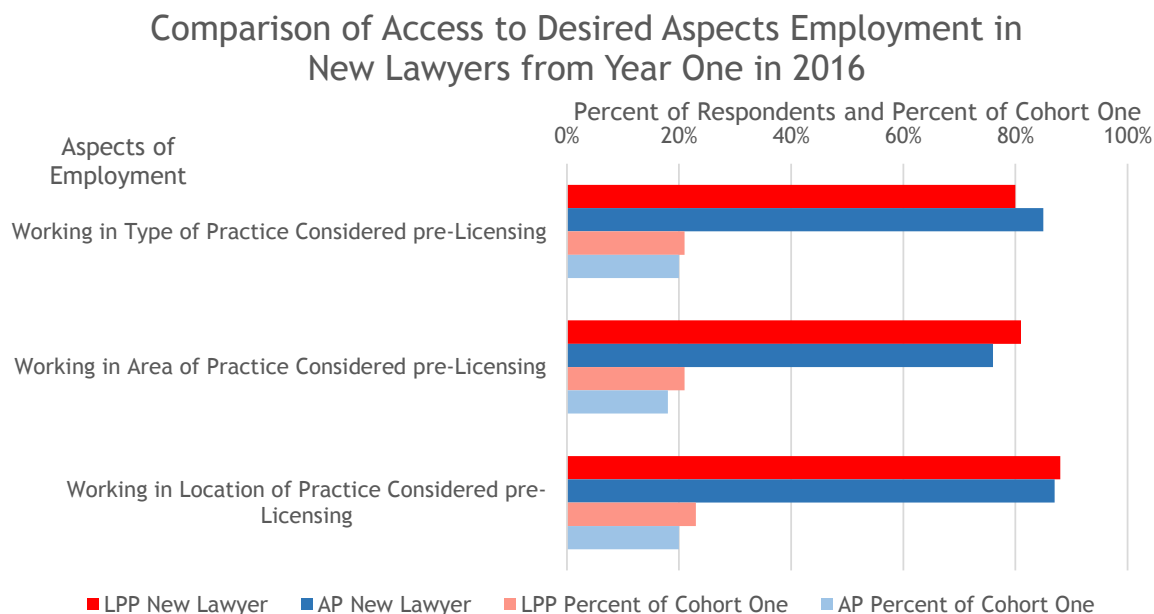


*Figure 3. Articling Principals' Agreement with Statements about Aspects of the Articling Program (Year One and Year Two)*

### Articling Program New Lawyer

Eighty-five percent (85%) of the respondents to the New Lawyer Survey from the **Year One** cohort, who had completed the Articling Program one year ago, reported they were working in the type of practice they were considering before becoming licensed; 76% of these new lawyers reported they were practising in the areas of law they were considering before becoming licensed; and 87% of these new lawyers reported they were practising in the location they were considering before becoming licensed. These data may be indicative of **accessibility** to desired practice, areas of law and location offered by the Articling Program. Again, however, we contextualize these results in terms of the response rate for the New Lawyer Survey. Just 339 new lawyers responded to this survey, representing a 30% response rate. So, 85% of this group is 288 lawyers. In total then, 288 of the original 1,455 in **Year One** cohort, is just 20%.

Figure 4 below shows a comparison of these data in Articling Program new lawyers and LPP new lawyers in terms of response rates and true representation of the **Year One** cohort for meaningful comparison.



*Figure 4. Comparison of Access to Desired Aspects of Employment in Year One Post-Licensing New Lawyers*

### Articling Program - Employer

All 12 respondents to the hire-back question on the Articling Program Employer Survey indicated that they indeed hired back a candidate, with 7 (58%) reporting that they hired back a single candidate. The data are sparse here, and we cannot draw safe conclusions for access to employment.

## b. Exposure to the Experiential Training Competencies

### *Exposure to the Experiential Training Competencies in Law Practice Program*

The LPP training course is designed to simulate the experience of working in a law firm, with the goal that candidates learn by doing. Working with various scenarios that replicate client matters commonly addressed by entry-level lawyers, candidates will take the necessary steps to resolve the clients' matters, while developing the skills and undertaking the tasks outlined in Sections 2 (skills) and 3 (tasks) of the ***National Entry to Practice Competency Profile for Lawyers and Quebec Notaries***:<sup>21</sup>

#### **Skills**

- Ethics and Professionalism Skills
- Oral and Written Communication Skills
- Analytical Skills
- Research Skills
- Client Relationship Management Skills
- Practice Management Skills

#### **Tasks**

- General Tasks
  - Ethics, professionalism and practice management
  - Establishing client relationship
  - Conducting matter
  - Concluding retainer
- Adjudication/Alternative Dispute Resolution
  - Draft pleading
  - Draft court order
  - Prepare or respond to motion or application (civil or criminal)
  - Interview and brief witness
  - Conduct simple hearing or trial before an adjudicative body
  - Prepare list of documents or an affidavit of documents
  - Request and produce/disclose documents
  - Draft brief
- Transactional/Advisory Matters
  - Conduct basic commercial transaction
  - Conduct basic real property transaction
  - Incorporate company
  - Register partnership
  - Draft corporate resolution
  - Maintain corporate records
  - Draft basic will

<sup>21</sup> Federation of Law Societies of Canada (pp. 2-7), September 2012.

- Draft personal care directive
- Draft powers of attorney

The LPP Providers provide this training in a variety of practice areas including: civil litigation, criminal law, family law, wills and estates, real estate, administrative law and business law, as well as human rights and immigration law.

Further information about competency exposure in the LPP can be found in section *d) Assessment of Performance in Core Competencies*, on page 53.

### ***Exposure to the Experiential Training Competencies in the Articling Program***

Articling Principal and articling candidate compliance with the new reporting requirements in the **2014-2015** (Year One) Articling Program is **fairly high**.

- 98% of Articling Principals filed an Experiential Training Plan;
- 93% of Articling Principals filed their report about the candidates' exposure levels to the experiential training competencies during the placement
- 94% of articling candidates filed ratings on their exposure levels to the experiential training competencies; and
- 88% of Articling Principals filed an appraisal of the candidate's performance relating to the performance assessment competencies.

Articling Principal and articling candidate compliance with the new reporting requirements in the **2015-2016** (Year Two) Articling Program was **slightly higher than the previous year**, with the most increase in filing of appraisal of the candidate's performance relating to the performance assessment competencies.

- 99% of Articling Principals filed an Experiential Training Plan;
- 94% of Articling Principals filed their report about the candidates' exposure levels to the experiential training competencies during the placement
- 95% of articling candidates filed ratings on their exposure levels to the experiential training competencies; and
- 93% of Articling Principals filed an appraisal of the candidate's performance relating to the performance assessment competencies.

Figure 5 (next page) presents a summary of the exposure to the Experiential Training Competencies as reported by Principals and candidates on each of their reports for **Year One**. We see that there is **congruence** between both sources. We see the most regular exposure in *Fact Investigation and Legal Research* as well as *File and Practice Management*, with the most N/As in *Transactional / Advisory Matters* and *Advocacy*.

### Comparison on Experiential Training Competency Coverage as Reported by Principals and Candidates on the Record of Experiential Training in Articling Program (Year One)

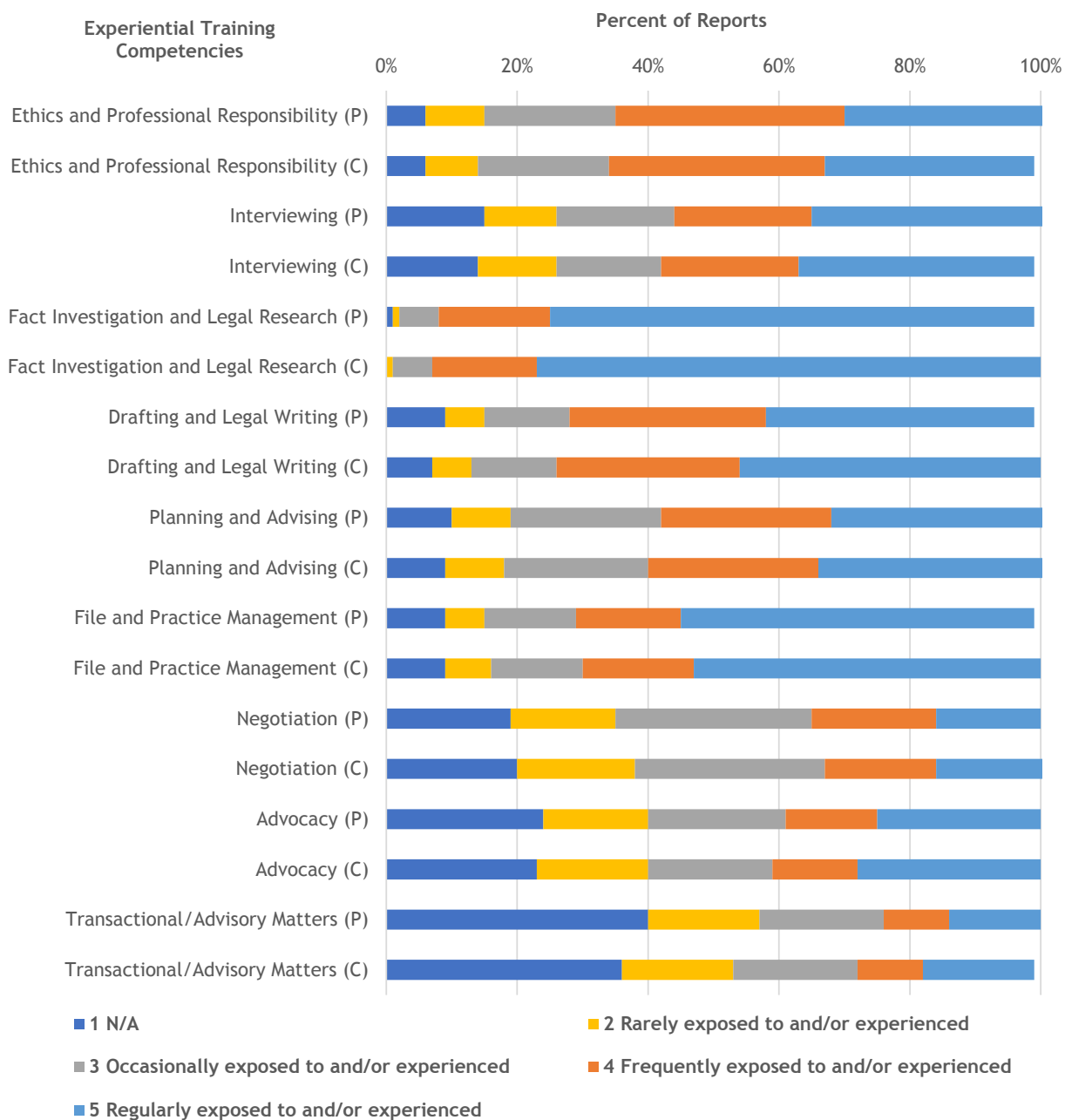


Figure 5. Comparison on Experiential Training Competency Exposure as Reported by Principals and Candidates (Year One)

Figure 6 below presents a summary of the exposure to the Experiential Training Competencies as reported by Principals and candidates on each of their reports for 2015-2016, or **Year Two**. We see that there is **congruence** between both sources. As in **Year One** we also see the most regular exposure in *Fact Investigation and Legal Research* as well as *File and Practice Management*, with the most N/As in *Transactional / Advisory Matters* and *Advocacy*.

### Comparison on ETC Coverage as Reported by Principals and Candidates on the RET (Year Two)

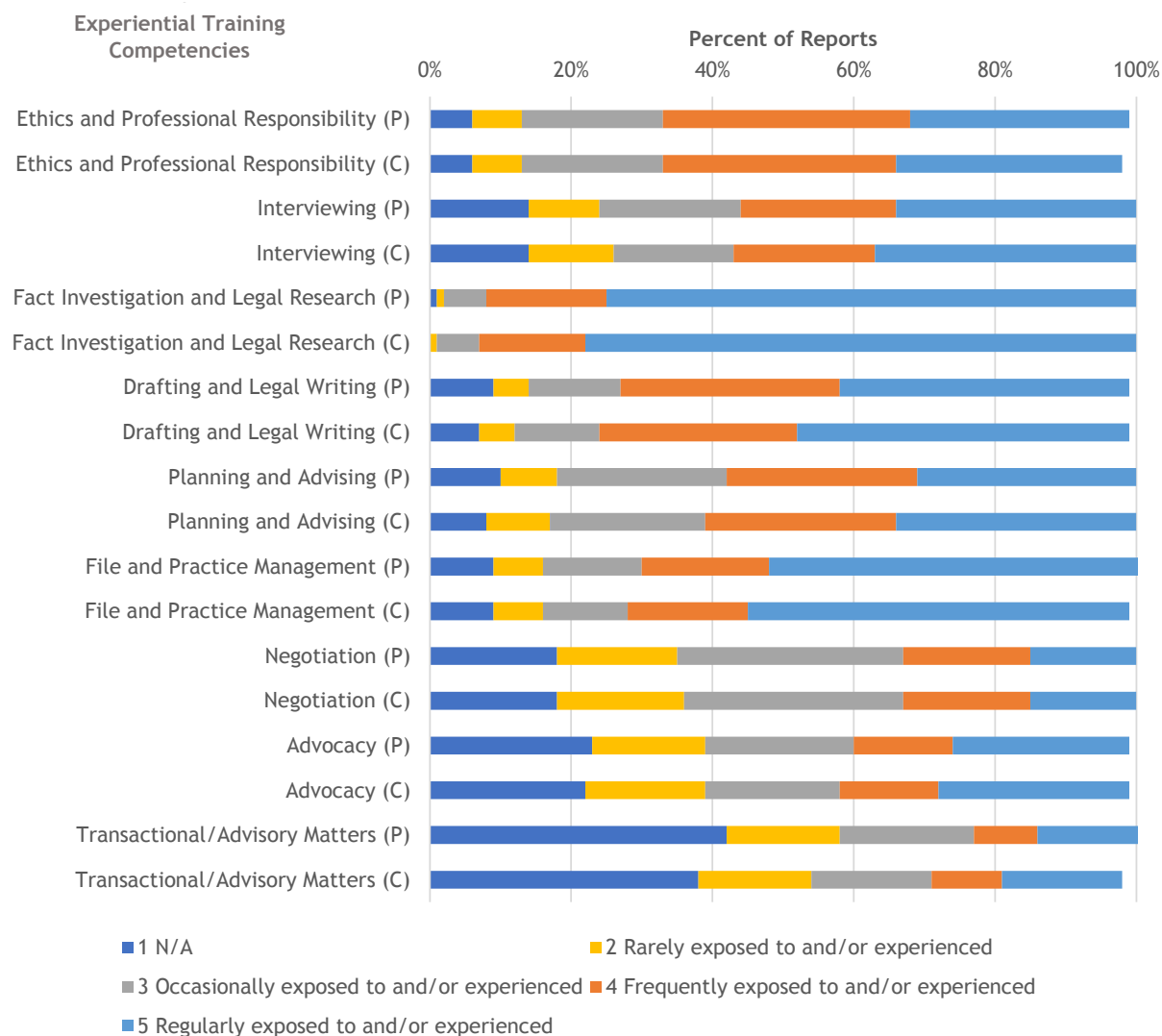


Figure 6. Comparison on Experiential Training Competency Exposure as Reported by Principals and Candidates (Year Two)

### *N/A for Exposure to the Experiential Training Competencies*

If N/A was reported by a Principal or candidate on the Record of Experiential Training in Articling Program for a particular experiential training competency, it means that exposure to that competency was not applicable in the placement context and that the candidate did not receive exposure to that competency. In both **Year One** and **Year Two**, we see *Transactional/Advisory Matters*, *Advocacy* and *Negotiation* were the competency categories that most often received an N/A rating.

However, we find that candidates were “Regularly” exposed to *Fact Investigation and Legal Research*, and *File and Practice Management* on more than 50% of the experiential training competencies reports by both candidates and Principals. *Drafting and Legal Writing* were next with the most “regular” exposure with almost 50% reported by Principals and candidates. We see very similar results for both **Year One** and **Year Two**.

When N/A was reported for a particular competency, the Principal and/or candidate was then required to provide commentary to explain why. In the large majority of cases, an N/A response is a result of the placement setting. Placements at the following settings had difficulty providing the candidate exposure to certain competencies: Government or Public, Crown, In-house, Legal Clinic, Tribunal and NGO. Also, some candidates at law firms were not exposed to some competencies as a result of the scope of available relevant solicitor or barrister work at the firm.

The majority of explanations given about why the competency was not applicable during the placement were “**the placement offers no opportunity to expose the candidate to this competency**”, “**the competency is not applicable during a clerkship**”, “**we don’t have clients**”, “**we do not engage in litigation work**”, “**we engage in litigation work only**”, and “**not applicable in context of placement**”. Some competencies, such as conflicts checking, conducting a negotiation, and conduct a hearing or trial where permitted, were not fulfilled as the placement organizations did not provide an opportunity for articling candidates to do these activities. In addition, certain placement organizations do not engage in transactional (solicitor) matters.

Table 2 on the following page shows the competencies that articling candidates were most often not exposed to during their placement, for Year One and Year Two.<sup>22</sup>

<sup>22</sup> Threshold of 15% of placements that reported N/A for each competency. Year One is 218 or more candidates and Year Two is for 209 or more candidates.

**Table 2 - Competencies that Articling Candidates Were Most Often Not Exposed to During their Placement<sup>23</sup> (Year One and Year Two)**

Competency Category	Competency	Number of N/A Ratings (Year One)	Number of N/A Ratings (Year Two)
<b>Transactional/Advisory Matters</b>	Participate in closing	698 (52%)	641 (48%)
<b>Advocacy</b>	Conduct a hearing or trial where permitted (e.g., status hearings, judgment-debtor examinations, Small Claims Court and tribunal matters).	584 (43%)	575 (43%)
<b>Transactional/Advisory Matters</b>	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)	568 (42%)	546 (41%)
<b>Transactional/Advisory Matters</b>	Fulfill appropriate regulatory requirements and/or identify forum/parties/stakeholders	520 (38%)	497 (38%)
<b>Transactional/Advisory Matters</b>	Use transactional checklists as appropriate (e.g., due diligence checklist, closing agenda)	470 (35%)	367 (28%)
<b>Transactional/Advisory Matters</b>	Conduct and/or review relevant searches (e.g., PPSA, Bulk Sales Act, bankruptcy, executions, title, corporate names, tax certificates, trademarks, liens).	456 (34%)	462 (35%)
<b>Negotiation</b>	Conduct negotiations under supervision of a lawyer (e.g., small claims, simple tribunal matter)	429 (32%)	437 (33%)
<b>Advocacy</b>	Attend court or tribunal, where permitted, to speak to routine administrative matters (e.g., unopposed adjournments, uncontested and consent motions, and set dates).	381 (28%)	344 (26%)
<b>Negotiation</b>	Observe forms of alternative dispute resolution (e.g., mediation, arbitration, conciliation)	346 (26%)	321 (24%)
<b>Advocacy</b>	Prepare clients or witnesses for trial or other examination	322 (24%)	315 (24%)
<b>Interviewing</b>	Attend interviews with witnesses and/or experts	308 (23%)	295 (22%)
<b>Interviewing</b>	Prepare witness statements, affidavits, or other court documents based on interview	287 (21%)	246 (19%)
<b>Advocacy</b>	Request, provide or participate in document disclosure as required (e.g., affidavits of documents, Crown disclosure, Children's Aid Society).	229 (17%)	-
<b>Interviewing</b>	Prepare witness statements, affidavits, or other court documents based on interview	-	238 (18%)

<sup>23</sup> Report provided by Law Society Staff, July 2, 2015 and June 8, 2016

### Law Practice Program New Lawyer - English

Figure 7 below shows that for the most-part all of the skills candidates were exposed to in their experiential training in the LPP are “Very” to “Highly” relevant from the perspective of newly-practicing lawyers who completed the LPP. Only *Transactional /Advisory Matters* and *Use of Law Firm/Legal Practice Management Systems* had fewer than 50% of the respondents rate them as “Very” to “Highly” relevant. This latter result is contradictory to what both Year One (of which these new lawyers belong) and Year Two cohorts report in the forthcoming section on Growth in Practical Skills Development. The highest percentage of respondents rating “Very” or “Highly” relevant were in *Interviewing* and *File and Practice Management*; both results support results from the upcoming section on Growth in Practical Skills Development.

### LPP Year One New Lawyer Ratings of Skills Relevancy

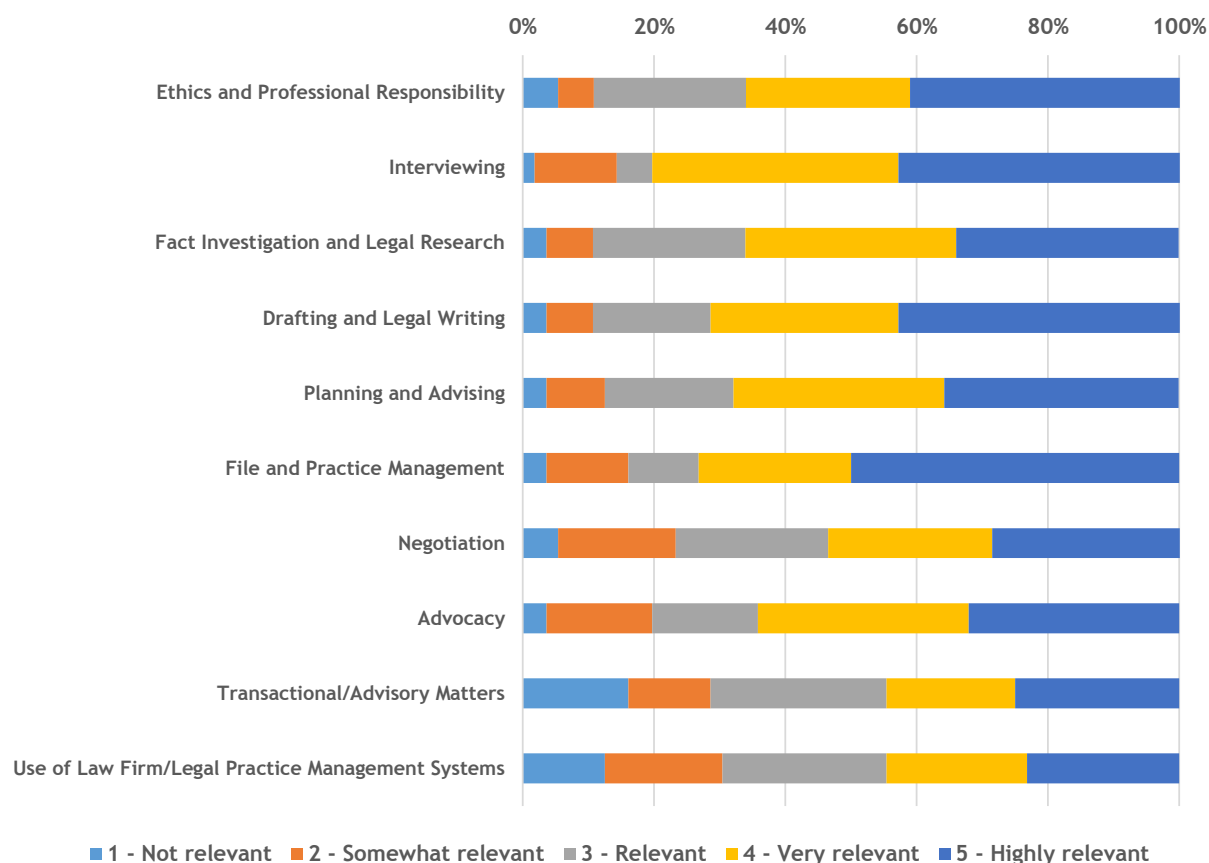


Figure 7 -LPP Year One New Lawyer Ratings of Skills Relevancy

### Articling Program New Lawyer

Figure 8 below shows that for the most-part all of the skills candidates were exposed to in their experiential training in the Articling Program are “Very” to “Highly” relevant from the perspective

of newly-practicing lawyers who completed the Articling Program. Only *Transactional /Advisory Matters* and *Use of Law Firm/Legal Practice Management Systems* had fewer than 50% of the respondents rate them as “Very” to “Highly” relevant. This latter result is contradictory to what both Year One (of which these new lawyers belong) and Year Two cohorts report in the forthcoming section on Growth in Practical Skills Development. *Drafting and Legal Writing* had 87% of the respondents rate this skill as “Very” or “Highly” relevant; supporting the results of the forthcoming section on Growth in Practical Skills Development.

### Articling Program Year One New Lawyer Ratings of Skills Relevancy

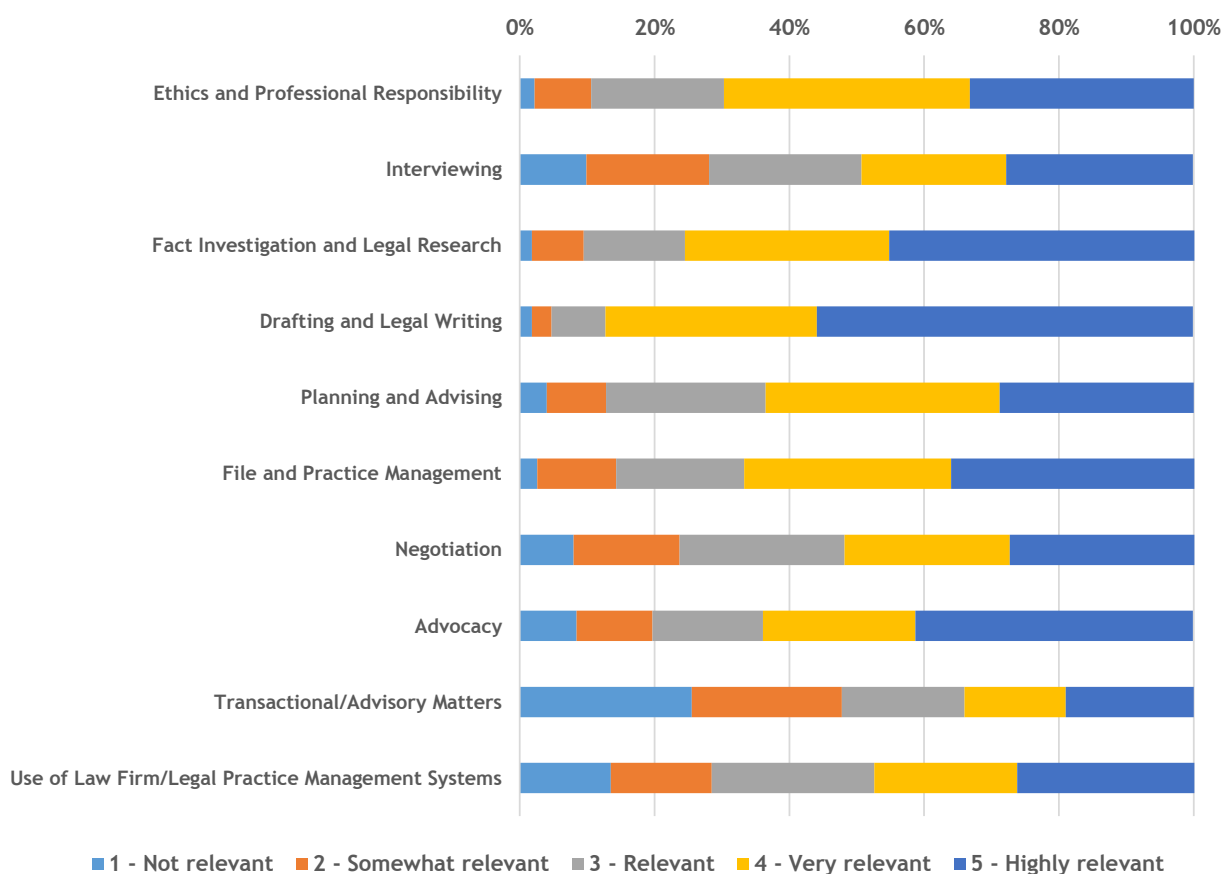


Figure 8 - Articling Program Year One New Lawyer Ratings of Skills Relevancy

#### Articling Program Employer

There are few data to report here, but of the 14 respondents, all indicated that *Fact Investigation and Legal Research* as well as *Drafting and Legal Writing* were “Very” and “Highly” relevant skills for candidates to develop in the Articling Program.

### c. Growth in Practical Skills Development

#### Law Practice Program - English

Figure 9 illustrates that there was mostly “Ample” to “Tremendous” growth in mastery of the majority of competency areas as reported by the LPP candidates in both **Year One** and **Year Two**. *File and Practice Management* shows the most-reported “Tremendous” growth in both cohorts with 29% and 35% for Year One and Year Two, respectively; followed by *Use of Law Firm / Legal Practice Management Systems* with 28% and 30% for Year One and Year Two, respectively. Both of these results show an increase in “Tremendous” growth from Year One to Year Two. *Drafting and Legal Writing* also showed high reports of “Tremendous” growth, but a slight decline from Year One (33%) to Year Two (26%).

“Minimal” growth was reported the most in *Negotiation* (6%), *Advocacy* (7%), and *Transactional/Advisory Matters* (6%) in **Year One**, but there was fewer reports of “Minimal” growth in these skills in **Year Two** with *Negotiation* at 3%, *Advocacy* at 1% and *Transactional/Advisory Matters* at 4%.

The most “Ample” growth for **Year One** and **Year Two**, respectively, was reported for *Ethics and Professional Responsibility* (45% and 49%), *Interviewing* (45% and 47%), and *Planning and Advising* (41% and 50%). Each of these results also illustrates an increase in reports of “Ample” growth from Year One to Year Two.

#### Canadian-Educated versus Internationally-Educated Candidates

For **Year One**, those graduates of law schools outside of Canada indicated considerably more total “Ample” and “Tremendous” growth than their counterparts who graduated from Canadian law schools in *Interviewing* (78% to 68%), *Fact Investigation and Legal Research* (80% to 61%), *Planning and Advising* (72% to 56%), *File and Practice Management* (74% to 51%), *Negotiation* (70% to 50%), *Advocacy* (67% to 46%) and *Transactional/Advisory Matters* (62% to 53%).

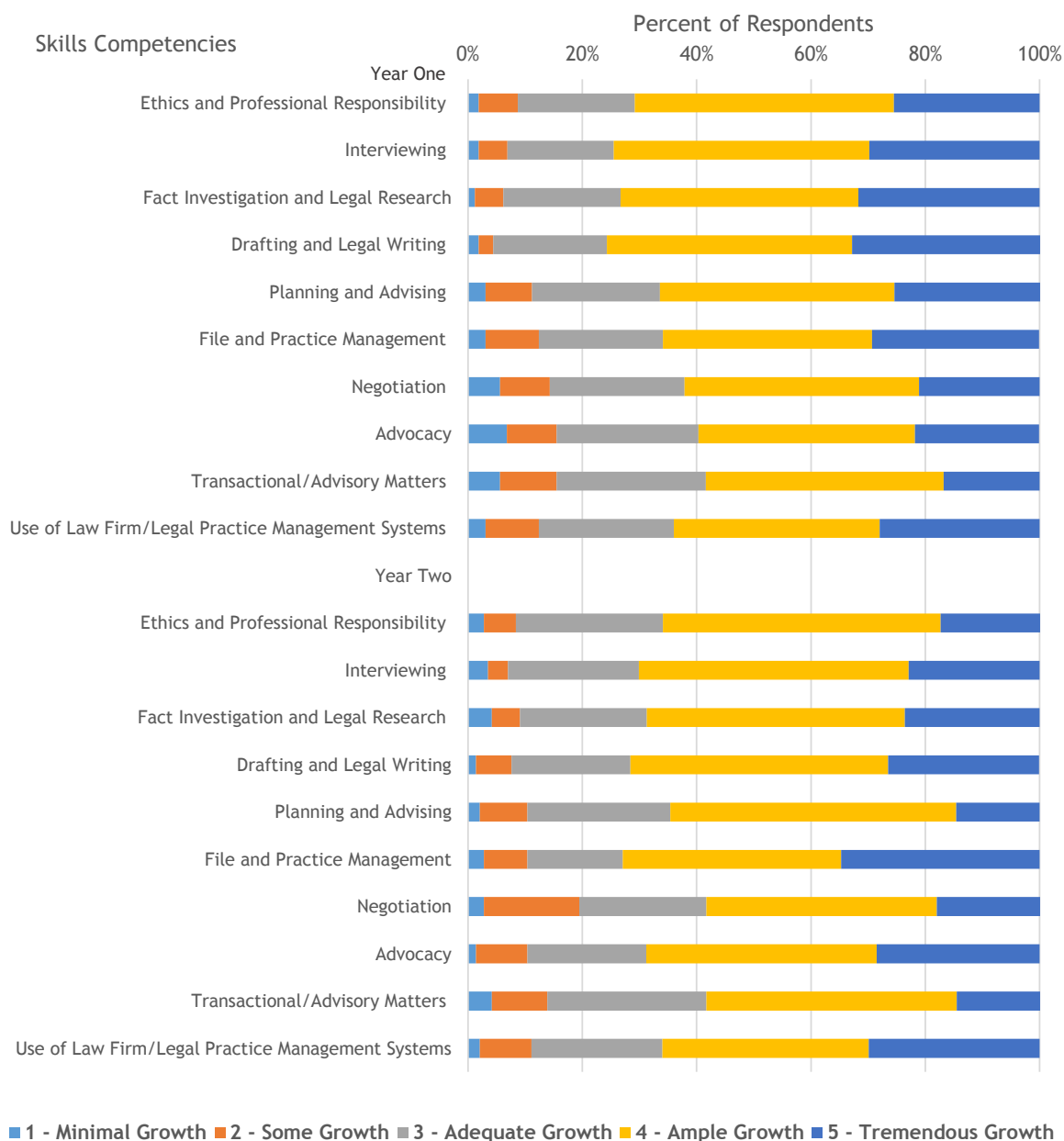
For **Year Two**, those graduates of law schools outside of Canada indicated considerably more total “Ample” and “Tremendous” growth than their counterparts who graduated from Canadian law schools in *Ethics and Professional Responsibility* (77% to 55%), *Interviewing* (80% to 61%), *Fact Investigation and Legal Research* (75% to 62%), *Drafting and Legal Writing* (81% to 62%), *Planning and Advising* (74% to 55%), *File and Practice Management* (78% to 68%), *Negotiation* (63% to 53%), and *Transactional/Advisory Matters* (62% to 54%), and *Use of Law Firm / Legal Practice Management Systems* (71% to 61%).

#### Law Practice Program - French

In **Year One**, the majority of the French LPP candidates reported “Ample” growth to “Tremendous” growth in all of the skills competencies areas, with *Ethics and Professional Responsibilities* showing the most growth and *Transactional / Advisory Matters* and *File and Practice Management* showing the least. These results are considerably different than the result from their English counterparts.

In **Year Two**, there are relatively few data points to report any results other than all six respondents reported “Ample” growth to “Tremendous” growth in *Interviewing*, and *Planning and Advising*.

## LPP Candidates' Growth Ratings in the Mastery of Skills Competencies (Year One and Year Two)



*Figure 9. LPP Candidates' Growth Ratings in the Mastery of Skills Competencies (Year One and Year Two)*

**Law Practice Program New Lawyer - English**

When we asked the new lawyers who completed the 2014-2015 LPP what they considered to be their greatest strengths when practising law, most respondents listed “**organization**” as one of their greatest strengths, along with “**client communication skills**,” “**research and writing**,” and flexibility of knowledge; the examples from four respondents illustrate this result:

*“The strength that I was able to demonstrate to the Partners upon hiring was in legal research and writing. I have since demonstrated proficiency in strategizing and client management.”*

*“Interviewing clients and maintaining their expectations. Writing, and doing research.”*

*“Compassion and understanding for clients; flexibility and adaptability; appreciation, understanding and willingness to learn from diverse populations; legal research; communication and advocacy.”*

*“The ability to bring a vast amount of knowledge of multiple areas of practice (obtained during the LPP) to only a couple areas of practice.”*

Organizational skills are not specifically a skills competency area in the LPP, but may be related to the indications of “Ample” and “Tremendous” growth in *File and Practice Management* and *Use of Law Firm / Legal Practice Management Systems* while these new lawyers were candidates in the LPP. Further, client communication strengths may be indicative of similar reports of growth in *Interviewing*. Reported strengths in research and writing may also be linked to reports of “Ample” and “Tremendous” growth in *Drafting and Legal Writing* and *Fact Investigation and Legal Research* while these new lawyers were in their experiential training in the LPP.

Conversely, new lawyers from the LPP reported that their current challenges in practice are centred on a perceived **lack of experience**, as well as **lack of confidence** in personal ability and professional interactions, and **lack of time management** in properly preparing and managing workload, for example:

*“Juggling too many files, keeping emotional distance from clients, gaining confidence without much assistance, the overall unhelpfulness of most court procedure.”*

*“Firms/companies wanting you to have expertise or working knowledge in every time of law they practice, even if a recent graduate.”*

*“General lack of experience. Law school did virtually nothing to prepare me for the realities of working in a law firm, and the LPP didn’t do enough.”*

*“I need to become more confident in myself and believe in the fact that I am providing adequate legal advice.”*

The lack of experience and confidence in the first-year of practising law is understandable, and time-management is a soft-skill, and not usually focused upon in transitional, experiential training.

### **Articling Program**

Figure 10 shows that the greatest proportion of articling candidates in **Year One and Year Two** reported “Tremendous Growth” in *Drafting and Legal Writing* (48% and 44%, respectively) and the smallest proportion of respondents reported “Tremendous Growth” in *Negotiation* (13% and 14%, respectively). *Transactional/Advisory Matters* saw the greatest proportion of respondents’ ratings of “Minimal Growth” at around 28% and 26% of respondents, respectively for Year One and Year Two.

## Articling Candidates' Growth Ratings for Skills Competencies (Year One and Year Two)

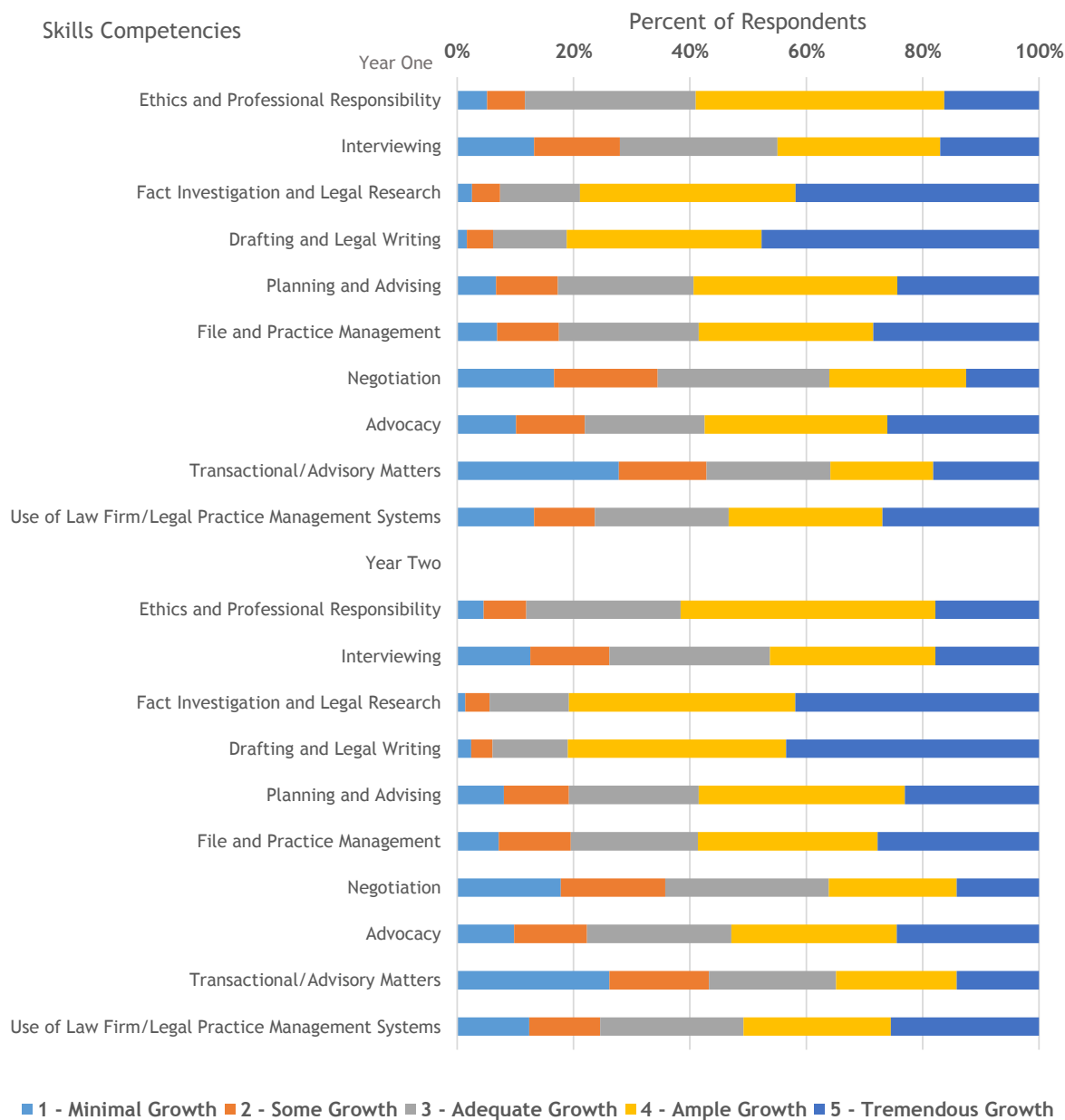


Figure 10. Articling Program Candidates' Growth Ratings in the Mastery of Skills Competencies (Year One and Year Two)

## Comparison of Candidates' Growth Ratings in Mastery of Skills Competencies between the Pathways (Year One)

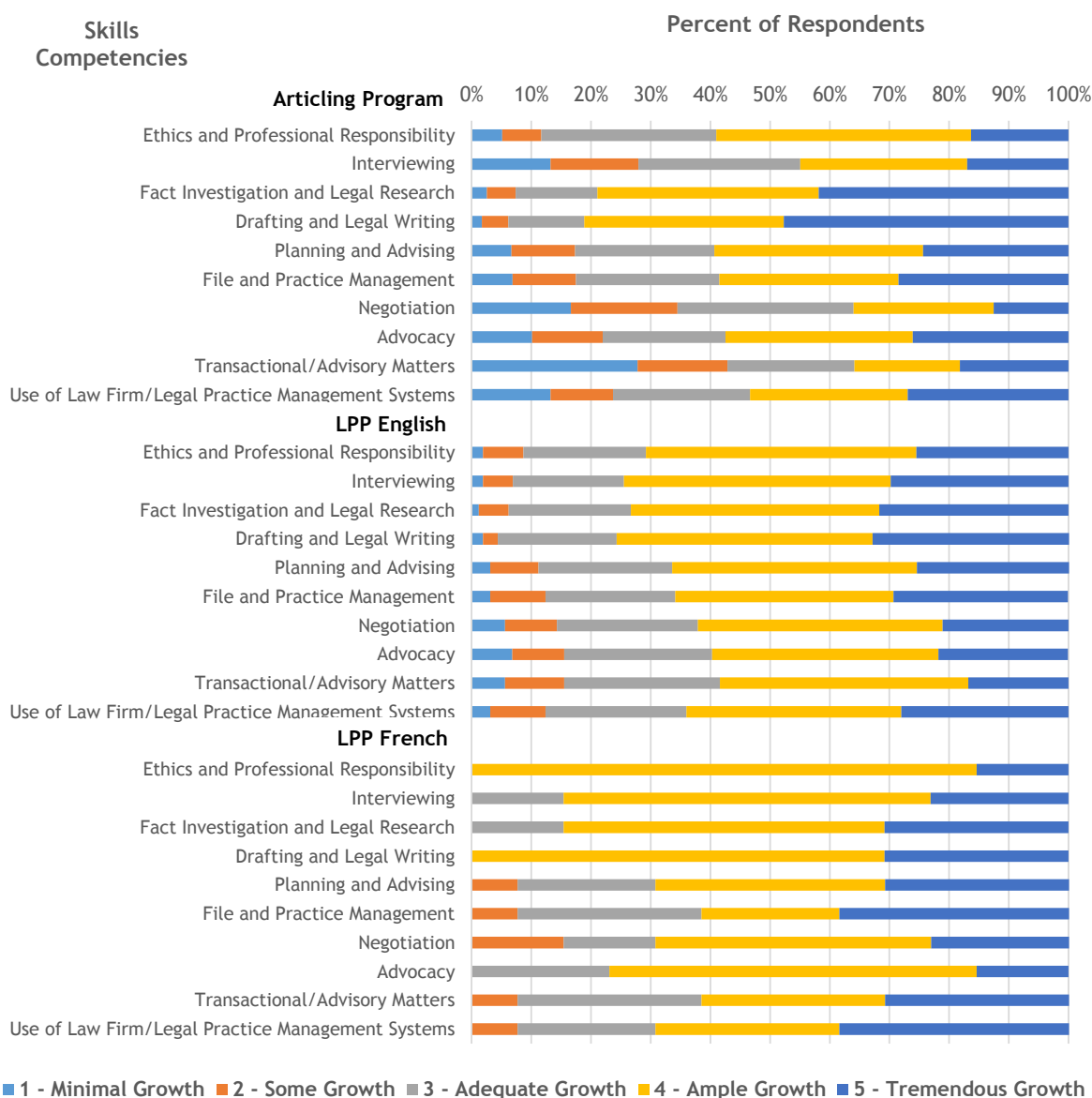


Figure 11. Comparison of Candidates' Growth Ratings in Mastery of Skills Competencies between the Pathways (Year One)

Figure 11 presents a comparative look at **Year One** respondents' growth ratings in mastery of the skills competencies between the articling candidates and each of the English and French LPP

candidate groups. *Fact Investigation and Legal Research* and *Drafting and Legal Writing* as rated by the respondents to the Articling Program Candidates' Survey showed the largest proportion of "Tremendous Growth," with 42% and 48%, respectively.

Further, as noted, *Transactional/Advisory Matters* saw the greatest proportion of respondents' ratings of "Minimal Growth" at around 28% of the Articling Program Candidates' Survey respondents, and that proportion was highest among any skills competency across the three groups. By comparison, *Advocacy* at 7% of the respondents to the English LPP Exit Survey was the greatest proportion of "Minimal Growth" for that group. The 13 respondents to the French LPP Exit Survey did not rate any skills competency at "Minimal Growth."

Figure 12 presents a comparative look at **Year Two** respondents' growth ratings in mastery of the skills competencies between the articling candidates and each of the English and French LPP candidate groups. These data look a lot like the previous year's data. Once again, *Fact Investigation and Legal Research* and *Drafting and Legal Writing* as rated by the respondents to the Articling Program Candidates' Survey showed the largest proportion of "Tremendous Growth," with 42% and 44%, respectively.

Further, as in the Year One data, *Transactional/Advisory Matters* saw the greatest proportion of respondents' ratings of "Minimal Growth" at around 26% of the Articling Program Candidates' Survey respondents, and that proportion was highest among any skills competency across the three groups. By comparison, *Fact Investigation and Legal Research* as well as *Advocacy*, both at 4% of the respondents to the English LPP Exit Survey was the greatest proportion of "Minimal Growth" for that group. The 6 respondents to the French LPP Exit Survey did not rate any skills competency at "Minimal Growth."

## Comparison of Candidates' Growth Ratings in Mastery of Skills Competencies between the Pathways Year Two

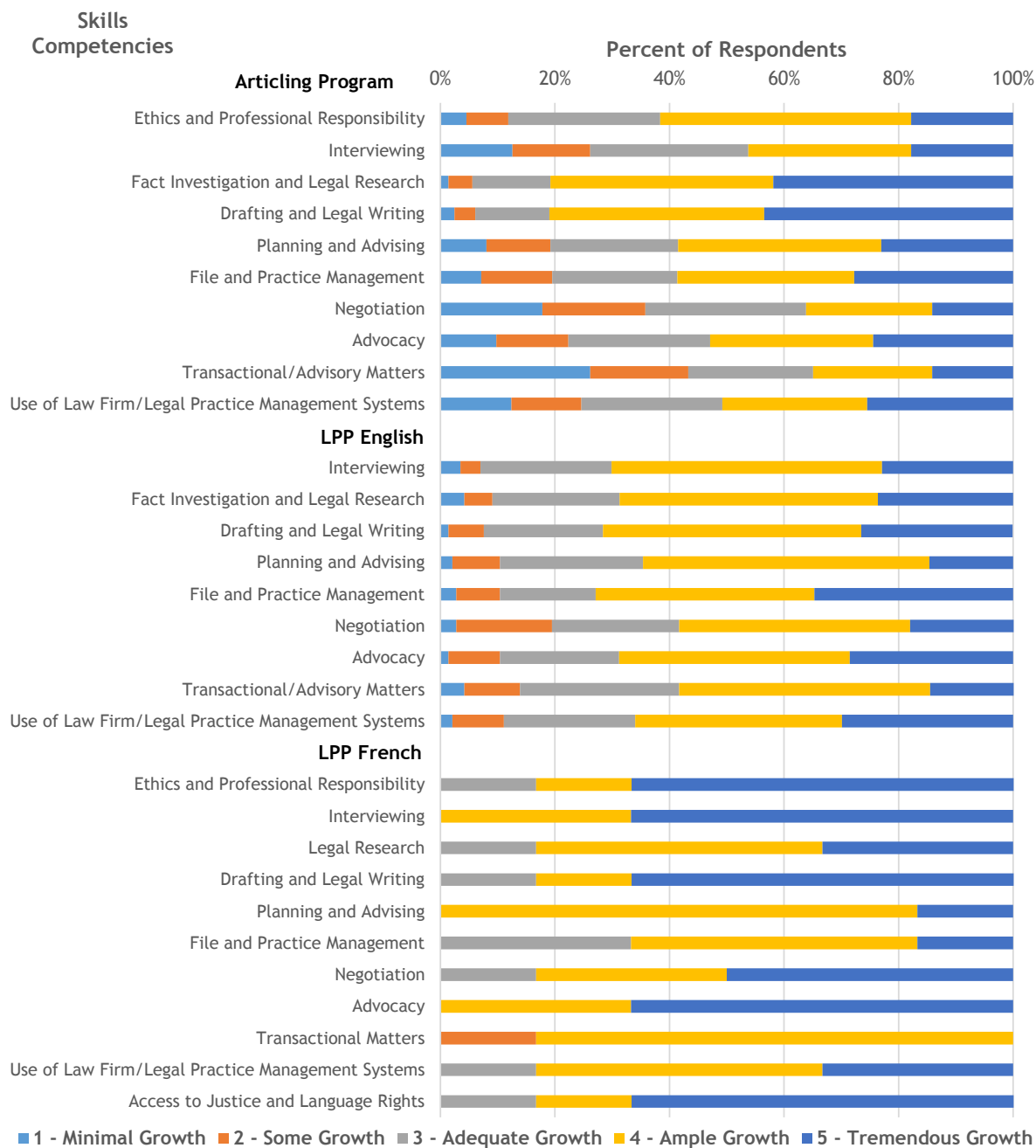


Figure 12. Comparison of Candidates' Growth Ratings in Mastery of Skills Competencies between the Pathways (Year Two)

*Articling Program New Lawyer*

When we asked the new lawyers who completed the 2014-2015 Articling Program what they considered to be their greatest strengths when practising law, they reported that their greatest strengths were in **oral and written advocacy**, **organizational skills**, **client communication skills**, and a strong emphasis on **work ethic**. Comments that best illustrate these themes are presented below:

*“Communication skills, time management/organizational skills, client relations.”*

*“Drafting, oral advocacy, legal knowledge and research skills, critical thinking, interpersonal skills.”*

*“Very good at listening and understanding client needs; I am very thorough and attentive to detail; I have strong written skills, and am excellent at communication orally with clients and counsel.”*

However, according to the data from the Articling Program candidates survey in **Year One**, *Advocacy*, *Negotiation*, and *Interviewing* were not the greatest growth areas reported. These results are borne out in the next set of results, looking at challenges of first-year new lawyers from the Articling Program.

Similar to their newly licensed colleagues from the LPP, many of the first-year new lawyers from the Articling Program felt that the greatest challenge faced when practising law is **inexperience**, but some in this group also tied inexperience to a **lack of confidence** in **practical skills and client interactions**, for example:

*“Need to gain confidence to push back against stronger (more abrasive) characters; being relatively new, obviously the amount of knowledge that I will have to acquire to develop my practice; stress response patterns (work/life balance); confidence in my own judgement.”*

*“Lack of experience – most things are new and I don’t have the benefit of past experiences to evaluate against.”*

*“Lack of practical knowledge of certain legal issues that is difficult to obtain without the relevant experience.”*

These new lawyers who completed the 2014-2015 Articling Program also frequently listed “**time management**” as a challenge, similar to their post-LPP colleagues, but also reported a challenge was the stress of interacting with “**difficult people**,” for example:

*“Managing high workload; managing competing/shifting priorities; dealing with difficult people.”*

*“Dealing with difficult clients and the professional/ethical challenges they sometimes present.”*

Again, time management is a soft skill, not specifically focused upon in the transitional, experiential training, and was also reported by post-LPP new lawyers. However, dealing with difficult people and client interaction as challenge was a theme that did not emerge from the data on post-LPP new lawyers.

#### **Articling Program Employer**

Employers of those new lawyers who were trained in the Articling Program were asked to comment on what skills in particular they have seen in their new lawyer(s) that are indicative of high-quality skill development in the Articling Program.

There were only 13 responses to this question. It was most frequently reported that “**research**” skills were indicative of high-quality skill development, as well as “**professional responsibility**,” “**drafting**,” and “**client communication**.” Examples of comments that reflect these themes are below:

*“Very good sense of professional responsibility, file management, communication to clients and opposing counsel.”*

*“Practice management skills, organizational skills, research skills.”*

*“Legal research and writing, and interacting with clients.”*

These employers were also asked to comment on a competency area or skill that they have seen in their new lawyer(s) that could have been better developed in the Articling Program.

Again, there were just 13 responses to this question, the most common answer simply being “**No**” to the question of whether new lawyers could have been better prepared in certain competency areas. The second most frequent response was that “**legal research and writing skills**” could

be improved, followed by certain **practical skills**. Comments that best illustrate these themes are presented below:

*“Not that I can think of.”*

*“Generally, the hands on practical aspects of being a lawyer in a private practice.”*

*“Legal research and writing.”*

Clearly the indication that legal research and writing was an area that could be improved contradicts the results to the previous question wherein candidates indicated their perception that this was an area of tremendous growth and that they perceived themselves as achieving high-quality skill development; this, however, may be indicative of the range of skill development in different new lawyers.

#### **Articling Program Principal**

Figure 13 below shows the same basic picture for each of **Year One** and **Year Two**, that a majority of the Principals each year reported that they had “Ample” to “Tremendous” ability to train their articling candidate in the ten skills competencies, ranging from a low of about 45% and 37% for *Transactional/Advisory Matters*, in Year One and Year Two, respectively to a high of 90% and 88% for *Drafting and Legal Writing* in Year One and Year Two, respectively.

## Principals' Ratings of their Ability to Deliver Training that Promotes Candidates' Growth in Skills Competencies (Year One and Year Two)

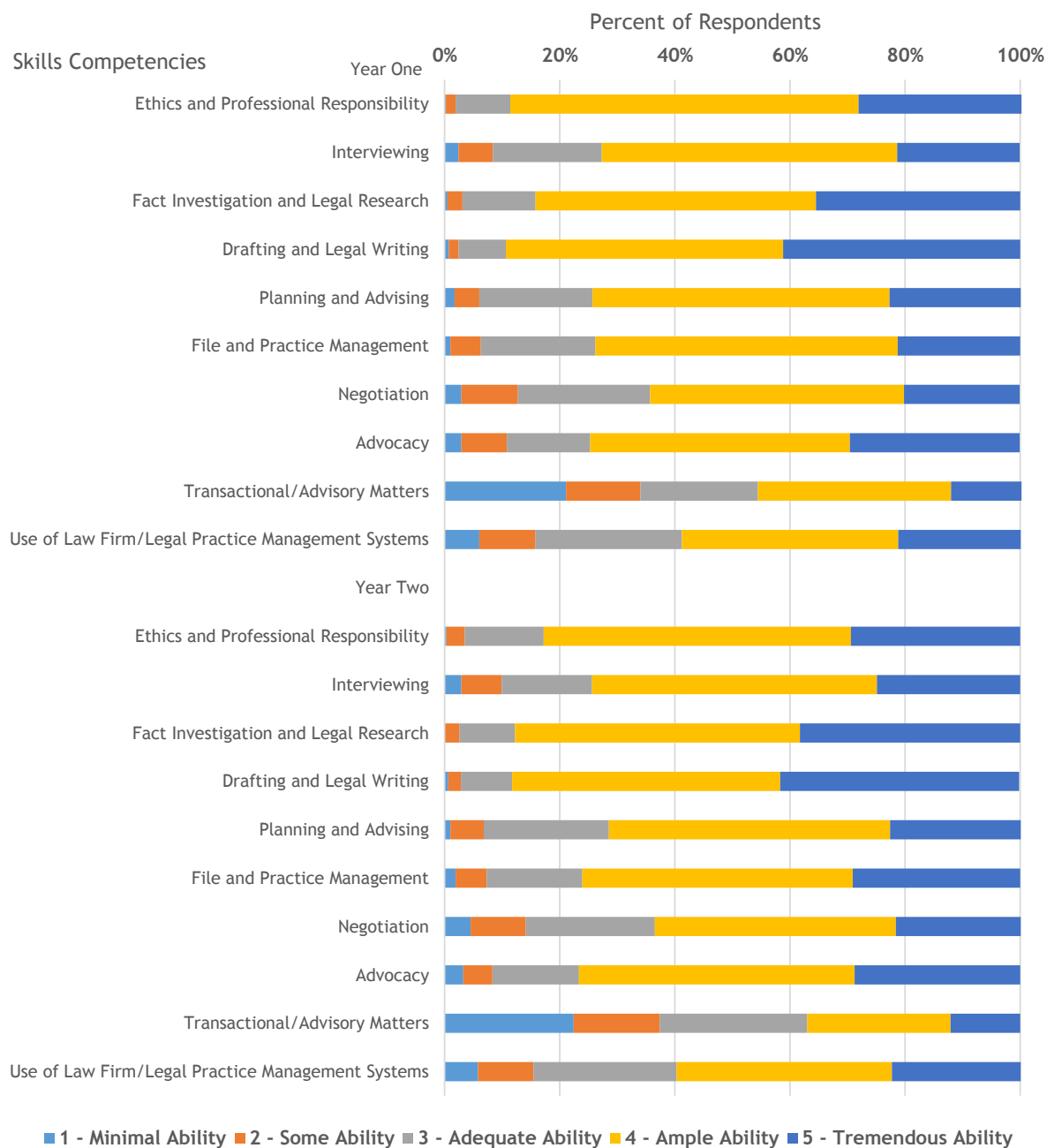


Figure 13. Principals' Ratings of their Ability to Deliver Training that Promotes Candidates' Growth in Skills Competencies (Year One and Year Two)

#### d. Assessment of Performance in Core Competencies

##### *Law Practice Program - English*

Assessment of candidate learning is designed to fit within the fair, accessible and objective parameters set forth by the Society. In keeping with the replication of law firm experiences, candidates are assessed on their work throughout the course, rather than tested at the end of a particular unit. Throughout the course, candidates are required to work in groups of four to produce numerous documents, ranging from research memoranda to commercial agreements. The weightings of these skills and tasks depend on their importance in the particular case being worked through.

Further, candidates receive individual assessments on research and writing, document drafting, client management, negotiation and advocacy. Candidates must receive an assessment of *competent*, as a firm and individually, in each practice area to successfully complete the LPP *d) Assessment of Performance in Core Competencies* training course.<sup>24</sup>

A five-point rating scale was used by Ryerson University in the **Year One** training course to appraise candidates' competencies:

1. E – Exceeding
2. EM – Exceeding/Meeting
3. M – Meeting
4. MD – Meeting/Developing
5. D – Developing

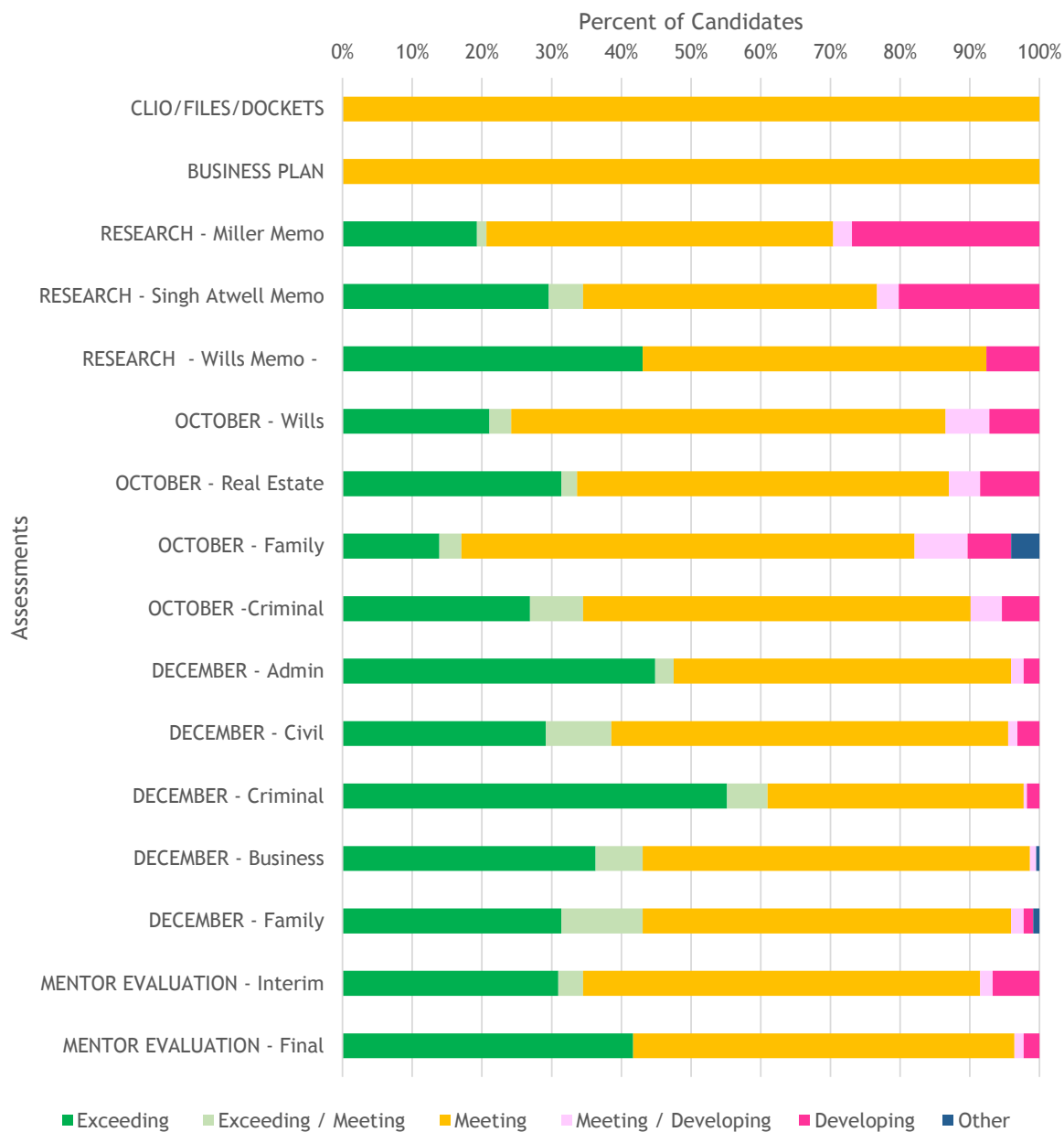
Ryerson provided the Law Society with the ***Ryerson Law Practice Program Training Program 2014 Portfolio*** which specifically outlined the categories from which work assignments were completed during the training course:

- General Work File
- Special Firm's Project
- Administrative Law File
- Business Law File
- Civil Litigation Law File
- Criminal Law File
- Family Law File
- Real Estate Law File
- Wills, Estates Law File
- Additional Non-Specific Law File

Overall candidate performance in **Year One** is presented in Figure 14 below.

<sup>24</sup> Ryerson University Report to the Law Society, June 2015 and June 2016.

## LPP Candidate Assessment Results for Ryerson Year One (Fall 2014)



*Figure 14. Ryerson LPP Candidate Assessment Results Fall 2014*

Figure 14 above show us that most candidates are indeed “Meeting” the competency development expectation on all assessments. A considerable proportion of candidates are “Exceeding” or “Exceeding/Meeting” the expectations on all assessments. The *Research* assessments had the

greatest proportion of candidates still at the “Developing” stage; the *Miller Memo* had almost 30% of candidates at the “Developing” rating. Finally, it seems that over time, more and more candidates were achieving the “Exceeding” or “Exceeding/Meeting” ratings, with the *December Criminal Law, Business and Mentor Final* assessments showing the greatest percentage of candidates receiving these ratings.

In **Year Two**, a three-point rating scale was used by Ryerson University in the training course to appraise candidates’ competencies:

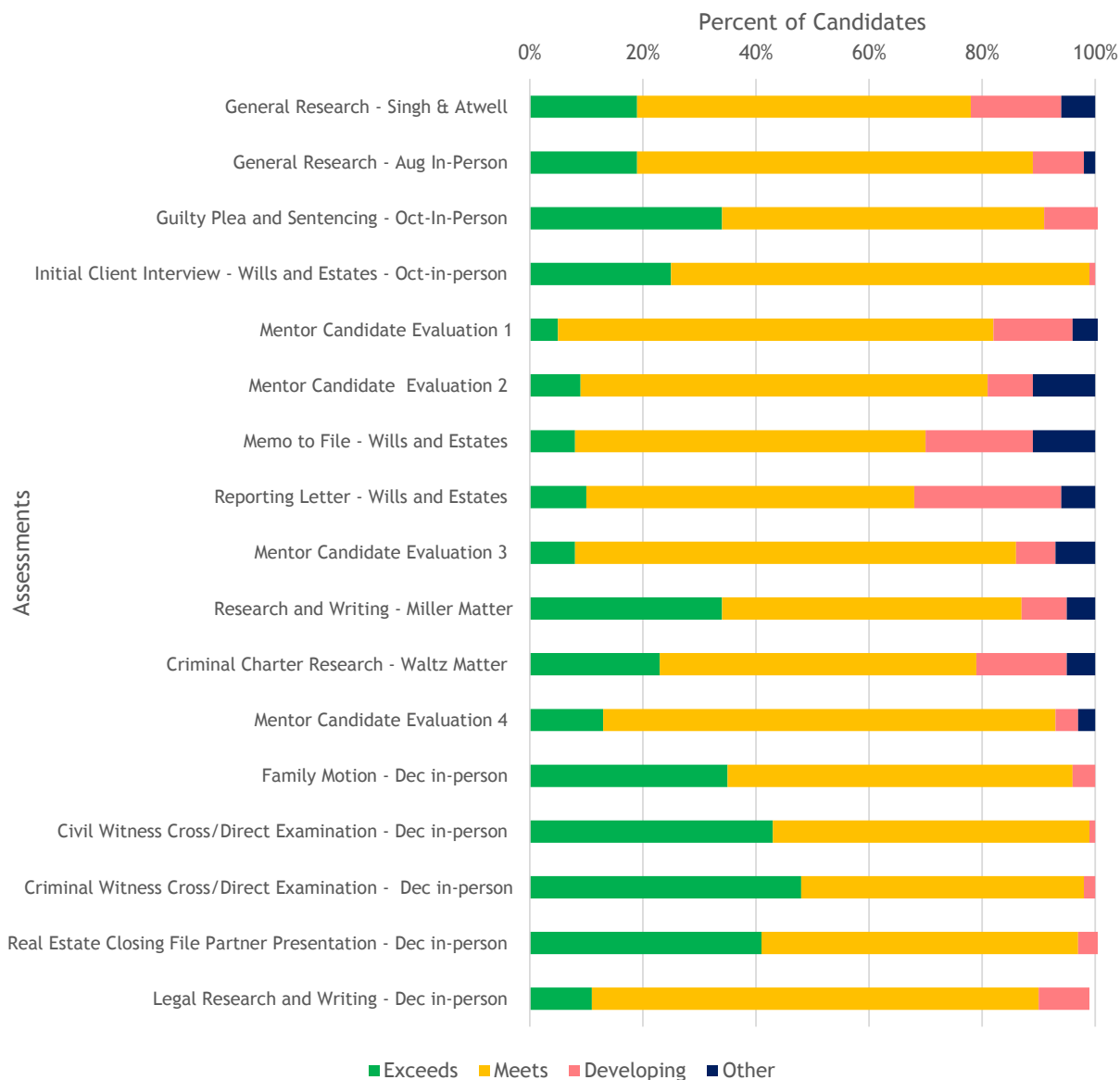
1. E – Exceeds
2. M – Meets
3. M –Developing

Ryerson provided the Law Society with the ***Ryerson Law Practice Program Training Program 2015 Portfolio*** which specifically outlined the categories from which work assignments were completed during the training course:

- General File Work
- Special “Firm” Projects
- Administrative Law File - Landlord and Tenant Matter
- Business Law Files (Incorporation and Business Acquisition)
- Civil Litigation Files
- Criminal Law File
- Family File
- Real Estate File
- Wills and Estates File
- Additional Non-Specific Law File

Overall candidate performance in the LPP English training course in **Year Two** is presented in Figure 15 on the following page.

## LPP Candidate Assessment Results for Ryerson Year Two (Fall 2015)



*Figure 15. Ryerson LPP Candidate Assessment Results Fall 2015*

Figure 15 above shows the candidates' assessment results from **Year Two**. The assessment names have changed from Year One, but the general competencies remain the same. Further, and as noted, there is now a three-point scale, rather than a five-point scale used to rate the competency development of the candidates. Again, we see most candidates are indeed "Meeting"

the competency development expectation on all assessments. A considerable proportion of candidates are “Exceeding” or “Meeting” the expectations on all assessments. The *Wills and Estates* assessments had the greatest proportion of candidates still at the “Developing” stage; the *Reporting Letter* had just over one-quarter (26%) of candidates at the “Developing” rating. Finally, it seems that over time, more and more candidates were achieving the “Exceeding” ratings, with the December *Criminal and Civil Direct/Cross Examination*, and *Real Estate Closing* assessments showing the greatest percentage of candidates receiving these ratings.

#### LPP Work Placement Assessment

The work placement component of the LPP worked the same way as an articling placement, with a lawyer acting as a Principal, and either individually or together with lawyer colleagues, providing work to and assessing the work of a candidate during the placement. Ryerson obtained this information both during the placement, and at the end, from the Principal and the candidate. Candidates are provided with opportunities to gain further exposure to the nine competency areas, and where applicable are assessed on them:<sup>25</sup>

Most of the work placements were completed at the end of April in each year, and data from the work placements provided to the Society by Ryerson indicated that all work placements, including the exposure to the competency areas, were complete in **Year One** and are expected to be complete **Year Two**.

As far as the five competency-based tasks (performance appraisal competencies), all were reported as being “*Regularly Done*” or to a “*High Degree*” in both **Year One** and **Year Two**.

#### Law Practice Program - French<sup>26</sup>

In both **Year One** and **Year Two**, all the skills and tasks listed in the Federation of Law Societies of Canada’s National Competency Profile for lawyers were assessed or addressed at least once – and some at least five times – in the training component via the execution of various tasks in the following areas:

- Administrative Law: Landlord and Tenant Board, Human Rights/Government, and Immigration/Refugee
- Civil Litigation
- Commercial Law
- Criminal Law
- Family Law
- Practice Management
- Real Estate Law
- Wills and Estates

<sup>25</sup> It is noted by Ryerson that the nine competency areas have been further developed or refined during the work placements on a varying basis depending on the practice and nature of the work placement itself.

<sup>26</sup> LPP Report from the University of Ottawa, May 2015 and June 2016

In order to obtain a “Satisfactory” pass for the training component, candidates had to successfully demonstrate all the competencies evaluated in the LPP. All candidates successfully completed the training course in both **Year One** and **Year Two**.

In November and December 2015, the LPP offered some candidates the opportunity to take retake activities for the competencies they had not yet successfully demonstrated in the training component. In the case where the candidates did not succeed in a peripheral competence during the retake activities, we sent them a letter to inform them of their gaps and to encourage them to try to fix them in the placement component.

Candidates received their final training course results at the end of January. Candidates also received a detailed competency assessment report that specifies the rating they received for each skill and task listed in the Federation’s Profile.

In order to improve the training component for the pilot project’s third year, the LPP asked the candidates to complete surveys to have their feedback on the training component. Survey included questions on the following:

- Modules and practising trainers, including assessment;
- Professional development days;
- Resources offered by the LPP;
- Services offered by the University.

With a view to improving the training component for **Year Two**, the LPP asked candidates to make regular entries in a journal of reflection in order to more closely document their progress. This also allowed the university to check that all the candidates were well supported during their internships.

Mid-February, the university communicated with all the employers and the candidates for the mid-session assessment of internships. Each supervisor provided detailed feedback regarding their candidates’ performance. The candidates were also asked to complete a self-assessment about their performance and their progress in the internship.

When the assessments by the supervisors were not entirely positive or identified some gaps, the university followed up with them to discuss in detail the performance of the candidates. That allowed the university to determine if the candidate had satisfied the placement requirements.

It was noted in their report to the Law Society that within the final assessment process, the workplace supervisors also had to sign a solemn statement to the effect that they assessed their candidate in an objective and honest way, in a way not to undermine the trust the public has in the profession and the administration of justice.

Data from the training course and work placement assessments provided to the Society by the University of Ottawa indicated that all **Year One** and **Year Two** candidates successfully completed the LPP.

### Articling Program

The BARS tools allow Articling Principals, candidates and the Law Society of Upper Canada know with a high degree of objectivity whether candidates were exposed to experiential training competencies development in the articling placements, and their performance of such through a **Performance Appraisal of Competencies** process.

Candidates in the Articling Program have their competencies appraised by their Principals using the BARS tool while they perform the five prescribed competency-based tasks:

1. **Interview a client** from *Establishing a Client Relationship* category
2. **Draft a legal opinion** from *Conducting the Matter – Matter Management* category
3. **Represent the client in an Appearance or through some form of alternative dispute resolution or settlement process** from *Conducting the Matter – Advocacy* category
4. **Professional responsibility assessment** from *Ethics and Professionalism* category
5. **Use of law firm/legal practice management systems** from *Practice Management* category

Table 3 (next page) shows that in **Year One**, Principals submitted 1,275 candidate performance appraisals. We see that just about one-third of candidates “significantly exceeds expectations” on all of the applicably-scaled tasks except *Conducting the Matter: Advocacy*, in which only 27% of the candidates did so. It is unclear if there is a relationship between the relatively low number of candidates “significantly” exceeding expectations and the relative lack of exposure to *Advocacy* in the articling placements as reported on the Experiential Training Plans and on the skills tasks exposure BARS tools. Generally, almost all candidates met or exceeded the expectations in the four applicably-scaled tasks. Finally, about 87% of the candidates were rated as being able to “successfully” use a *Practice Management* system.

**Table 3: Articling Program Performance Appraisal of Competencies (Year One)**

Performance Appraisal of Competencies (Year One)						
N=1,275	5	4	3	2	1	0
Competency-based Tasks	Significantly exceeded expectations	Exceeded expectations	Met expectations	Met some expectations/Developing	Did not meet expectations	N/A
Establishing the Client Relationship	32%	32%	26%	1%	1%	8%
Conducting the Matter: Matter Management	34%	32%	26%	2%	1%	5%
Conducting the Matter: Advocacy	27%	29%	23%	1%	1%	20%
Ethics and Professionalism	32%	36%	31%	1%	1%	-
	5		3		1	0
	Uses the system successfully without assistance		Uses the system successfully with assistance		Does not use the system successfully, even with instruction	N/A
Practice Management	66%		21%		1%	12%

Table 4 (next page) shows the data for **Year Two**. Principals submitted 1,294 candidate performance appraisals. We see a slight increase over Year One as just over one-third of candidates “significantly exceeds expectations” on all of the applicably-scaled tasks except *Conducting the Matter: Advocacy*, in which again only 27% of the candidates did so. It is unclear if there is a relationship between the relatively low number of candidates “significantly” exceeding expectations and the relative lack of exposure to *Advocacy* in the articling placements as reported on the Experiential Training Plans and on the skills tasks exposure BARS tools. Generally, almost all candidates met or exceeded the expectations in the four applicably-scaled tasks. Finally, again about 87% of the candidates were rated as being able to “successfully” use a *Practice Management* system.

**Table 4: Articling Program Performance Appraisal of Competencies (Year Two)**

Performance Appraisal of Competencies (Year Two)						
N=1,294 Principals	5	4	3	2	1	0
Competency-based Tasks	Significantly exceeded expectations	Exceeded expectations	Met expectations	Met some expectations/	Did not meet expectations	N/A
Establishing the Client Relationship	33%	34%	24%	1%	0%	9%
Conducting the Matter: Matter Management	35%	33%	25%	3%	0%	5%
Conducting the Matter: Advocacy	27%	32%	20%	0%	0%	21%
Ethics and Professionalism	35%	37%	26%	1%	0%	0%
	5		3		1	0
	Uses the system successfully without assistance		Uses the system successfully with assistance		Does not use the system successfully, even with instruction	N/A
Practice Management	64%		23%		0%	14%

## e. Access to Mentors, Principals and Supervisors, and the Quality and Timeliness of Feedback

### Law Practice Program - English

#### Mentors

On the **Year One** LPP Exit survey, candidates were asked to comment on their experiences with their training course mentors. Many of the comments were aimed at **assessing or appraising the quality** of the training course mentors. Mostly, these types of comments were positive as mentors were described as “**great**,” “**fantastic**,” “**knowledgeable**,” “**supportive**” and “**showed interest**” in the candidate’s learning.

Some appraisal of the mentors was **critical** for different reasons, but most of these reasons focused on the candidates’ judgement that their mentors **lacked of expertise** in given particular areas of law practice.

This type of comment is likely tied to the unique learning experience of the Law Practice Program, as it spans seven substantive areas of law and practising lawyers, serving as mentors, would not necessarily have practical experience in all seven areas.

An emergent theme from the LPP Focus Groups (see Appendix 3 for summary) was that more timely feedback in training course is necessary for it to be useful to candidates. The following points were expressed by the candidates in the Focus Groups:

- Candidates feel that marked work and feedback were not meaningful, as it was not made clear what the standards actually were; disorganization with feedback instills lack of motivation in candidates.
- Candidates suggest quicker feedback; better planning from administration, and more recurrent check-ins.
- Candidates suggest more rigorous marking schemes, and structures for feedback. Also the feedback needs to be well interpreted by both candidates and mentors, and meaningful.
- More transparency and more communication needs to be had with mentors and administration regarding their time commitments
- Candidates suggest a feedback/marking system that mirrors the in-person week for every assignment.

Figure 16 below shows the effectiveness ratings for **Year One** with regards to their Mentors. The majority of candidates rated “Effective” or “Most Effective” on all aspects experiential training, with *Availability of your mentor to address learning issues* receiving just over 83% of ratings as such.

### LPP Candidates' Effectiveness Ratings of Aspects of Experiential Training with Specific Regard to their Mentors (Year One)

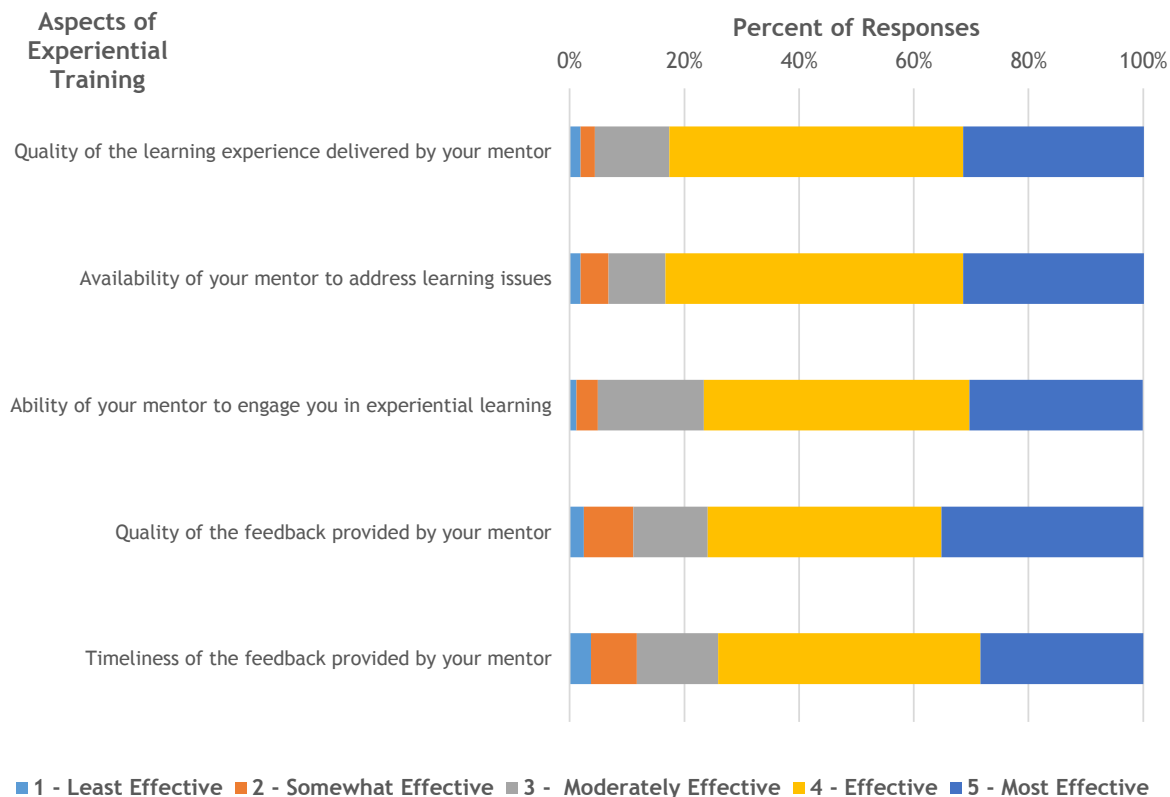


Figure 16. LPP Candidates' Effectiveness Ratings of Aspects of Experiential Training with Specific Regard to their Mentors (Year One)

In **Year Two**, the survey was more directed at each Virtual Firm Mentor, both with a quantitative rating (forthcoming) and the qualitative commentary. To make meaningful comparisons between Year One and Year Two, the qualitative commentary is presented next.

Many respondents offered feedback regarding the **quality of the mentors**. The majority of these **Year Two** comments were positive, **similar to Year One** highlighting mentors as “**fantastic**,” “**engaged**,” and “**dedicated**” to helping candidates learn, for example:

*“I was fortunate to be mentored by extremely dedicated Mentors who cared dearly about our success throughout the licensing process.”*

*“Both the mentors were very co-operative, most effective and gave me their valued feedback in a timely fashion. They understood my weaknesses, qualifications and worked with me to overcome that. I am at such a different level now in comparison to where and how I started.”*

Certain comments were made to suggest **greater diversity in professional experience** between the two mentors assigned to a candidate, for example:

*“Both mentors were sole practitioners and I feel exposure to a non-sole practitioner would have been valuable for comparison.”*

*“Both were great, and very different personalities. My only comment is a general one: in my case both mentors were real estate professionals, it would be beneficial to have one solicitor and one litigator.”*

However, some respondents in **Year Two** were critical of their mentors, again similar to **Year One**, specifically regarding the quality and timeliness of their **feedback**, as well as the limitations of their **expertise**, for example:

*“A lot of the feedback depended upon whether or not they had any familiarity with the area of law we were working in at the moment.”*

*“They did not have enough information about the program to assist me. Sometimes it seemed as if they did not want to be on video.”*

*“Reviewing the tasks in a timely manner is essential to the motivation and progress of candidates. It’s discouraging to see otherwise from our mentors because they are an important catalyst in the LPP.”*

However, what differed noticeably about the Focus Group responses (see Appendix 3 for summary) in **Year Two from Year One** was very few comments about the quality and timeliness of the feedback candidates received from their Mentors. This was a far larger issue in Year One than in Year Two.

Figure 17 on next page shows the **Year Two** LPP candidates’ ratings for each of their virtual firm mentors. Their second virtual firm mentors received marginally more positive effectiveness ratings on average.

## LPP Candidates' Effectiveness Ratings for their Virtual Firm Mentors (Year Two)

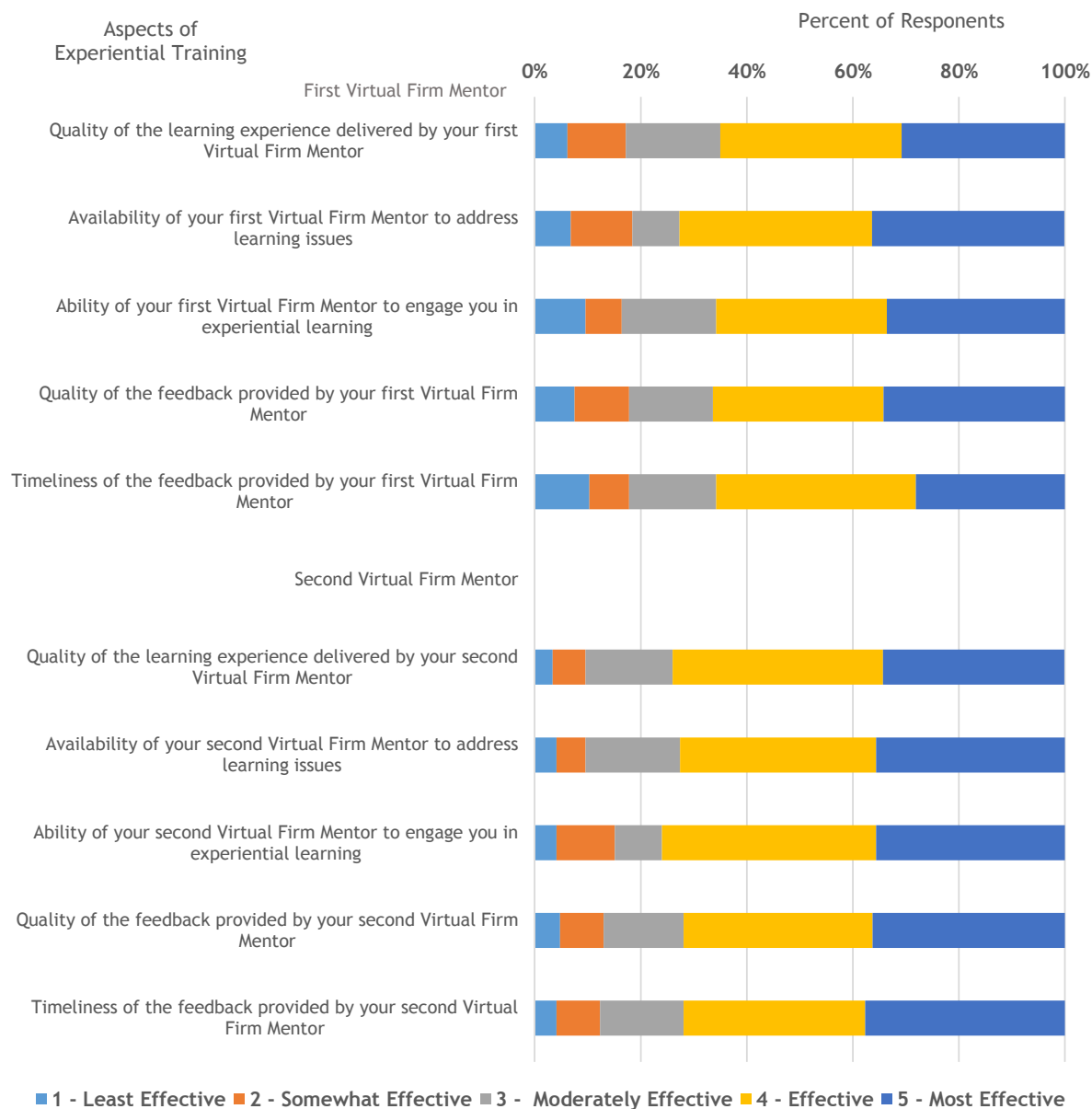


Figure 17. LPP Candidates' Effectiveness Ratings for their Virtual Firm Mentors (Year Two)

### In-Person Week Assessors

We asked the candidates in **Year Two** to rate or comment upon their interaction with their In-Person Week Assessors, and almost two-thirds (65%) of respondents to the LPP Exit Survey indicated they were either “Quite Satisfied” or “Most Satisfied” with these Assessors, while just 8% were “Least Satisfied” or “Somewhat Satisfied.”

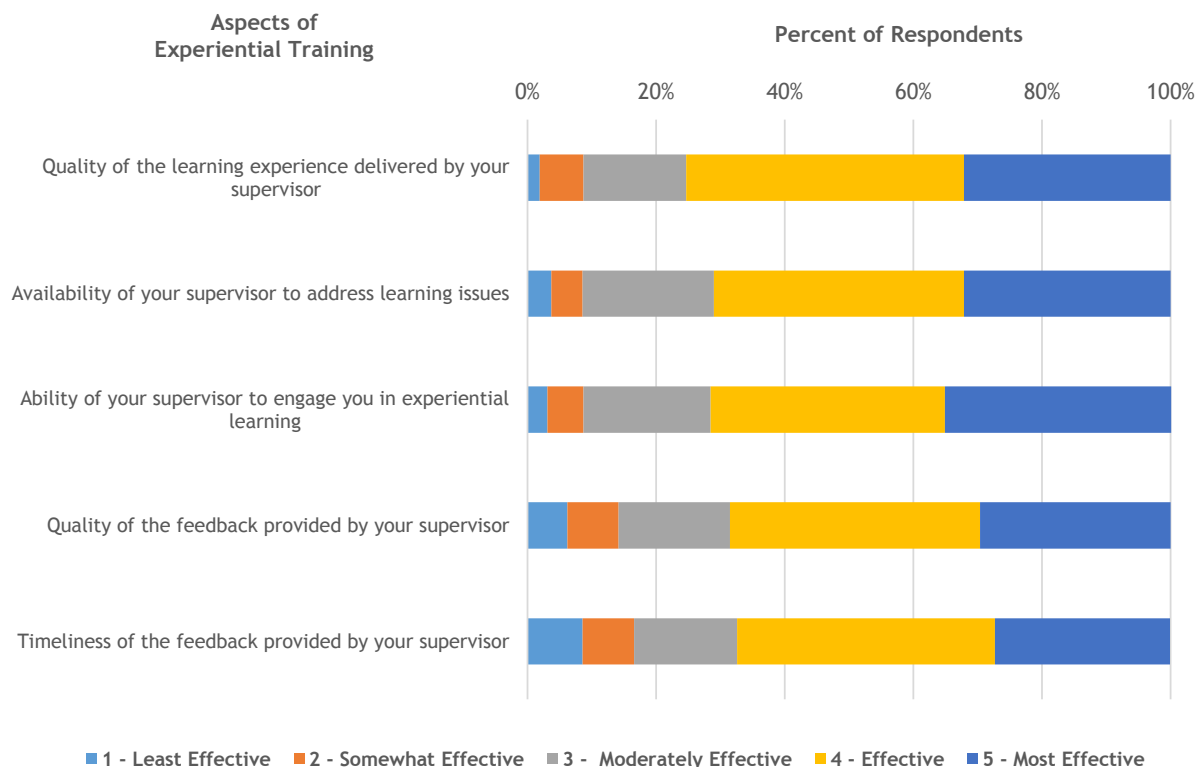
### Work Placement Supervisors

Figure 18 show that the response category with the most ratings was “Effective” for **Year One**. Together with “Most Effective,” “Effective” had the vast majority of responses, ranging from a low of 67 % in total for *Timeliness of the feedback provided by your mentor* to a high 75% for *Quality of the learning experience delivered by your supervisor*. The rating of “Most Effective” received the greatest proportion of responses for *Ability of your supervisor to engage you in experiential learning* (35%). These results are considerably positive for the identified aspects of experiential training, but not as positive as the ratings for the mentors.

### Canadian-Educated versus Internationally-Educated Candidates

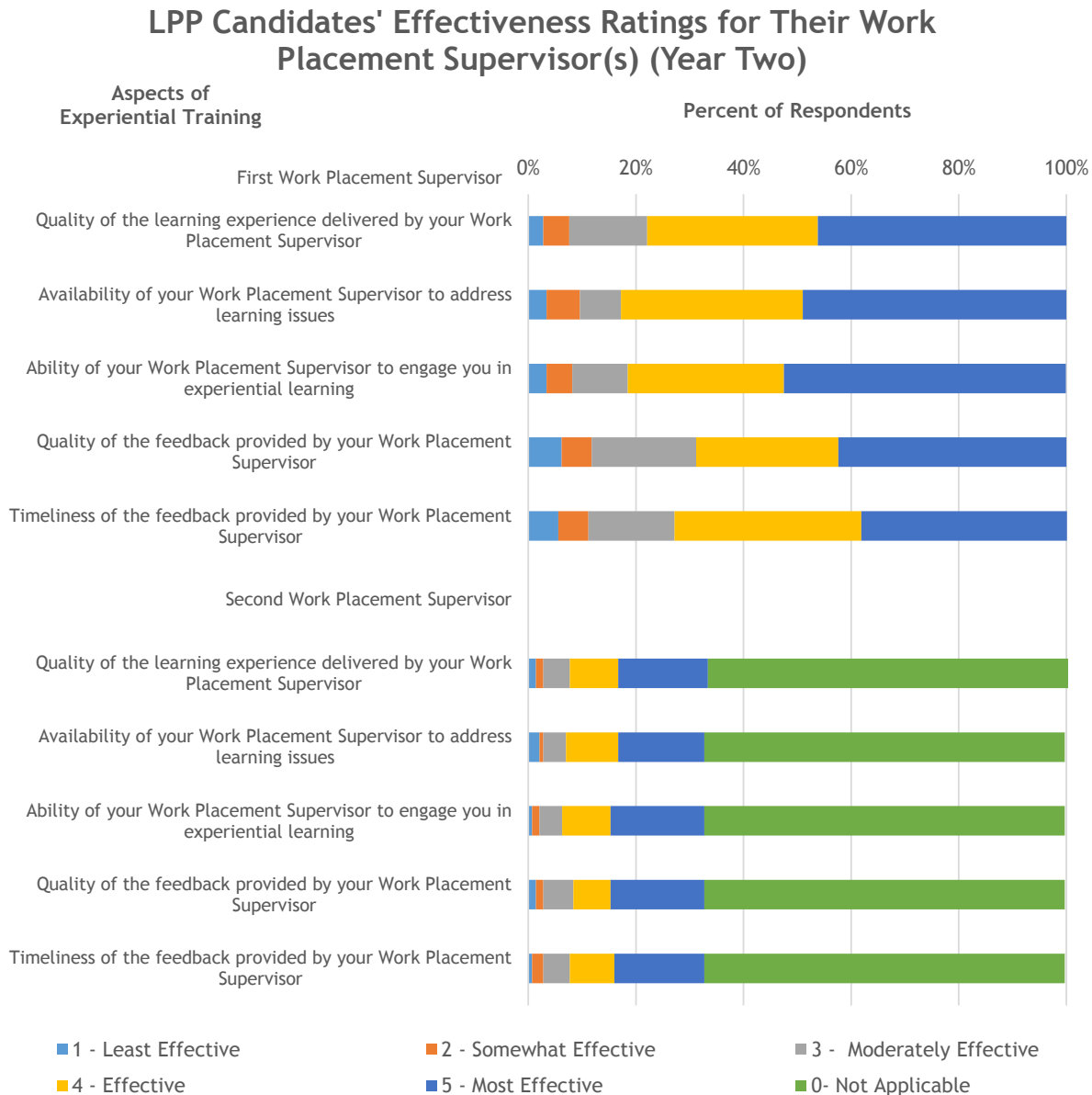
There were no substantive differences in responses between those who graduated from a Canadian Law school and those who did not, except for on *Quality of the feedback provided by your supervisor* in which those who were not graduates of a Canadian law school showed more “Effective” and “Most Effective” ratings (73%) than their Canadian law school graduate colleagues (61%).

### English LPP Candidates' Effectiveness Ratings of Aspects of Experiential Training with Specific Regard to their Supervisors (Year One)



*Figure 18 English LPP Candidates' Effectiveness Ratings of Aspects of Experiential Training with Specific Regard to their Supervisors (Year One)*

In **Year Two**, LPP Candidates were asked to rate the effectiveness of *each* of their supervisors, if they had more than one. These data are summarized in Figure 19. Many respondents, however, did not have a second supervisor, so the number of respondents rating the second supervisor is considerably lower.



*Figure 19. LPP Candidates' Effectiveness Ratings for their Workplace Supervisor(s) (Year Two)*

In **Year Two**, we see a similar result across each supervisor on each aspect of experiential training on average, which are ratings of “Effective” and “Most Effective” from the majority of candidates. In fact, roughly 10% more candidates in Year Two than in Year One rated their supervisors as being “Most Effective” in the first three aspects listed.

In both **Year One** and **Year Two**, the most “Most Effective” ratings are in the *Ability of the Supervisor to engage you in experiential learning*. Further, *timeliness of feedback* continues to be the aspect of experiential training that is rated the least proportion of “Most Effective.”

#### Canadian-Educated versus Internationally-Educated Candidates

Generally, graduates of law schools outside of Canada rated their first work placement supervisor as “Effective” and “Most Effective” on all aspects of experiential training in greater proportions than their Canadian-educated colleagues, except for the *ability of the supervisor to engage you in experiential learning*, in which both groups rated “Effective” and “Most Effective” in equal proportions.

### Law Practice Program - French

#### Mentors (Practitioner Trainers)

In **Year One**, the ratings of “Effective” and “Most Effective” garnered the vast majority of results for most of the aspects of experiential training, except for *Quality of the feedback provided by your practitioner-trainer* and *Timeliness of the feedback provided by your practitioner-trainer*. These results are similar to what was reported in the French Law Practice Program Focus Groups and what was reported in the English LPP in Focus Groups and on the Exit Survey.

In **Year Two**, all of the 6 respondents rated all aspects of their experiential training with specific regard to their Virtual Firm Mentors in the Law Practice Program as “Effective” and “Most Effective.”

Timeliness of feedback was not an issue in Year Two, though there were about half as many respondents to the survey question.

#### Supervisors

For **Year One**, we see in Figure 20 on the next page that respondents to the French LPP Exit Survey were most apt to rate aspects of their experiential training with regards to their workplace supervisors with “Most Effective” than any other group, and did so at almost double the proportion of the respondents to the Articling Program Candidates’ Survey. Articling candidates also rated in smaller proportions all aspects of their experiential training as “Effective” or “Most Effective” when compared to the respondents of the LPP Exit Surveys.

In **Year Two**, all of 6 respondents rated all aspects of their experiential training with specific regard to their Work Placement Supervisor(s) in the Law Practice Program “Moderately Effective” to “Most Effective.”

Timeliness of feedback was not an issue in Year Two, though there were about half as many respondents to the survey question.

## Comparison of Effectiveness Ratings for Aspects of Experiential Training between the Pathways (Year One)

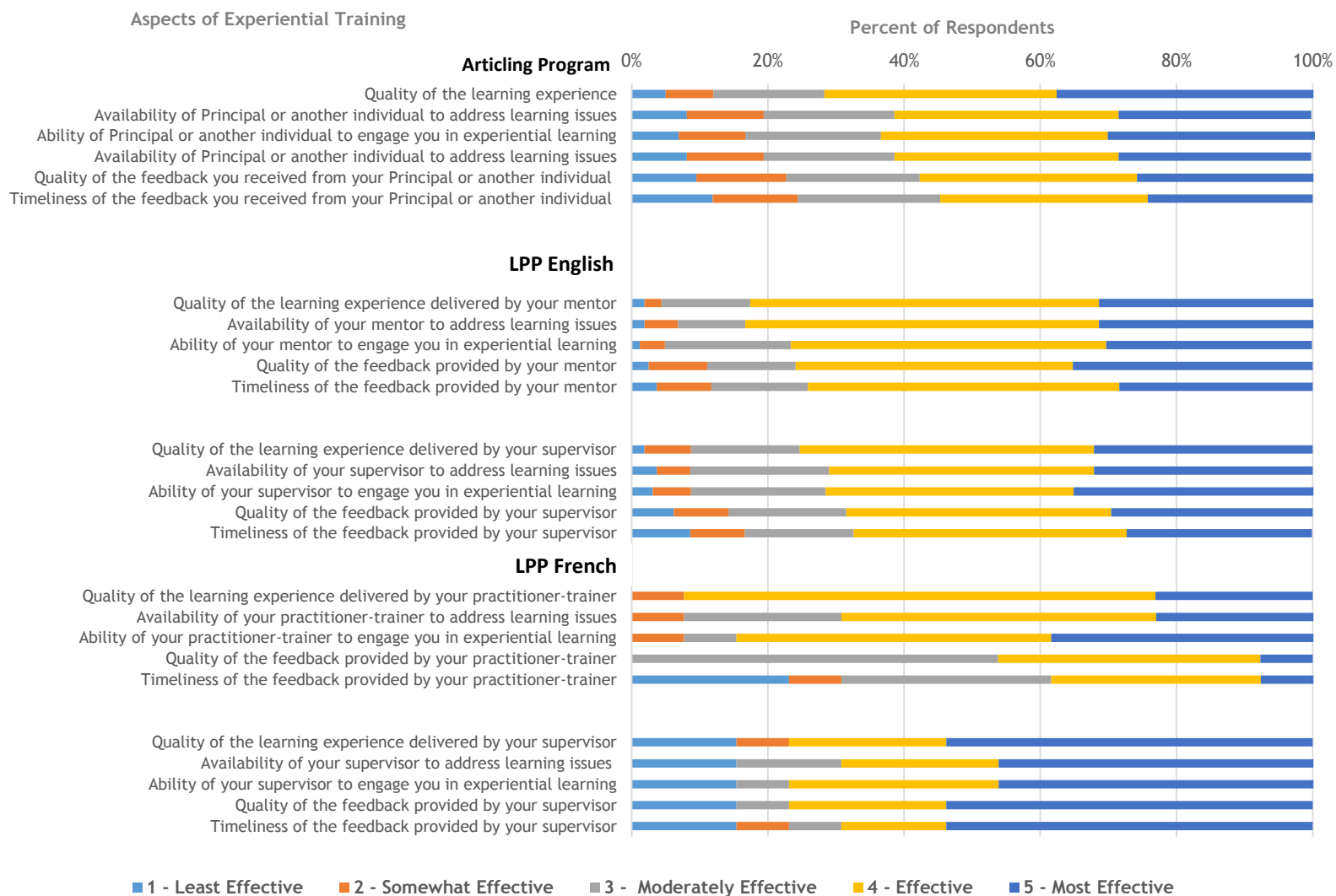


Figure 20. Comparison of Effectiveness Ratings for Aspects of Experiential Training between the Pathways (Year One)

### Articling Program - Candidates

In **Year One**, Articling Program candidates reported that lawyers, for the most part (93%: 49% Principals and 44% another lawyer at the organization), provided the majority of their training with the experiential training competencies. This percentage of lawyers providing the majority of the candidates' training with the experiential training competencies was slightly larger in **Year Two** (95%: 53% Principals and 42% another lawyer at the organization).

Candidates in **Year One** also indicated that the Articling Principal or another lawyer in the organization provided the majority of the feedback about respondents' work (94%: 52% Principals and 42% another lawyer at organization), with administrative personnel at the firm not playing a large role (6%). In **Year Two**, again we see an increased proportion of Principals and other lawyers (96% in total) being involved in experiential training of the candidates, with a slight increase in the involvement of Principals to 55%, with 41% of candidates reporting another lawyer at the organization provided the majority of feedback on the respondents' work.

In **Year One**, there was a very good level of participation by Articling Principals in the performance appraisal of candidates, as over three-quarters (76%) of respondents reported it was their Articling Principal who completed the performance appraisal. **So in Year One, over 27% more Principals were responsible for the respondents' performance appraisal than were active in the training of the respondents.** However, the response rate of the Articling Candidate survey is too low (44%) to state this is representative of the entire population of placements.

In **Year Two**, there was even more participation by Articling Principals in the performance appraisal of candidates, as over four-fifths (81%) of respondents reported it was their Articling Principal who completed the performance appraisal. **So in Year Two, over 26% more Principals were responsible for the respondents' performance appraisal than were active in the training of the respondents.** However, the response rate of the Articling Candidate Survey is too low (44%) to state this is representative of the entire population of placements.

For **Year One**, the Comparison of Effectiveness Ratings in Figure 20 above illustrates that *Quality of the learning experience* received the highest proportion of "Most Effective" ratings at almost 38%. *Timeliness of the feedback you received from your Principal or another individual* received the highest proportion of "Least Effective" at almost 12%. **This latter result was echoed in the Year One Articling Program Focus Groups.**

An emergent theme from the Articling Program Focus Groups was that feedback on candidate performance was context-specific (firm-size, Principal style, area of law), and ranged from formal to "no news is good news". The following points were expressed by the candidates in the Articling Program Focus Groups:

- Candidates' feel that their experiential learning and development of skills are measured as good as indicated by being given increased responsibility. Positive feedback is seen in the form of your phone is ringing = more responsibility, they trust you, and your work.

- “No news is good news”, or feedback is given if candidates are proactive about requesting it. The onus is on the candidate to seek it out from principals and mentors
- Younger associates will take the time to mark up and provide thorough feedback to articling candidates
- Candidate would like to request for a structured feedback system in government and ministry (public sector)

For **Year Two** we see similar results on the Comparison of Effectiveness Ratings in Figure 21 below, namely that *Quality of the learning experience* received the highest proportion of “Most Effective” ratings at 37%. *Timeliness of the feedback you received from your Principal or another individual* received the highest proportion of “Least Effective” at 8%. **This latter result was also echoed in the Year Two Articling Program Focus Groups.**

Generally, feedback on candidate performance was context-specific (firm-size, principal style, area of law), and ranged from formal feedback in structured sessions, though this was a rarity, to “no news is good news,” which tended to be more of the norm across articling contexts in **Year Two**. Articling Program candidates suggested that mandatory feedback sessions would improve consistency and quality of principal involvement, especially with regards to offering feedback on the candidates’ work.

## Articling Candidates' Effectiveness Ratings for Aspects of Experiential Learning Related to the Principal (Year One and Year Two)

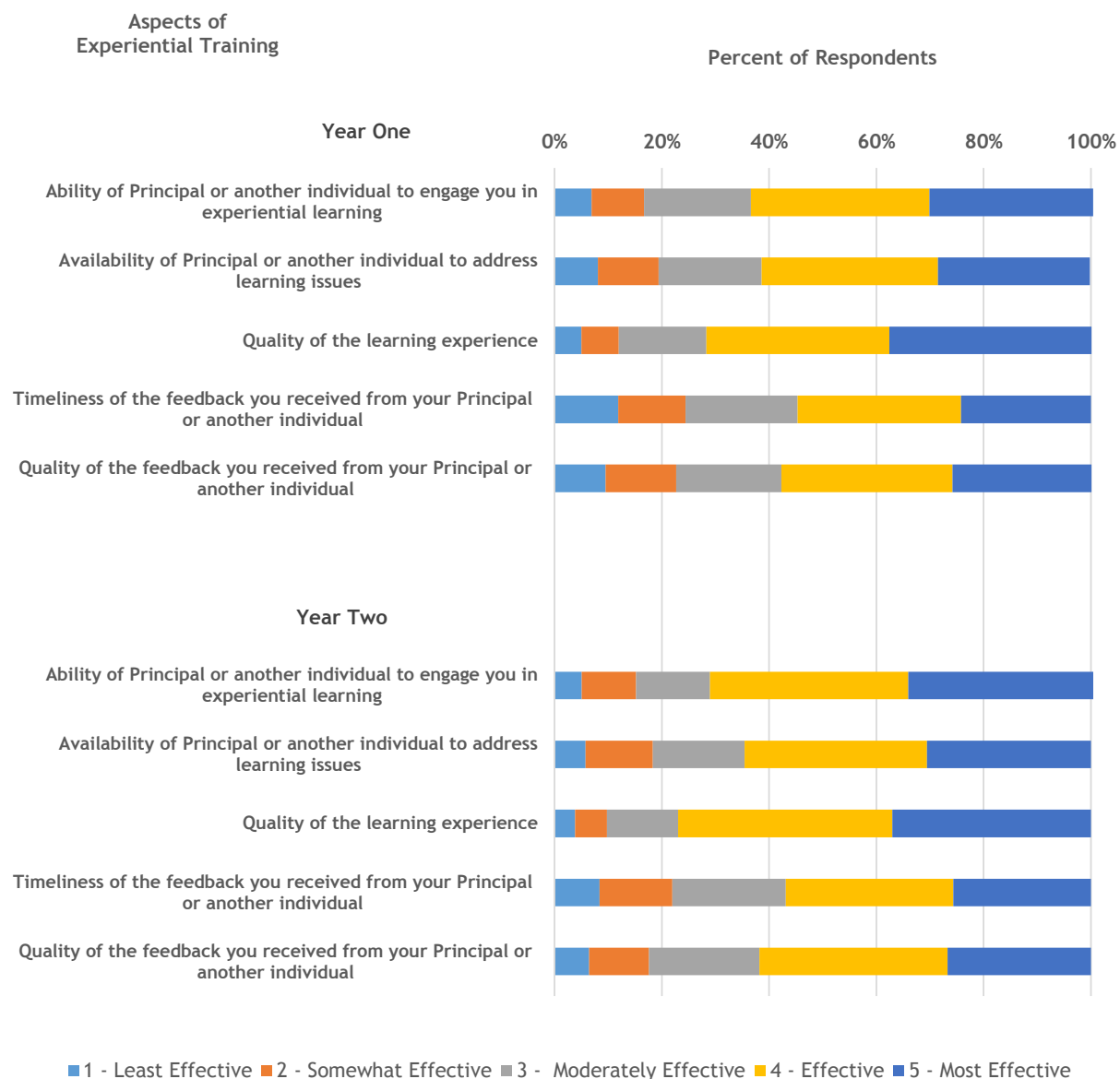


Figure 21. Articling Candidates' Effectiveness Ratings for Aspects of Experiential Training Related to the Principal (Year One and Year Two)

## 7. About the Candidates

### *Demographic Information<sup>27</sup> for the Year One and Year Two Evaluation Cohorts, based on Licensing Process Application Data*

Figure 22 below shows a comparison of **Year One** and **Year Two** evaluation cohorts' demographic information between candidates in each of the *pathways*. Generally speaking, the Articling Program and LPP are comparably similar in: (1) proportion of males and females, though the Articling Program has more females, and the LPP more males; (2) English and French; (3) Aboriginal; (4) persons with a disability; and (5) LGBT. However, there are a greater proportion of internationally-educated, *Racialized*, and *Age 40+* candidates are in the LPP in each of the evaluation cohorts.

The **Year Two** evaluation cohort has decreased proportions of French candidates and those self-identifying as Francophone in the LPP, where in Year One, the proportions of such were greater in the LPP. We see in the Year Two evaluation cohort an equal proportion of French in each pathway and a greater proportion of reported Francophones in the Articling Program.

### SECTION SEVEN SUMMARY

- ❖ The LPP continues to show greater proportions of internationally-educated, Racialized and age 40+ candidates than the Articling Program.
- ❖ There is now a greater proportion of identified Francophones in the Articling Program than in the LPP.
- ❖ The LPP is balanced in terms of internationally-educated versus Canadian-educated candidates, while fewer than 10% of the candidates in the Articling Program are internationally-educated.
- ❖ The University of Ottawa produced more candidates in either pathway than any other law school.
- ❖ The vast majority of candidates in the Articling Program graduate law school in the year immediately preceding their licensing year, while just about half of the candidates in the LPP do.
- ❖ The largest proportion of internationally-educated candidates in the pathways receive their law degrees in the U.K., the U.S., and Australia.

<sup>27</sup> Demographic data is based on the candidate's choice as to whether he or she would like to self-identify as part of a demographic group.

## Demographics for the Articling Program and Law Practice Program Year One and Year Two Candidates

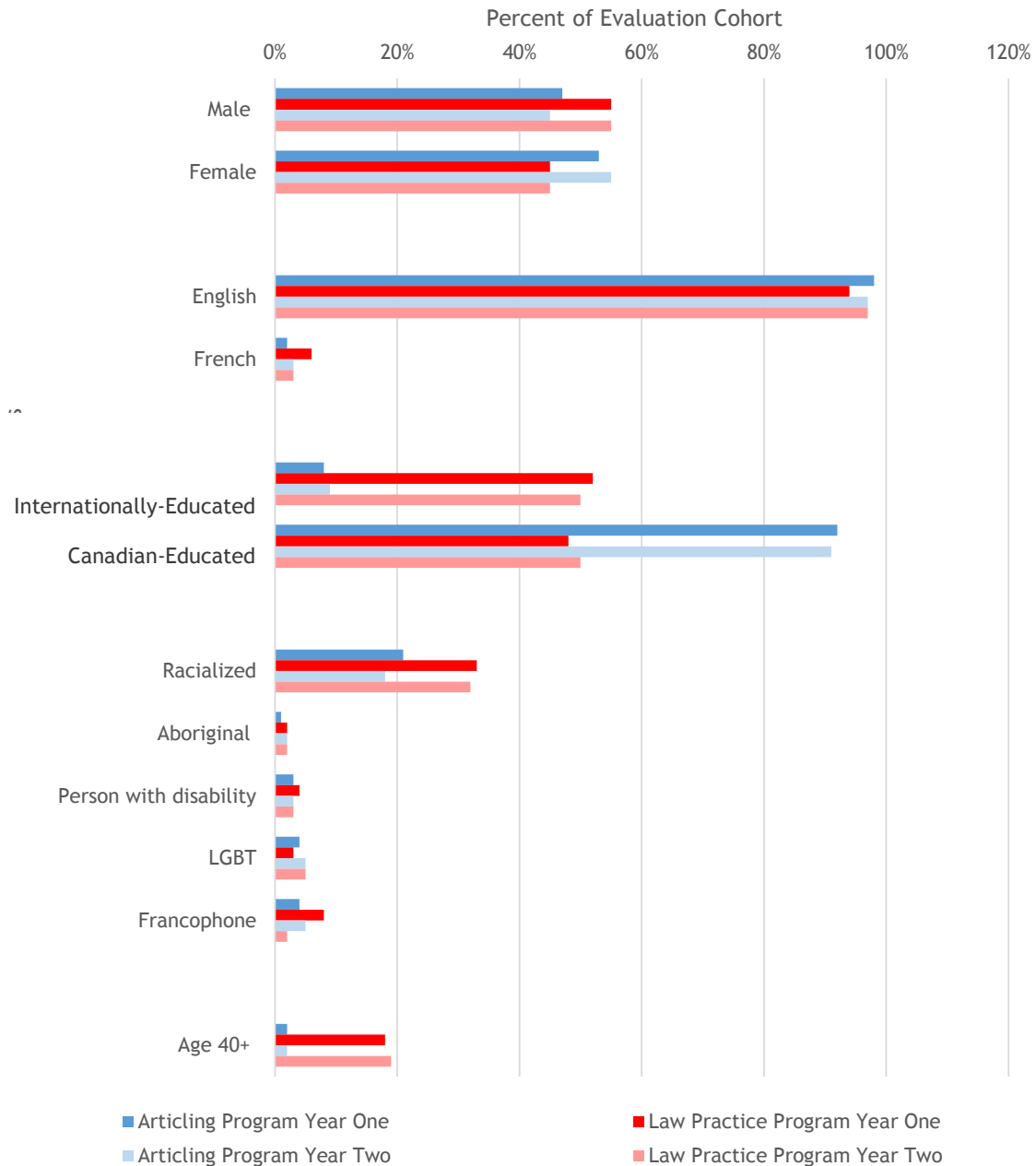


Figure 22. Demographics for the Articling Program and Law Practice Program Year One and Year Two Candidates

It is apparent from Figure 22 that proportionally, the **Year One** Law Practice Program had greater representation than the Articling Program from individuals who identify themselves as *Racialized, Person with a disability, Age 40+, or Francophone*. For **both evaluation cohorts**, there are virtually equal proportions of the candidates in the *pathways* that identify themselves as *LGBT*. But as previously noted, in **Year Two**, there are now a greater proportion of *Francophones* in the Articling Program than the LPP (5% to 2%, respectively), and also there are essentially the same proportion of candidates that describe themselves as *Aboriginal* (2%) across *pathways* and both evaluation cohorts.

In **Year One**, the greatest discrepancies in proportion between the *pathways* is in the *Racialized* category with the LPP having one-third (33%) of its enrolled candidates identifying themselves this way compared to just over one-fifth (21%) of the enrolled candidates in the Articling Program (a difference of 12%), and the *Age 40+* category with 17% of candidates in the LPP and just 2% of the candidates in the Articling Program identifying themselves this way (a difference of 15%). These discrepancies are not only apparent in **Year Two**, they have grown with 32% of the LPP reporting themselves to be *Racialized* compared to 18% for the Articling Program (now a difference of 14%); and 19% of the LPP in the *Age 40+* category compared to 2% for the Articling Program (now a difference of 17%).

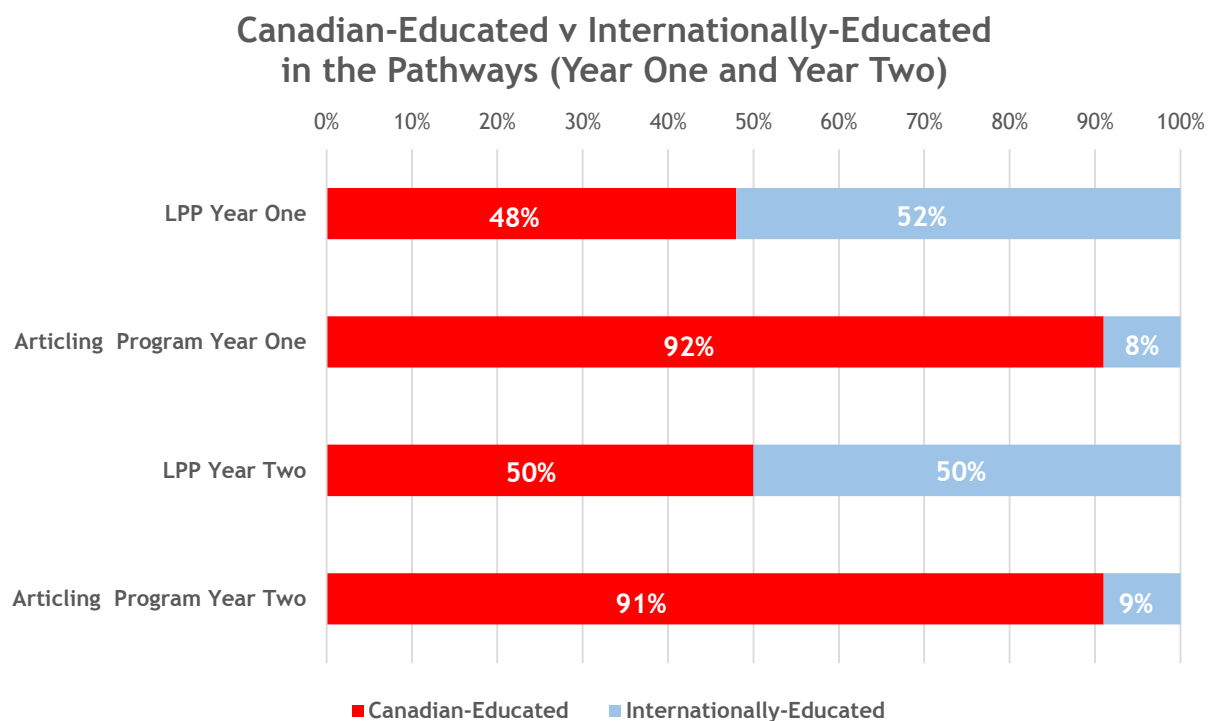


Figure 23. Canadian-Educated v Internationally-Educated in the Pathways (Year One and Year Two)

Figure 23 above illustrates a comparison between the *pathways* and their proportion of Canadian-educated and internationally-educated candidates. In **Year One**, 124 (52%) candidates in the Law Practice Program were internationally-educated candidates; 120 (8%) candidates in the Articling Program are internationally-educated candidates. In **Year Two**, 116 (50%) in the LPP were internationally-educated while 125 (9%) of the candidates in the Articling Program were internationally-educated candidates.

When looking at the schools that provided the legal education for Canadian-educated candidates in the *pathways*, Figure 24 presents the law schools by proportion of candidates for both **Year One** and **Year Two**. Figure 24 illustrates that law schools with the most candidates represented in the LPP and the Articling Program for both years are the University of Ottawa, Osgoode Hall, the University of Windsor, Western University and the University of Toronto; all are in Ontario. The University of Ottawa accounted for 22% of articling candidates and 32% of candidates in the LPP in Year One and 19% for each of the pathways in Year Two.

Figure 24 also illustrates that out of province law schools accounted for a much smaller proportion of the candidates in the *pathways*, with Thompson Rivers University having no graduates at all in the LPP and Articling Program in both **Year One** and **Year Two**. The University of Alberta had no graduates in either pathway in Year Two after having a handful of graduates in the *pathways* in Year One. In Year One, the universities of Calgary, Moncton and Montreal also had relatively smaller representation in the *pathways*; in fact, no graduates of these schools were a part of the Year One Articling Program evaluation cohort, and just a handful in the LPP. This remained essentially unchanged in Year Two with the exception of a few University of Calgary graduates in both the LPP and Articling Program.

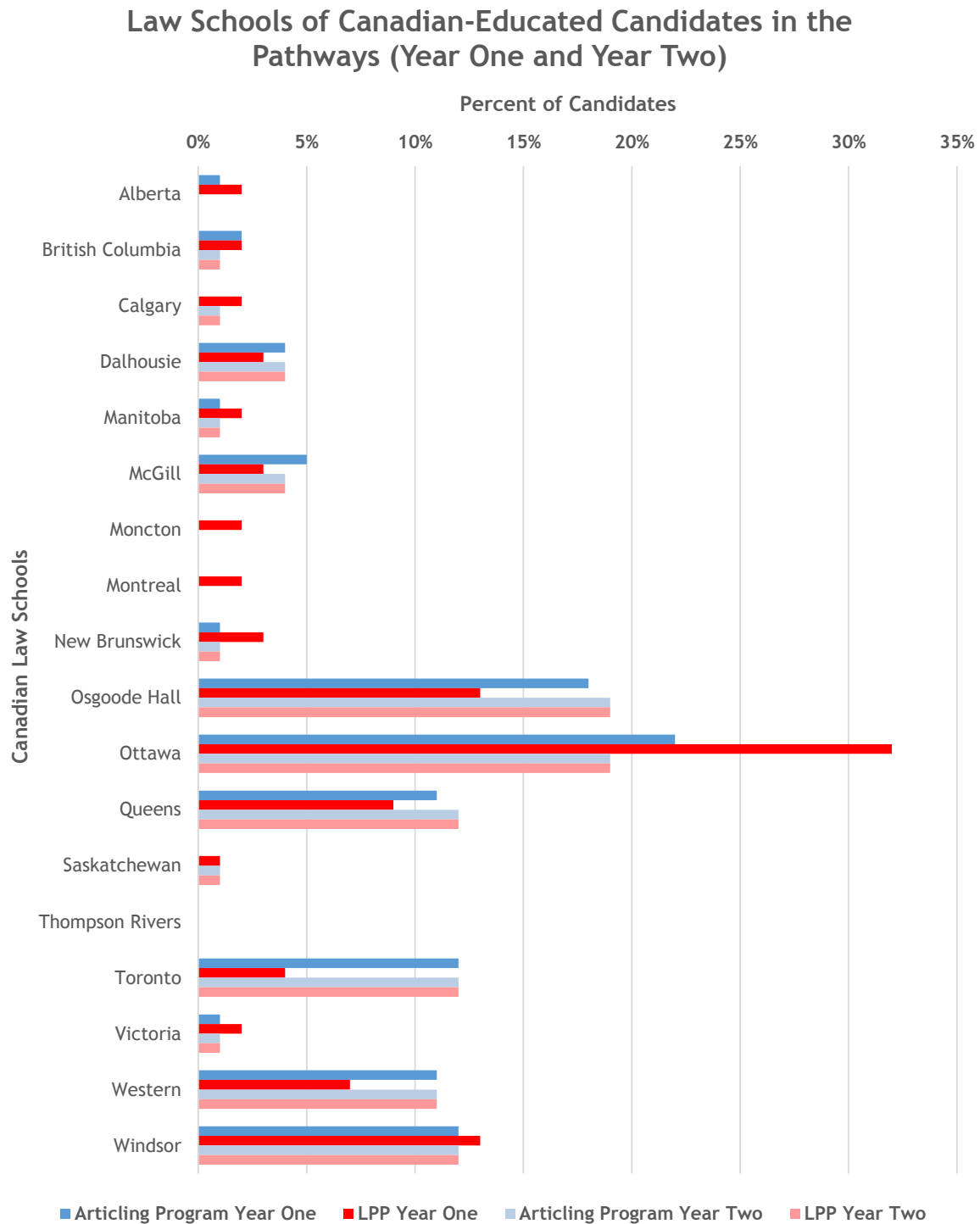
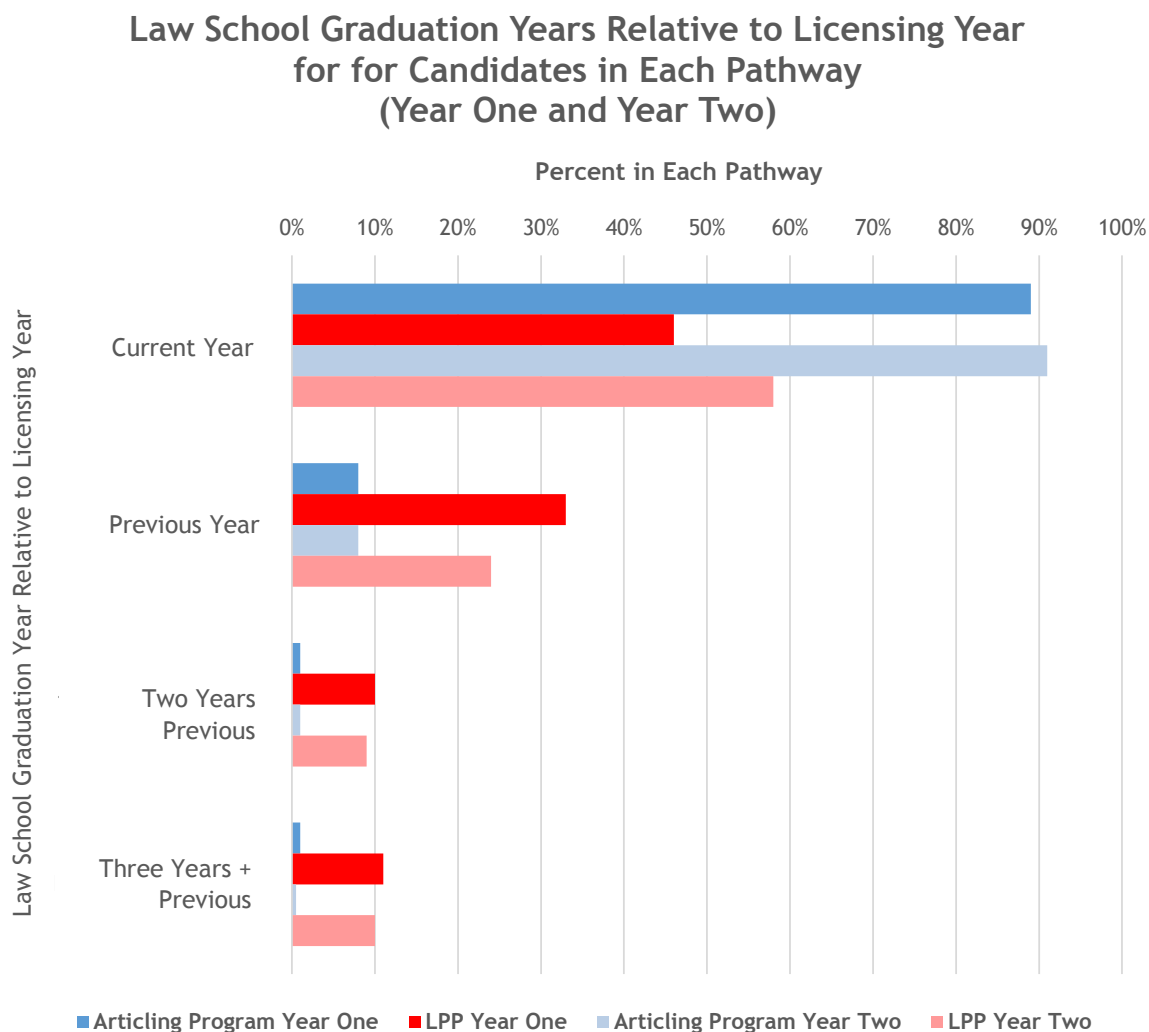


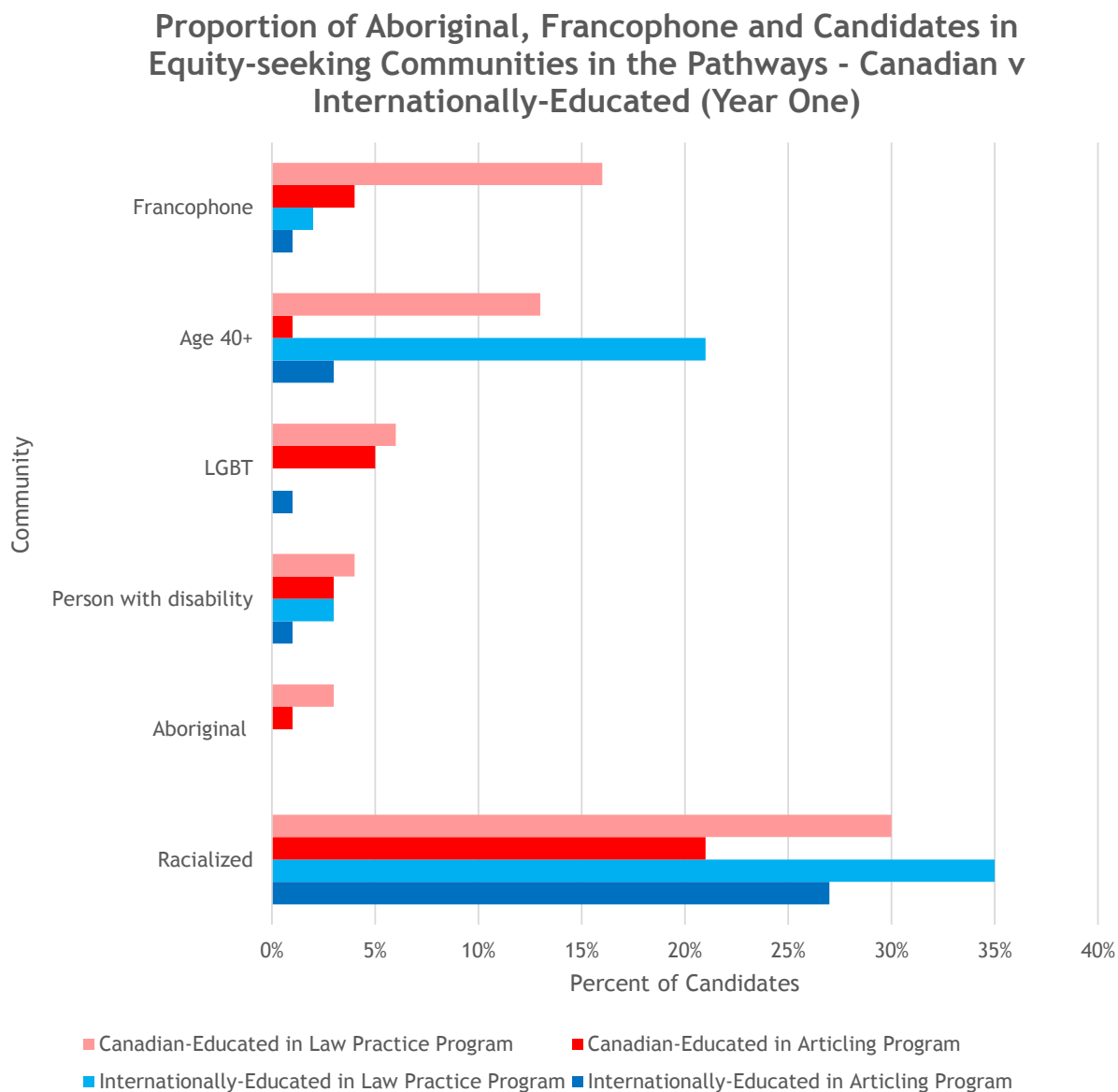
Figure 24. Law Schools for the Canadian-Trained Candidates in the Pathways (Year One and Year Two)



*Figure 25. Law School Graduation Years Relative to Licensing Year for Candidates in Each Pathway (Year One and Year Two)*

Figure 25 above presents the graduating years of candidates enrolled in the *pathways* for each evaluation cohort. We see that the vast majority (89% in Year One and 91% in Year Two) of the articling candidates graduated law school in same year as their enrollment in the Licensing Process, while about half (46% in Year One and 58% in Year Two) of the candidates in the LPP graduated in the same year as their enrollment in the Licensing Process. Further, about one-tenth (11% in Year One and 10% in Year Two) of the candidates in the LPP graduated from law school three years or more previous to their enrollment in the Licensing Process, compared to just about 1% of those in the Articling Program in both evaluation cohorts. With these data and data from Figure 22, it appears that the LPP continues to be the *pathway* with the more mature candidates.

Figure 26 below shows us the **Year One** breakdown of the *Aboriginal, Francophone* and equality-seeking communities in the *pathways* by where they received their legal training (in Canada or internationally).



*Figure 26. Proportion of Aboriginal, Francophone and Candidates in Equity-seeking Communities in the Pathways - Canadian v Internationally-Educated (Year One)*

Figure 26 (above) shows us that for the most-part, those candidates who identified themselves as *Racialized*, were internationally-educated, though there were still substantively-sized groups of

*Racialized* candidates who were Canadian-educated. Further, no *Aboriginal* candidates were internationally-educated, the largest group of candidates *Age 40+* were internationally-educated and enrolled in the LPP. Finally, there were *Francophone* candidates in each of the groups.

Figure 27 below shows us the **Year Two** breakdown of the *Aboriginal*, *Francophone* and equality-seeking communities in the *pathways* by where they received their legal training (in Canada or internationally).

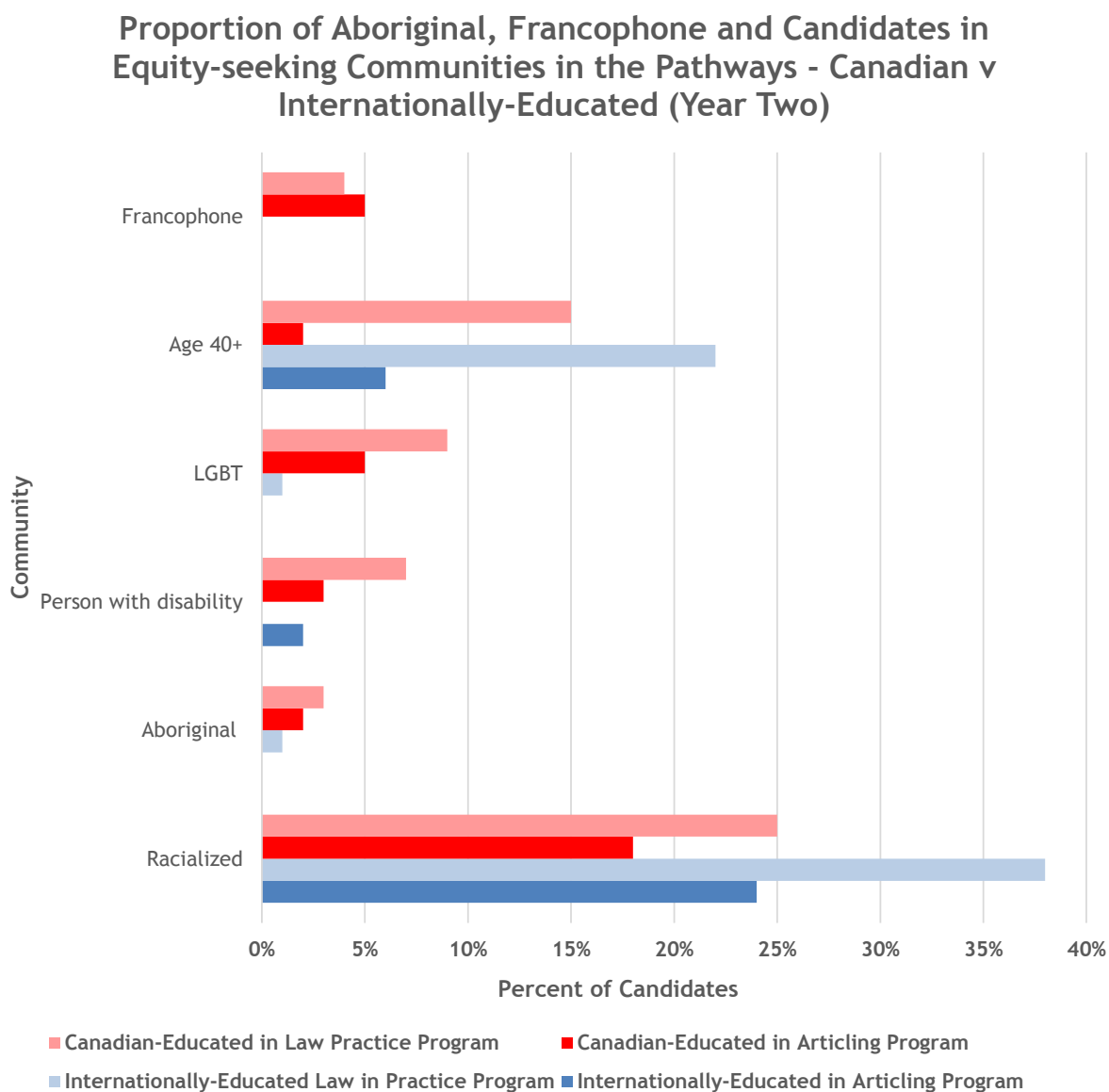


Figure 27. Proportion of Aboriginal, Francophone and Candidates in Equity-seeking Communities in the Pathways - Canadian v Internationally-Trained (Year Two)

Figure 27 shows us that in **Year Two**, there are very few internationally-educated candidates that identified themselves as *Aboriginal*, which is a very slight increase from Year One. There are no *Francophones* in this group, which is different from Year One. Further and also similar to Year One, the *Racialized* candidates tend to be more internationally-educated than Canadian-educated, though both groups are sizeable. Finally, and again similar to Year One, candidates *Age 40+* are more numerous in the internationally-educated group than the Canadian-educated group, and the numbers in both years for the LPP are substantive.

Generally, we see from Figures 26 and 27 that internationally-educated candidates in the *pathways* have a greater proportion that identify as *Racialized* and *Age 40+*, but Canadian-educated have a greater proportion of candidates in the *Francophone*, *LGBT*, *Person with Disability* and *Aboriginal* categories. Further, the largest percentages of candidates:

- that identified themselves as *Francophone* are found in the Canadian-educated LPP category in Year One, and in the Canadian-educated Articling category in Year Two;
- *Age 40+* are found most in the internationally-educated LPP category in both cohorts;
- that identified themselves as *LGBT* are found in the Canadian-educated LPP category in Year One and in Year Two;
- *with Disability* are in the Canadian-educated LPP category in both cohorts;
- that identified themselves as *Aboriginal* are found in the Canadian-educated LPP category in both cohorts, and had no one in the internationally-educated group identified as such in Year One; and
- that are *Racialized* are found in the internationally-educated LPP category in Year One, and in Year Two.

Figure 28 below illustrates where the internationally-educated candidates in each pathway in each cohort received their law school education. For both **Year One** and **Year Two**, most internationally-educated candidates receive their law degrees in the United Kingdom, the United States, Australia and to a lesser extent, India.

### Country of Law School for Internationally-Educated Candidates in each Pathway (Year One and Year Two)

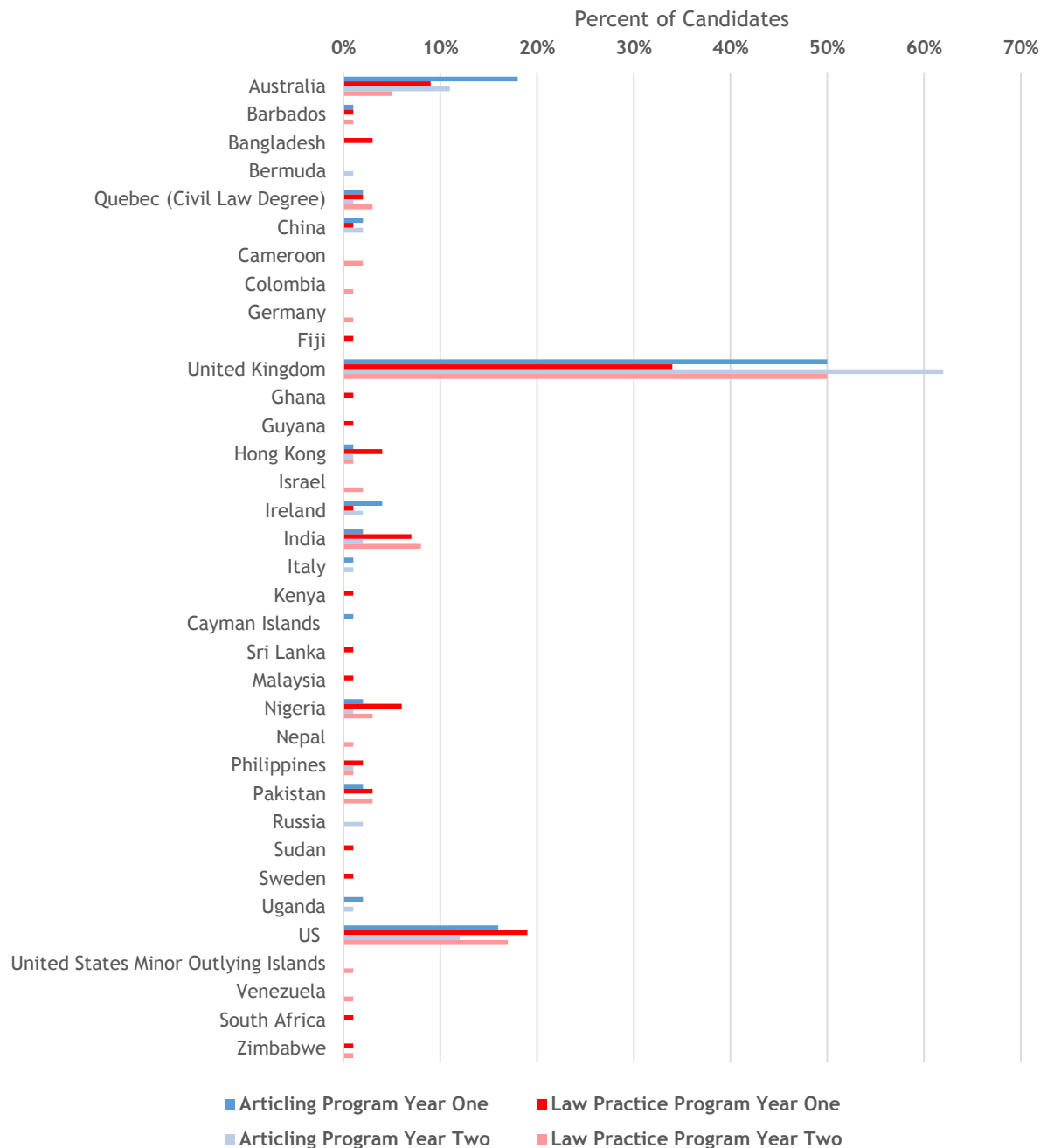


Figure 28. Country of Law School for Internationally-Educated Candidates (Year One and Year Two)

### Preference for the Law Practice Program

As previously noted, just 38% of respondents to the LPP Entry in **Year One** indicated that the Law Practice Program was their first choice for experiential training. This figure dropped to 27% in **Year Two**.

In **Year One**, almost two-thirds (64%) of candidates who responded to the LPP Entry Survey did not graduate from a Canadian law school, and these respondents were considerably more likely (45% to 28%) to have selected the LPP as their first choice for experiential training than the Canadian law school graduates. In **Year Two**, just over half (51%) of the respondents to the LPP Entry survey did not graduate from a Canadian Law School, and these respondents were just slightly more likely (33% to 20%) to have selected the LPP as their first choice for experiential training than their Canadian law school graduate colleagues.

Further, in **Year One**, some 39% of graduates from law schools outside Canada did so between 2007 and 1999 or selected “Other,” contrasted with just 4% of graduates from Canadian law schools who indicated they graduated pre-2008 or selected “Other.” Of this seemingly more mature group of graduates from foreign law schools (pre-2008 or “Other”), more than two to one (32 to 15, or 68%) indicated that the Law Practice Program was their first choice for experiential training. Similarly, in **Year Two**, some 40% of graduates from law schools outside Canada did so between 2008 and 1999 or selected “Other,” contrasted with just 6% of graduates from Canadian law schools who indicated they graduated pre-2009 or selected “Other.” But, of this seemingly more mature group of graduates from foreign law schools (pre-2009 or “Other”), only just over half (18 to 13, or 56%) indicated that the Law Practice Program was their first choice for experiential training.

### Comparison of Post-License Types of Practice Consideration between LPP and Articling Program

Figure 29 shows the comparison between results from the Articling Program Candidates’ Survey and the results from the Law Practice Program Exit Survey. We see that in both **Year One** and **Year Two**, those respondents enrolled in the Articling Program were considering “Private Practice” in a much larger proportion (67% and 63%, Year One and Year Two, respectively) than their colleagues who responded to the Law Practice Program Exit Surveys (45% and 56%, Year One and Year Two, respectively), and about the same proportion of these groups (about 2%) were considering “Non-practising,” with the exception of the Year Two Articling Program Survey respondents, of whom 4% were considering “Non-practising.” In both **Year One** and **Year Two**, proportionally, more respondents from the Law Practice Program Exit Surveys were considering “Practising but not in a Law Firm” or were “Undecided” than their colleagues who responded to the Articling Program Candidates’ Survey.

### Comparison of Candidates' Post-license Types of Practice Consideration between LPP and Articling Program (Year One and Year Two)

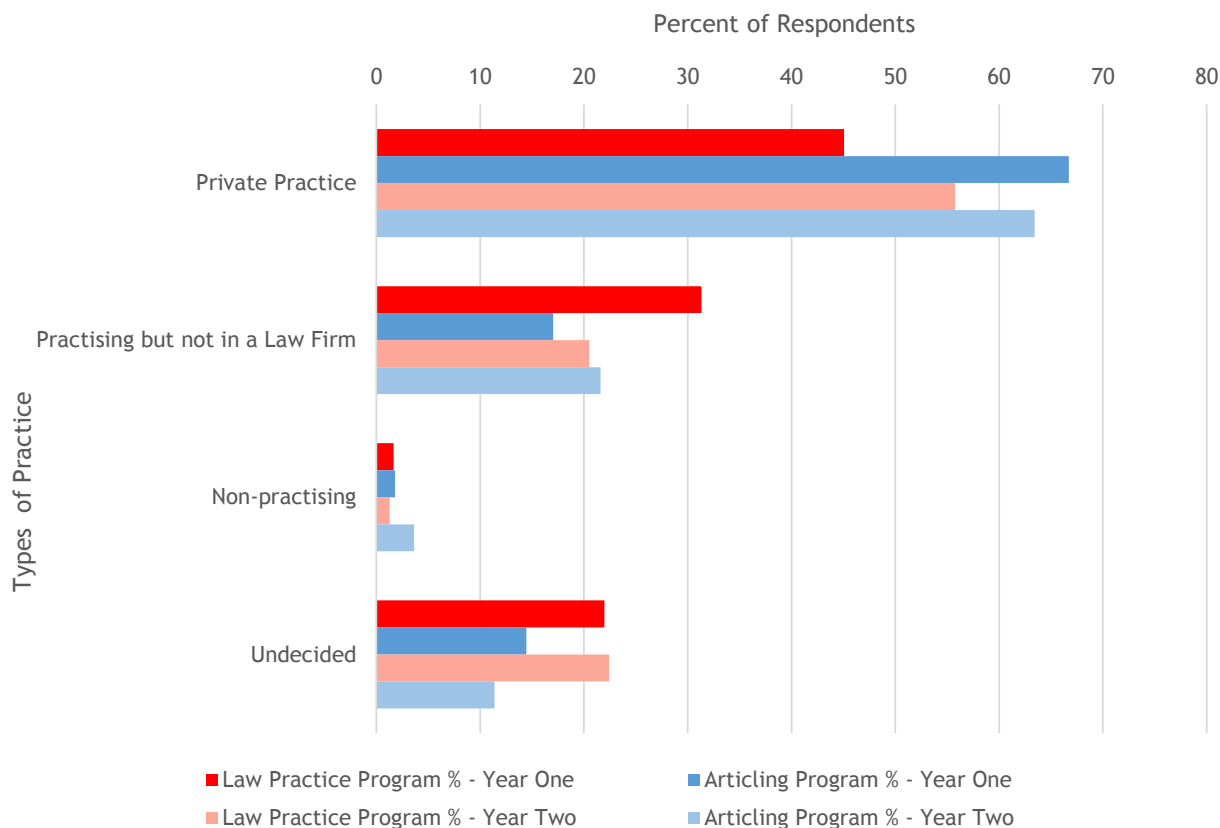


Figure 29. Consideration for Post-License Practice Type for Candidates in each Pathway (Year One and Year Two)

### Comparison of Candidates' Post- License Area(s) of Law Consideration<sup>28</sup> between LPP and Articling Program

Figure 30 (forthcoming) shows that in **Year One**, Articling Program Candidates' Survey respondents selected in greater proportions than their colleagues in the LPP the areas of Aboriginal Law (9% vs 8%), Bankruptcy Law (6% vs 5%), Civil Litigation – Defendant (38% vs 34%), Construction Law (10% vs 3%), Environmental Law (9% vs 7%), Language Rights Law (3% vs 2%), and "Other" (10% vs 8%). Note that respondents were able to select one or more areas of law when completing the survey. Those in the LPP selected Immigration Law, Real Estate Law and Wills, Trusts and Estates in much greater proportions than their colleagues in the Articling

<sup>28</sup> When asked about placement considerations (areas of practice, and location), candidates responding to surveys were allowed to select more than one option, hence totals exceed 100%.

Program. The “Other” category was selected by almost 10% of the respondents and the areas of law most selected were Health Law and Municipal Law.

Figure 31 shows that in **Year Two**, Articling Program Candidates’ Survey respondents selected in greater proportions than their colleagues in the LPP the area of Aboriginal Law (10% vs 9%), which is similar to Year One. But unlike in Year One, the Articling Program candidates did not select any other area of law in greater proportions than their colleagues in the LPP. Similar to Year One, those in the LPP selected Immigration Law, Real Estate Law and Wills, Trusts and Estates in much greater proportions than their colleagues in the Articling Program. But in Year Two, those in the LPP selected Corporate Commercial Law in a much greater proportion than their colleagues in the Articling Program. Note that respondents were able to select one or more areas of law when completing the survey. Again as in Year One, the “Other” category was selected by about 10% of the respondents and the areas of law most selected were Health Law and Municipal Law.

### Comparison of Post-license Areas of Law Consideration between LPP and Articling Program (Year One)

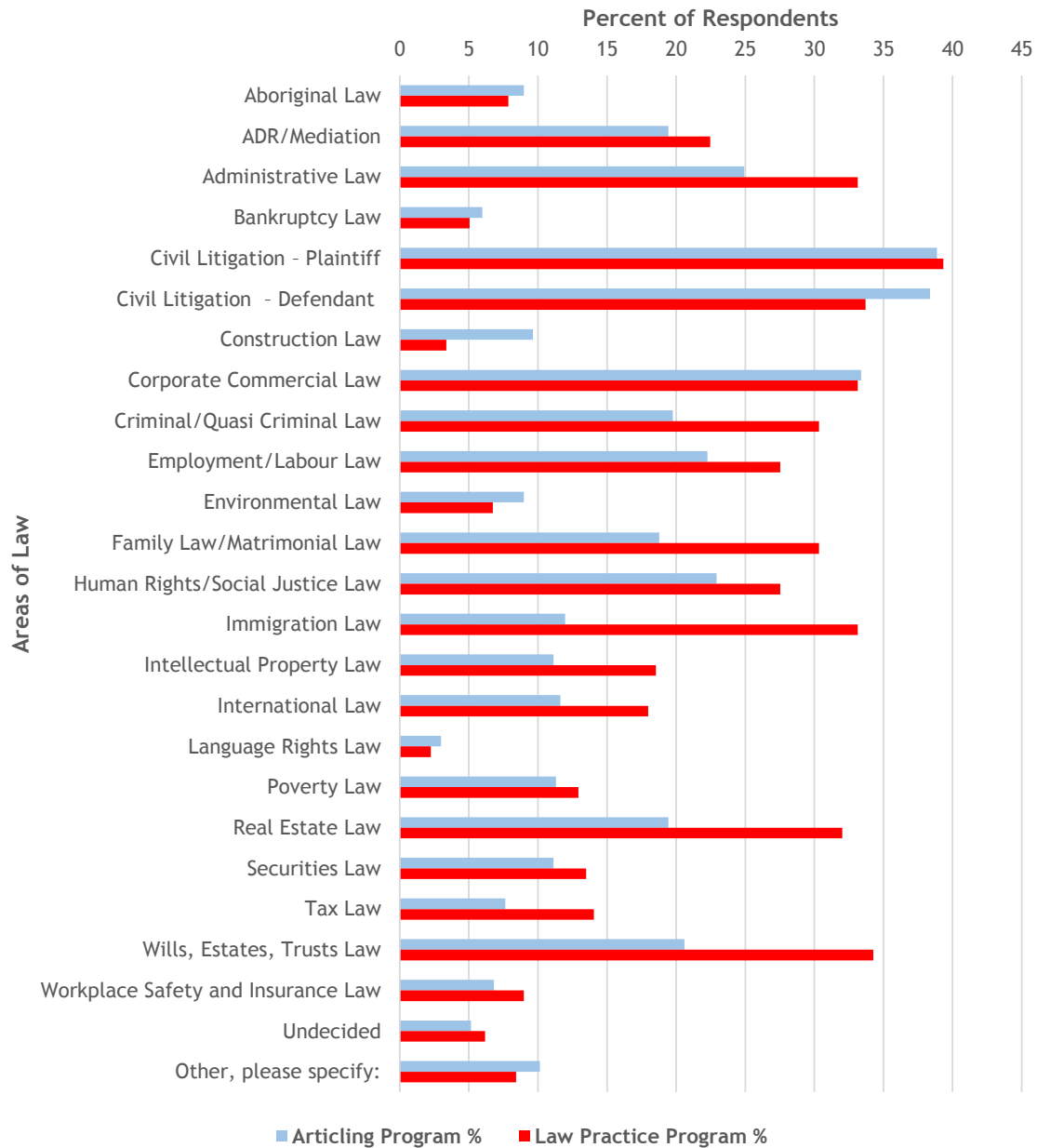


Figure 30. Comparison of Post-license Areas of Law Consideration between LPP and Articling Program (Year One)

### Comparison of Areas of Law for Consideration between LPP and Articling Program (Year Two)

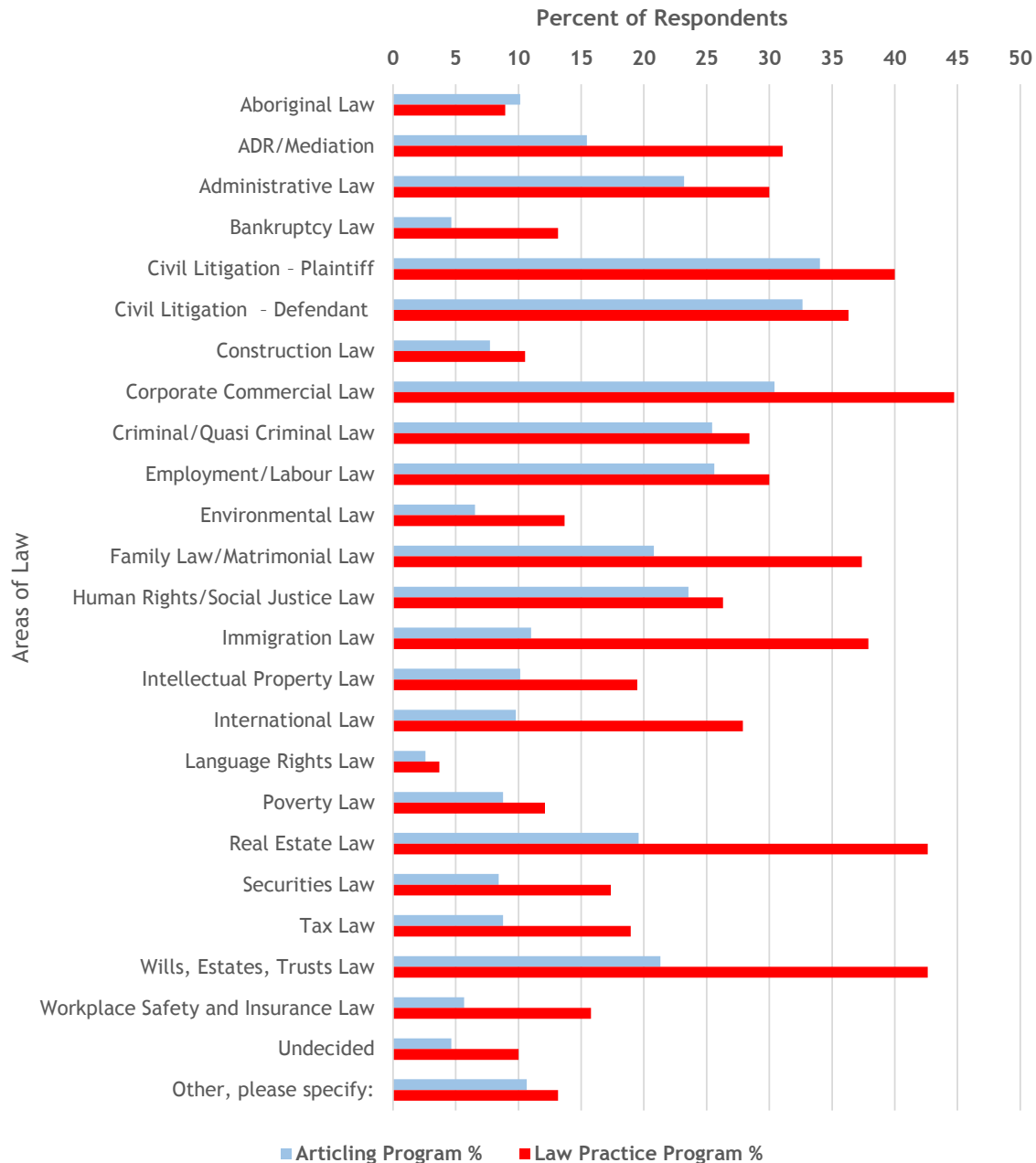


Figure 31. Comparison of Post- License Areas of Law Consideration between LPP and Articling Program (Year Two)

### Comparison of Candidates' Post-License Location Consideration<sup>29</sup> between LPP and Articling Program

Figure 32 shows a comparison of the responses from the Articling Program Candidates' Survey and the Law Practice Program Exit Surveys for both evaluation cohorts. We see that about 75% of respondents in each of the *pathways* considered Toronto as a location for practice. Next most-selected was the East with about one-quarter of the combined English and French respondents in the LPP and about one-fifth of the combined English and French respondents in the Articling Program choosing that area.

About one in ten respondents in the LPP were "Undecided," which was more than two times the proportion of the respondents in the Articling Program. The Northwest location was selected by the smallest proportion of each group of respondents.

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<sup>29</sup> When asked about placement considerations (areas of practice, and location), candidates responding to surveys were allowed to select more than one option, hence totals exceed 100%.

### Comparison of Post-License Location Consideration between LPP and Articling Program (Year One and Year Two)

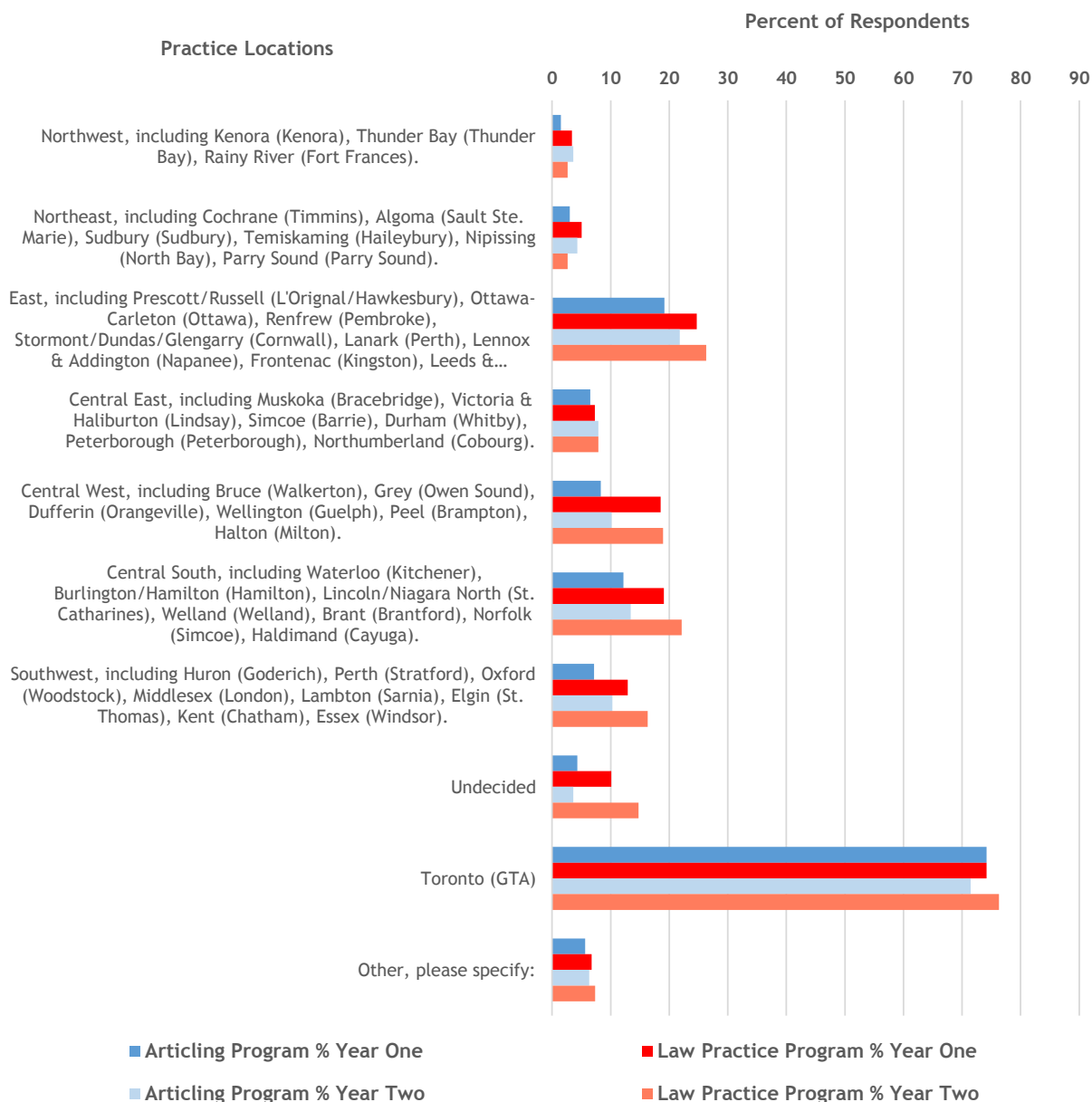


Figure 32. Comparison of Post- License Location Preference between LPP and Articling Program (Year One and Year Two)

## 8. The Search for a Placement

### *Law Practice Program - English*

In **Year One**, 38% of the respondents to the LPP Entry Survey reported that the LPP was their **first choice** for experiential training, compared to 27% for **Year Two**. When asked why the LPP was their first choice, many of the comments from the Year One candidates mentioned **“articling position”** did so in reference to respondents’ status as **“foreign”** or **“foreign-trained”** and perceiving a difficulty in obtaining an articling position or opportunity. Many comments also mentioned that the Law Practice Program was **“broad in scope,” “innovative”** and exposed candidates to the **“Canadian legal system,” “many “areas of law”** and was akin to programs offered in the **“UK and Ireland.”** Comments from **Year Two** were very similar, as many of the respondents reported that the LPP offered them **“practical experience,”** others noted the **“innovative”** approach to the LPP delivery, and several indicated that the focus in seven areas of law was **“broad”** and **“comprehensive.”** Still, respondents who are internationally-educated described that they felt like they did not have the same **“opportunity”** as their Canadian-educated colleagues to join **“better”** firms, some mentioning that as an internationally-educated candidate, they were out of the **“regulated articling application cycle.”**

In **Year One**, of the 62% of the candidates in the LPP that indicated the Law Practice Program was **not their first choice** for experiential training, a great many responded that they **“wanted”** or **“preferred”** the **“traditional route”** of **“Articling”** or an **“articling placement”** rather than the Law Practice Program and **“tried”** to **“secure (an Articling) position.”** Some of the respondents commented that Articling was preferable for **“financial reasons”** or because it was **“paid.”** Some comments mentioned that not having an articling position would be a **“stigma”** and that after **“completing”** the LPP it would be difficult to find **“employment after call to the Bar.”**

In **Year Two**, most of the almost three-quarters (73%) that indicated they did not choose the LPP as their first choice for experiential training had responses that were related to three main themes: (i) candidates prefer articling because it is paid, longer in duration, providing more income than the LPP, thus **“disadvantaging”** those in the LPP; (ii) candidates prefer articling because it is **“traditional,”** and are wary of the

### SECTION EIGHT SUMMARY

- ❖ A declining percentage (38% in Year One and 27% in Year Two) of candidates in the LPP reported that it was their first choice for experiential training.
- ❖ LPP focus group participants indicated they perceived the work placement process to be unfair.
- ❖ There is a significant discrepancy between perceptions of candidates in the Articling Program and Articling Principals as to the ratio of applications per articling placement.
- ❖ Internationally-educated or out-of-province candidates in the Articling Program feel disadvantaged in access to articling placements.
- ❖ Principals report that they offer articling placements: to recruit new members of the firm; as a responsibility to the profession; and because they can pay relatively lower rates for candidates in articling, compared to first-year associates, for much of the same type of work.

**“perception of the legal community”** which see the LPP the lower of a **“two-tier”** system of experiential training, creating a **“stigma”** around the LPP and its candidates, which may be **“detrimental”** in finding post-call employment; and (iii) many respondents declared they could not find an articling placement, so enrolled in the LPP as a result.

In both evaluation cohorts, almost all (99%) of the respondents to this question, **indicated that they had searched for an articling placement**. Just under half (45%) of those that declared they searched for an articling placement graduated from a Canadian law school in **Year One** as did just over half (52%) in **Year Two**.

We then asked those candidates who declared they searched for an articling placement to tell us about their search. Many of the responses in **Year One** mentioned **“extensive”** searches or **“searched for an articling position”** but were **“unsuccessful”** in receiving an articling **“placement.”** Some respondents had submitted **“applications”** to **“law firms,”** and mentioned that they **“received” “interviews”** but found the pursuit of articling positions **“difficult”** for many reasons, including that firms were **“not hiring or already hired”** for their articling positions. In **Year Two**, several respondents reported that law firms were simply not hiring, either as a holdover affect from the recession of 2008 or because they hired their summer students for articling placements. A great many respondents indicated that they had sent out dozens of applications, received only a few interviews, if any, and no offers. Others, who described themselves as internationally-educated candidates felt that the timing of the official application process was difficult for them to adhere to. Some candidates claimed they were not hired because they were **“mature,”** a **“minority,”** a **“non-traditional”** law school graduate or **“NCA”**<sup>30</sup>. Finally, some respondents, did not say much other than their searches were, **“fruitless,” “terrible,” “futile,” “daunting”** and the like.

#### Work Placement Search Process

An emergent theme from **both evaluation cohorts** during the LPP Focus Groups was that the LPP work placements search process was unfair. They felt that forcing candidates to take the first call-back though it may not be in their best interest was unfair, as was the lack of transparency regarding work placement location and salary conditions.

The LPP Exit Survey results echoed these comments in **both cohorts** as well. The fact that many **work placements** were **unpaid** and that the **placement process was not “transparent”** were sore points for some candidates. In one of the LPP Focus Groups in **Year One**, a candidate stated that she/he should not have to be faced with doubts and fears that s/he would not find a position, since they are participating, and paying for the program.

Of the respondents to the LPP Withdrawal Surveys, 65% or 15 of the 23 received their legal education from a Canadian law school in **Year One** and 61% (14 of 23) in **Year Two**. Just short of two-thirds of the withdrawal survey respondents are from those educated in Canada. So we may say at this point, **Canadian law school graduates in the LPP, just under half the**

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<sup>30</sup> National Committee on Accreditation of the Federation of Law Societies of Canada assesses legal education credentials obtained outside of Canada, or in a civil law degree program in Canada, for individuals applying to a law society in a Canadian common law jurisdiction ([www.flsc.ca/en/nca](http://www.flsc.ca/en/nca)).

**LPP population over two evaluation cohorts, withdrew from the LPP at almost twice the proportion as their internationally-educated counterparts.**

When asked why they withdrew from the LPP, most responses in both evaluation cohorts focussed on looking for and finding an articling placement. Almost half (48%) of the responses indicated that the candidate had found an articling placement in **Year One**; this figure was over 60% (15 of 24) for **Year Two**. Of those 11 respondents that indicated they had found an articling placement in **Year One**, eight of the placements or around 73% were paid; this figure was 100% (15 of 15) for **Year Two**. Relatively few people reported that the Law Practice Program did not meet their needs (22%) in **Year One** and just 8% reported so in **Year Two**. Two of the five responses to the question in **Year One** relate to the geography of the Law Practice Program placements; another two responses related to finances and the other response was critical in general of the Law Practice Program. In **Year Two**, both responses indicated the respondents felt the LPP was geared to younger candidates.

Candidates in both evaluation cohorts were also asked to provide “any other comments about why you chose to withdraw from the Law Practice Program.” All responding candidates in **both cohorts** offered commentary. **Many of the responses to this question centered around two predominant themes, both of which are financially-driven: (1) the issue of the Law Practice Program placements being unpaid; and closely related, (2) the search for a paid articling placement.**

#### **Articling Program**

Figures 33 and 34 show us a comparison of what was reported by **Year One** and **Year Two** Articling Principals and articling candidates regarding the number of applications per articling position, respectively. These data show that the greatest proportion of candidates (40% and 43%, Year One and Year Two, respectively) reported that they applied to between 1 and 10 articling positions before obtaining theirs, while the largest proportion of Principals (40% and 41%, Year One and Year Two, respectively) indicated that more than 50 applications per position were received.

### Comparison of Applications per Articling Position between Articling Candidates and Articling Principals (Year One)

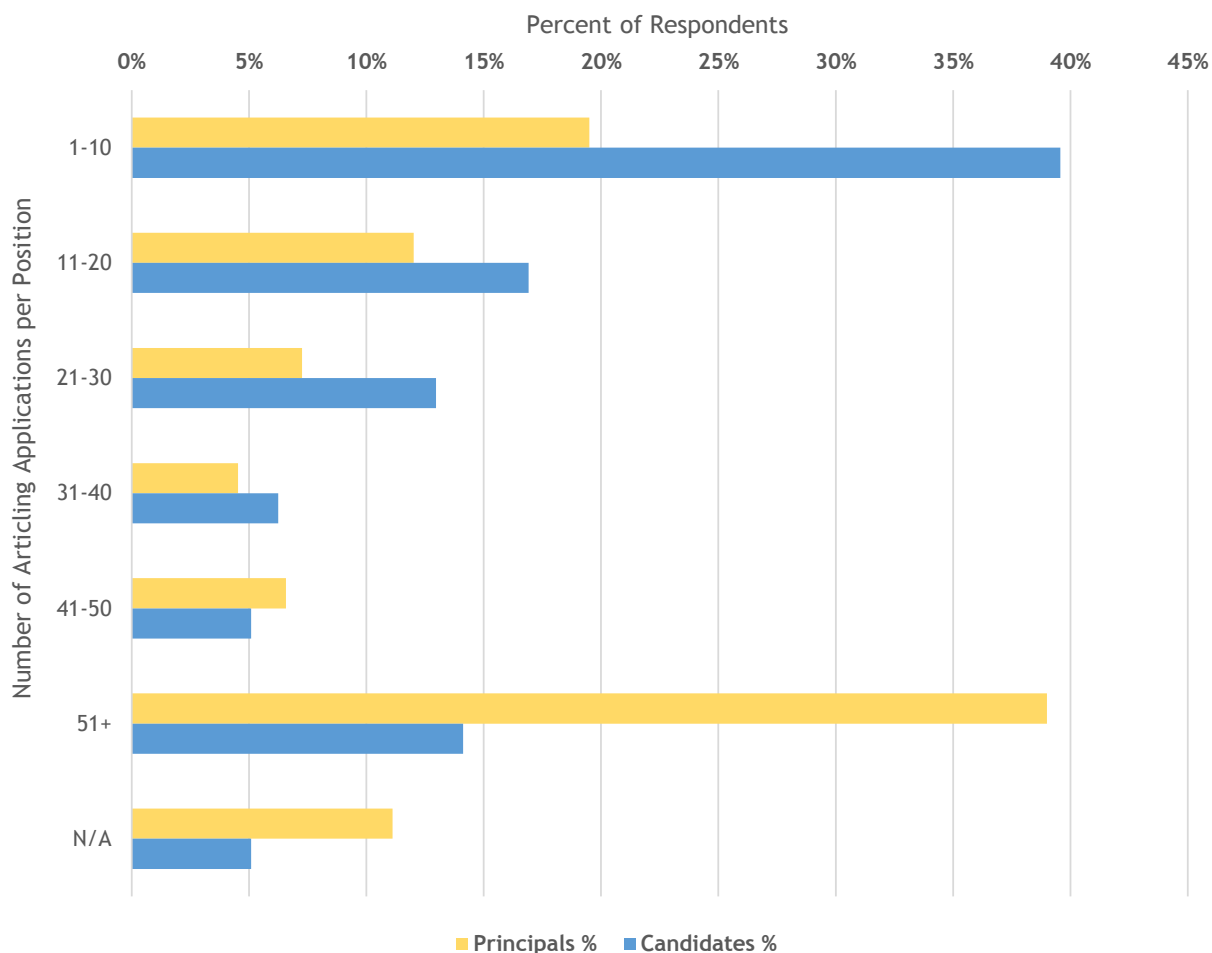


Figure 33. Comparison of Applications per Articling Position between Articling Candidates and Articling Principals (Year One)

### Comparison of Applications per Articling Position between Articling Candidates and Articling Principals (Year Two)

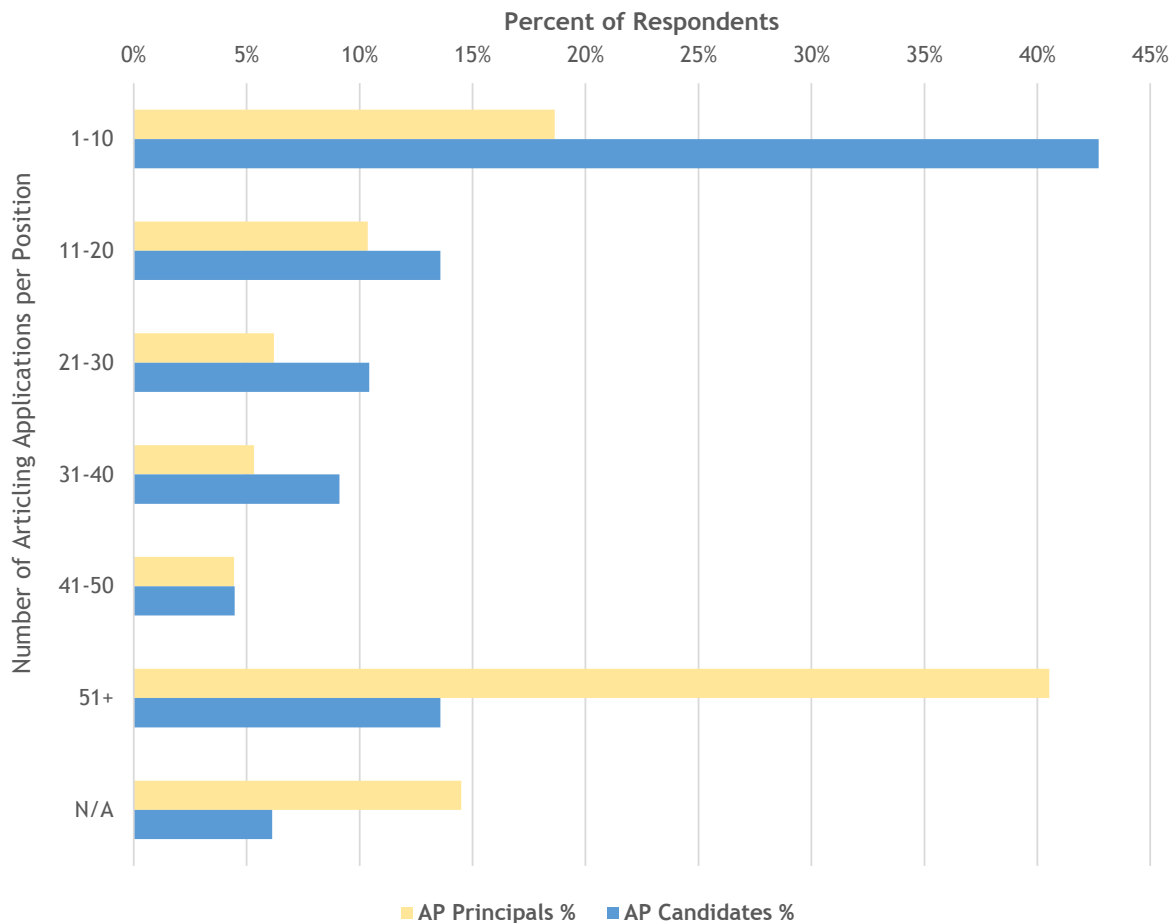


Figure 34. Comparison of Applications per Articling Position between Articling Candidates and Articling Principals (Year Two)

An emergent theme uncovered from Articling Program Focus Groups in **both evaluation cohorts** about the articling placements search is that out-of province or out-of country candidates are disadvantaged in access to articling positions. Candidates also felt that the search process puts those who are interested in social justice/child protection work at a disadvantage, as there is a deficit of paid opportunities and effective job search resources.

The following comments exemplify these sentiments:

*“Candidate feels confined by jurisdiction deadlines for hiring and accepting and applying for positions within and out of province. It was stressful navigating different deadlines especially for those who were internationally educated.”*

*“Career offices are not highlighting an equitable amount of positions for articling positions; emphasis is given to corporate, Bay Street style positions, and there is a lack of postings on social justice, criminal, and family.”*

On their survey, the Articling Principals were asked **why they offer articling placements** and there were three emergent themes to the responses in both **Year One** and **Year Two: Recruitment**, as firms utilize the candidates in articling positions to fill their hiring needs for entry to practice lawyers at post-call; **Responsibility**, as respondents felt they had a duty to help train and deliver new lawyers into the profession; and to a much lesser extent **Rates**, as the pay rate that candidates are remunerated at are below what a first-year associate lawyer earns, so it makes economic sense to some firms to hire articling candidates to perform many of the tasks a first-year lawyer would be expected to complete. The following direct quotations from Principals exemplify these themes:

*“Students are an important aspect of our firm's growth. We hire students from first year summer and bring them all the way through. We take our responsibility seriously to train student and young lawyers.”*

*“It is a mutually beneficial circumstance where we can assist a student in their progress towards being called to the bar by providing a thorough practical experience in learning criminal procedure and court process while they can provide us with assistance in our practice in a busy law firm. Successful students may also become a source of interest when we look towards hiring new lawyers.”*

*“We feel a duty to the profession to have a student. Also, the students are our main source of growth in terms of new associates. Finally, they assist greatly with research and other tasks that sometimes can't be fully billed or billed at all.”*

## 9. About the Placements<sup>31</sup>

### *Law Practice Program*

In **Year One**, of the 170 (71%) candidates in the LPP who obtained paid work placements; 155 of these placements were for English LPP candidates, serving 70% of the English candidates; and 15 were for LPP French candidates, serving 88% of them.

In **Year Two**, of the 169 (73%) candidates in the LPP who obtained paid work placements; 158 of these placements were for English LPP candidates, serving 72% of the English LPP candidates, and 11 were for LPP French candidates, serving 100% of them.

In **Year One**, sixty-eight (68) candidates (29%) in the LPP obtained unpaid work placements; 66 of these placements were for English LPP candidates; and 2 were for French LPP candidates.

For the French LPP, one candidate accepted an unpaid placement because the candidate was not able to find a paid placement, and one candidate accepted an unpaid placement in order to work in a particular city or area of law (and withdrew from competition for paid placements).

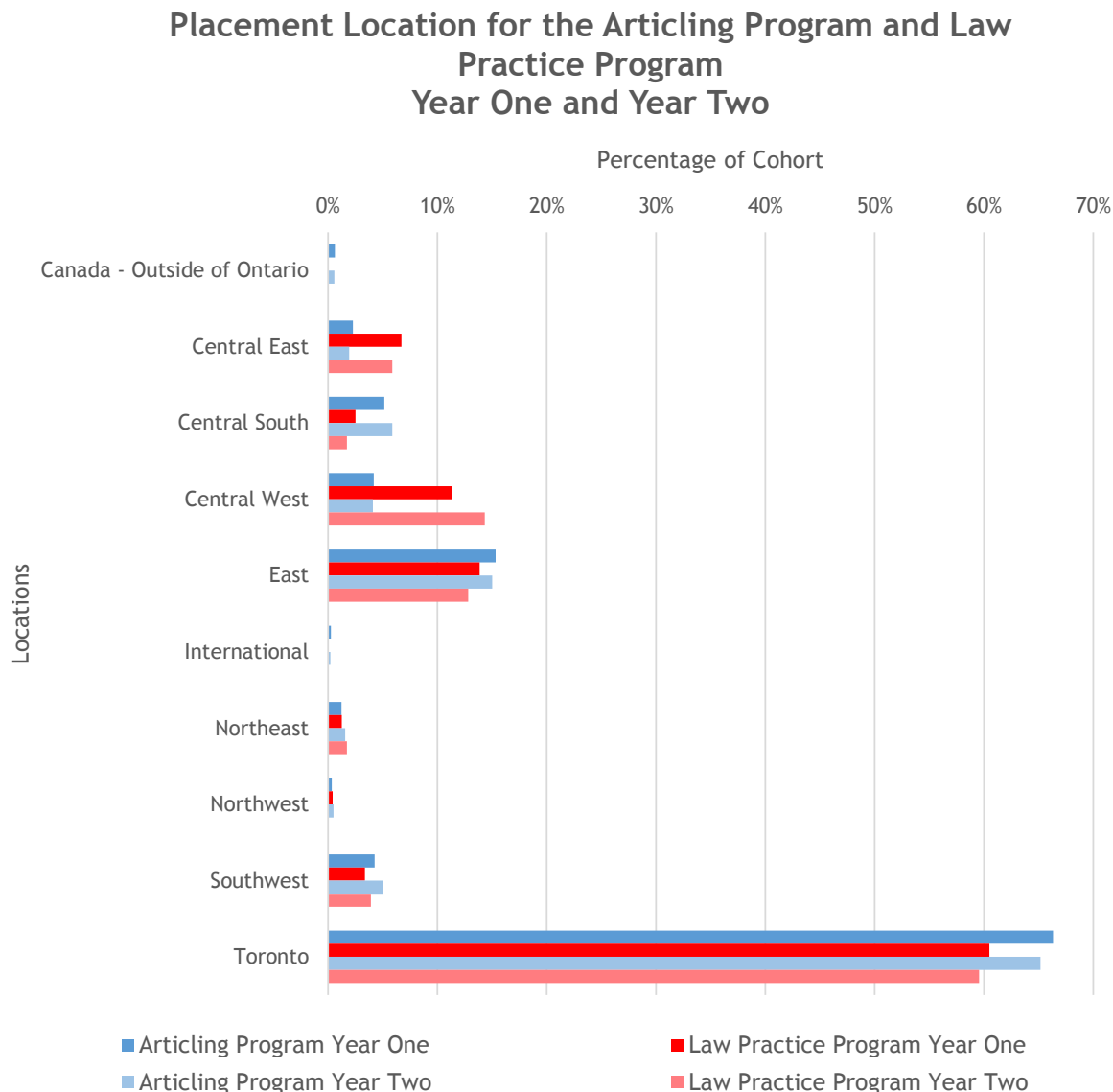
In **Year Two**, twenty-seven (27%) of the work placements were unpaid, and all sixty-one (61) of these placements were for English LPP candidates.

In both **Year One** and **Year Two**, the location of LPP work placements were proportionally on par with articling placement locations with the exception of the greater proportion of LPP work placements in the Central East and Central West regions.

## SECTION NINE SUMMARY

- ❖ From program delivery statistics we know about 71% of the work placements in the LPP were paid in Year One and 73% were paid in Year Two.
- ❖ According to survey data, 97% of the articling placements in both Year One and Year Two were paid.
- ❖ The largest proportions (29% in Year One, and 31% in Year Two) of work placements in the LPP were in small firms, while the largest proportions (36% in Year One, and 37% in Year Two) of articling placements were at medium-sized firms.
- ❖ Corporate/Commercial Law was reported as the most common area of practice in LPP work placements: 39% of placements in Year One and 47% of placements in Year Two exposed candidates to Corporate/Commercial work
- ❖ The largest proportion of articling placement practice areas reported by candidates on the Articling Program Survey was Civil Litigation - Defendant in both Year One and Year Two.

<sup>31</sup> When asked about placement considerations (areas of practice, and location), candidates responding to surveys were allowed to select more than one option, hence totals exceed 100%.



*Figure 35. Comparison of Locations of Work Placements in the LPP to Locations of Articling Placements in the Articling Program Year One and Year Two*

Figure 35 above shows both **Year One** and **Year Two** data that indicates the majority (over 60%) of the placements in the Articling Program are in the Toronto area, and the majority (~60%) of placements for the Law Practice Program are also in the Toronto area. The East is the location that has the next most placements across pathways and cohorts at about 13%-15%. The Northwest has the few placements across pathways and cohorts. Finally, there are no international or out-of-province placements in the LPP.

Table 5 below presents work placement settings for the **Year One** and **Year Two** Law Practice Program. In both years, around 3 out of 10 placements were in small law firms, and less than 1 percent was in a large law firm. In **Year Two**, there were more in-house counsel placements and more sole practice placements. This was balanced by there being fewer placements at medium firms and at government and public agencies than in Year One.

**Table 5: Settings for Work Placements in the LPP (Year One and Year Two)**

Settings	Year One		Year Two	
	Number of Candidates	Percent of Candidates	Number of Candidates	Percent of Candidates
Non-governmental organization (NGO)	9	4%	7	3%
Other	4 (1 Tribunal)	2%	5 (2 Tribunal)	2%
Crown's office	2	1%	2	1%
Education	6	3%	8	3%
Government or public agency	37	16%	26.5	12%
In-house counsel for a private corporation	29	12%	40.5	18%
Legal clinic	22	9%	14	6%
Sole Practice	32	13%	39.5	17%
Small Firm (2-5 lawyers)	68	29%	72	31%
Medium Firm (6-199 lawyers)	28	12%	14.5	6%
Large Firm (200+ lawyers)	1	<1%	1	<1%

#### **Areas of Law in the LPP Work Placements**

In **Year One**, the most common areas of law in LPP work placements were: Corporate Commercial (39%), Real Estate (29%), Civil Litigation – Plaintiff (29%), Civil Litigation – Defendant (27%), and Wills, Estates, Trusts Law (26%). The least covered areas of law were: Aboriginal Law (2%), Language Rights Law (0%), and International Law (0%). On average, LPP work placements covered 2.5 areas of law.

In **Year Two**, the most common areas of law in LPP work placements were: Corporate Commercial (47%), Civil Litigation – Plaintiff (36%), Civil Litigation – Defendant (36%), Real Estate (34%), Employment/Labour Law (34%), and Wills, Estates, Trusts Law (20%). The least covered areas of law were: Language Rights Law (3%), Tax Law (5%), and International Law (4%). On average, LPP work placements covered 1.5 areas of law.

#### **LPP Candidates' Satisfaction Ratings for Aspects of Work Placement**

Figure 36 on the next page illustrates that LPP candidates in **both evaluation cohorts** experienced the most satisfaction with *Location* of the work placement and the least satisfaction was for *Remuneration* at the work placement, each by a considerable margin. **The latter result is consistent to what was expressed in the Law Practice Program Focus Groups.** Together, “Quite Satisfied” and “Most Satisfied” ranged from a low of 49% for *Remuneration* to a

high of 78% for *Location* in **Year One** to 41% for *Remuneration* to a high of 76% for *Location* in **Year Two**.

When asked on the LPP Exit Survey in **Year One**, 37 candidates provided additional comments about their work placement. Many of the comments were **positive**, stating that the experience was “**fantastic**,” “**wonderful**,” “**great**,” and “**invaluable**,” despite many of the placements being unpaid. In **Year Two**, there were 23 responses to this question, many of which were **positive**, stating that the experience was “**great**,” and an “**amazing opportunity**.”

#### Canadian-Educated versus Internationally-Educated

In **Year One**, those who graduated from law schools outside of Canada were more “Quite Satisfied” and “Most Satisfied” in total (46%) than their Canadian-educated colleagues (36%) in *Remuneration*. But this gap closed considerably in Year Two as 41% of internationally-educated were “Quite Satisfied” and “Most Satisfied” compared to 40% of their Canadian-educated colleagues in *Remuneration*.

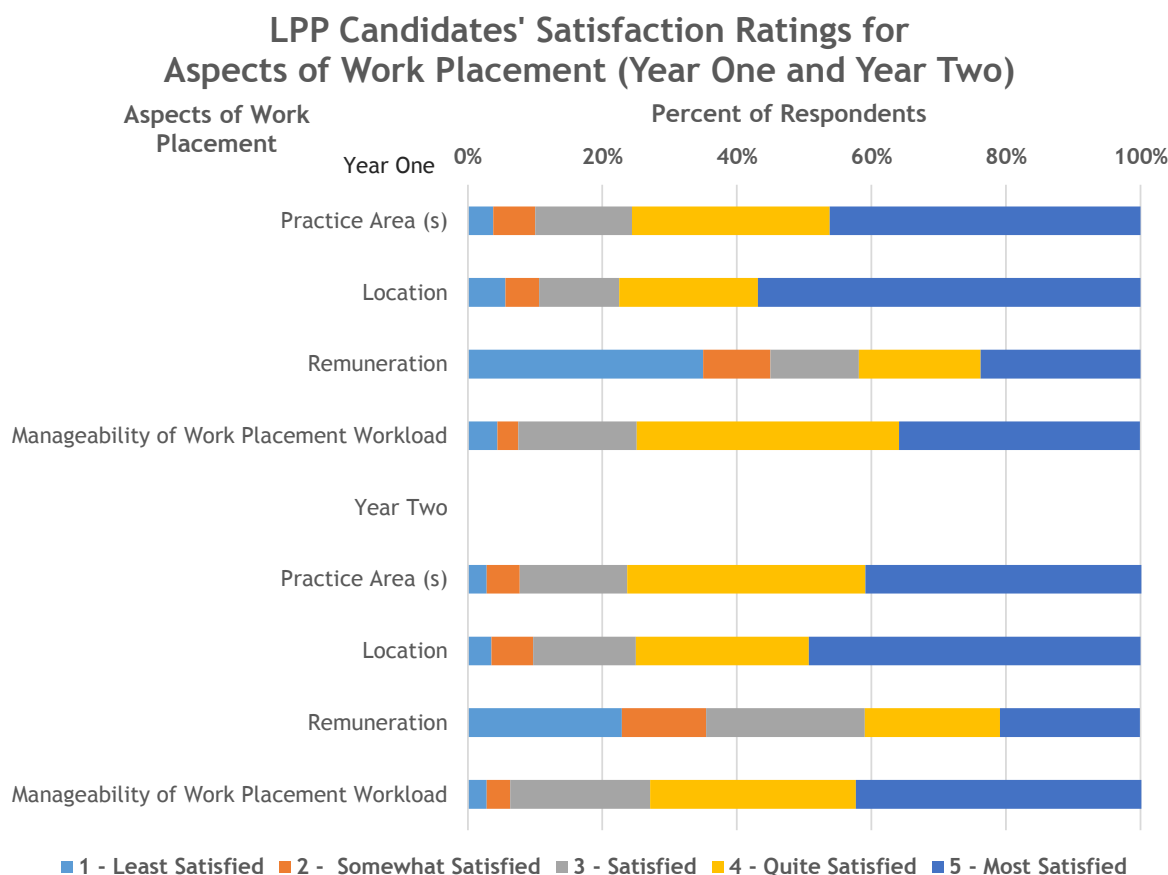


Figure 36. LPP Candidates' Satisfaction Ratings for Aspects of Work Placement (Year One and Year Two)

### Articling Program

Of the **Year One** evaluation cohort of articling candidates, survey results tell us that approximately 97% of articling candidates secured paid placements, and 3% were unpaid. We see the same result for the **Year Two** evaluation cohort as again 97% of respondents indicated their placements were paid.

In **Year One**, there were 1,243 Articling Principals supervising the 1,455 articling candidates that made up the year one evaluation cohort, and most supervised just one candidate; however, 13% of the Principals supervised two candidates. There were 54 placements in the courts in Year One.

In **Year Two**, there were 1,221 Articling Principals supervising the 1,392 articling candidates that made up the year two evaluation cohort, and most supervised just one candidate; however, 14% of the Principals supervised two candidates. There were 48 placements in the courts in Year One

Table 6 below show us that taking the Articling Program as a whole in **Year One** and **Year Two**, respectively, the vast majority (75% each year) of articling placements were in law firms, with medium-sized firms (6-199 lawyers) being the most popular placement setting. Outside the law firm placements, 12% in **Year One** and 13% in **Year Two** were in government or public agencies.

**Table 6. Settings for Articling Placements (Year One and Year Two)**

Settings	Year One		Year Two	
	Number of Candidates	Percent of Candidates	Number of Candidates	Percent of Candidates
Non-governmental organization (NGO)	11	1%	13	1%
Other	60	4%	58	4%
Crown's office	43	3%	40	3%
Education	1	<1%	2	<1%
Government or public agency	179	12%	179	13%
In-house counsel for a private corporation	27	2%	22	2%
Legal clinic	28	2%	34	2%
Sole Practice	103	7%	92	7%
Small Firm (2-5 lawyers)	132	9%	129	9%
Medium Firm (6-199 lawyers)	530	36%	514	37%
Large Firm (200+ lawyers)	341	23%	309	22%

### Areas of Law at Placements

In **Year One**, according to the Articling Program Survey where respondents were asked to identify all areas they practised in during their articles, the most common areas of law in articling placements were: Civil Litigation Defendant (57%), Civil Litigation Plaintiff (57%), Corporate Commercial (49%), Real Estate (44%) and Employment/Labour (43%). The least-covered areas for practice were: Language Rights Law (1%), Poverty Law (4%), Immigration Law (10%), and Aboriginal Law (12%).

Using data from the Experiential Training Plan submissions, about one-quarter (26%) of or 361 placements covered just one area of practice. About another quarter (24%) of or 350 of placements covered two to four practice areas. In all, just about half of all Articling Program placements addressed one to four or fewer practice areas.

In **Year Two**, again using the same source data, we see a similarity to Year One as the most common areas of law practice in the articling placements were: Civil Litigation Defendant (50%), Civil Litigation Plaintiff (45%), Corporate Commercial (41%), Employment/Labour (37%), and Administrative Law (31%).

In **Year Two**, again using the Training Plan data, just over one-quarter (27%) of or 374 placements covered just one area of law. About another quarter (24%) or (339) of placements covered two to four practice areas. In all, just about half of all Articling Program placements addressed one to four or fewer practice areas.

#### Administrative Support Available to Articling Candidates

On the Experiential Training Plan, Articling Principals were asked about the supports in place at the placement for the candidate, and it was reported in **Year One** that 79% of the candidates would have administrative support available to them during their placements compared to 83% of the candidates in **Year Two**.

#### Comparison of Satisfaction Ratings Between Pathways

Figure 37 shows a comparison of satisfaction ratings between the Articling Program Candidates' Survey and the Law Practice Program Exit Surveys in **Year One**. We see that on the one hand, *Location of Placement* (Articling Program, 56% and LPP, 57%) had the greatest proportion of the respective respondents rate their satisfaction as "Most Satisfied." *Remuneration* on the other hand, received the most "Least Satisfied" ratings from each respective group with the Articling Program Candidates' Survey respondents at 14% but the LPP Exit Survey respondents at 34% was considerably higher. In other words, though there were some feelings of dis-satisfaction regarding pay from the respondents of the Articling Program Candidates' Survey, the topic of *Remuneration* was considerably less satisfying to respondents of the LPP Exit Surveys.

### Comparison of Satisfaction Ratings for Aspects of the Articling and Law Practice Programs (Year One)

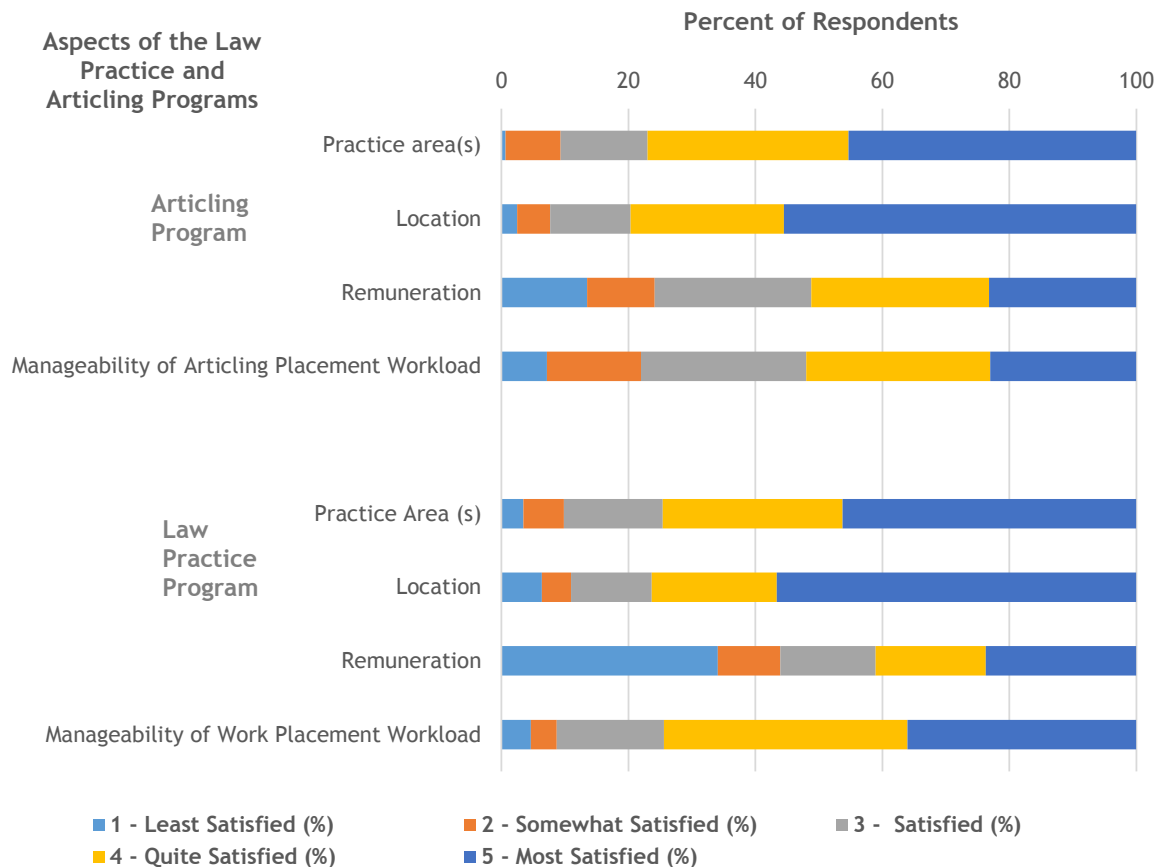


Figure 37. Comparison of Satisfaction Ratings for Aspects of the Articling and Law Practice Programs (Year One)

Figure 38 (next page) shows a comparison of satisfaction ratings between the Articling Program Candidates' Survey and the Law Practice Program Exit Surveys in **Year Two**. We see very similar results to Year One, for example, *Location of Placement* (Articling Program, 59% and LPP, 49%) had the greatest proportion of the respective respondents rate their satisfaction as "Most Satisfied." *Remuneration* on the other hand, received the most "Least Satisfied" ratings from each respective group with the Articling Program Candidates' Survey respondents at 12% but the LPP Exit Survey respondents at 24% was considerably higher. In other words, though there were some negative sentiments regarding pay from the respondents of the Articling Program Candidates' Survey, the topic of *Remuneration* was considerably less satisfying to respondents of the LPP Exit Surveys.

### Comparison of Satisfaction Ratings for Aspects of the Articling and Law Practice Programs (Year Two)

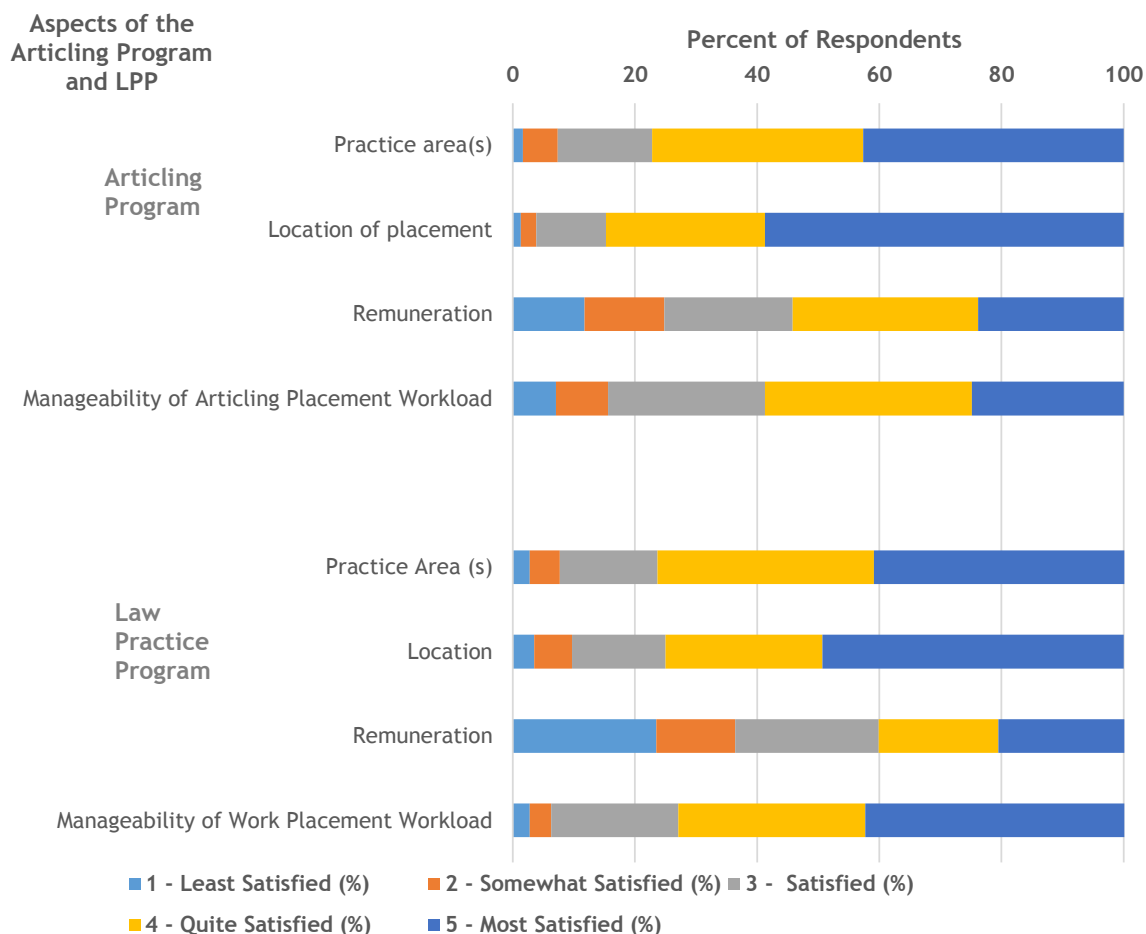


Figure 38. Comparison of Satisfaction Ratings for Aspects of the Articling and Law Practice Programs (Year Two)

When asked on the Articling Program for Candidates Survey in both **Year One** and **Year Two**, 92 candidates in each case of provided additional comments about their articling placements. Comments ranged from complimentary to critical. Some of the critical comments were aimed at the Law Society's lack of "**check-ups**" on the articling experience and relatedly, the need for more "**regulation**" of the articling experience. Further commentary was aimed at the perception that articling experiences are "**not homogeneous**," or the desire to have a "**mentor**" during the articling process; these are the very areas the Law Society is addressing with the enhancements to the Articling Program and the new Law Practice Program. Further criticism was directed at the

Articling Principals and the reality of **“heavy workloads,” long work hours** and the perception of **low pay** for those hours.

Still, many comments were complimentary of the **“great learning experience”** and **“excellent placement,” “practical experience”** and **mentorship** they had in the Articling Program. Some respondents responded that the articling experience was their **“dream job,”** or that they **“loved (my) placement.”**

## 10. Financial Impact

### Law Practice Program

The Law Practice Program Survey provided information as to remuneration for work placements and the financial impact that the LPP had on them. **Year One** and **Year Two** data are presented next.

- Year One, 71% (170) of work placements were paid and 29% (68) were unpaid; Year Two, 73% (169) of work placements were paid and 27% (61) were unpaid
- Year One, 70% of the English were paid and 88% of the French were paid; Year Two, 73% of the English LPP were paid and 100% of the French LPP were paid
- Year One, on the LPP Exit Survey, 35% of LPP candidates were “Least Satisfied” and 24% were “Most Satisfied” with the remuneration from their work placements; Year Two, 23% were “Least Satisfied” and 21% were most “Most Satisfied.”

In both **Year One** and **Year Two**, three-quarters (76% in Year One, and 75% in Year Two) of the LPP survey respondents provided comments when asked about the financial impact of the LPP on their path to licensing. Most of the commentary here focused on the **cost of the Licensing Process** coupled with the notion that many of the **work placements were unpaid**, and the paid ones lasted **just four months**, which together put a significant amount of **financial burden** on many of the respondents.

A significant portion of commentary came from those who had secured **paid placements**, but still experienced financial strain due to familial obligations, living expenses, and transportation costs. Despite this, many of these respondents acknowledged that they were still in a lucky position to have received remuneration at all, given the circumstances of many of their colleagues.

Further contributing to the financial impact was that the Law Practice Program is not part of law school; thus disqualifying candidates as “students,” which made them **ineligible for the Ontario Student Assistance Program (OSAP)**. Additionally, some respondents gave up **part-time jobs** to take the Law Practice Program, only to find out later the workload was relatively light and they could have maintained a part-time job throughout the training course of the program, but others described the course workload to be heavy. Other

### SECTION TEN SUMMARY

- ❖ The cost of the Licensing Process continues to be mentioned as the largest source of financial impact on candidates in both pathways.
- ❖ About one-quarter to one-fifth of respondents on the LPP Exit Survey reported they were “most satisfied” with remuneration of their work placement, compared to just over half of the respondents to the Articling Program Survey in both years.
- ❖ Over half the candidates in the Articling Program reported having their Licensing fees paid for by their articling organization; Licensing fees are not covered by work placement organizations for candidates in the LPP.
- ❖ About 40% of candidates in the Articling Program reported having paid leave to prepare and write the Licensing exams.
- ❖ Commentary from candidates in the LPP on open-ended survey questions suggest they feel a greater financial impact from the shorter work placement compared to their colleagues in the Articling Program.

candidates expressed that notion that they viewed the Law Practice Program cost as another year of tuition. The aforementioned financial impact is summarized by one candidate's response on the Year Two LPP Exit Survey:

*"It's put me further in debt by a significant amount. Not only do you have to pay for your own bar fees, everyone has to support themselves on no income for at least 4 months. An additional 4 if, like me, you get an unpaid placement. This program also doesn't qualify for student loans so if you don't have financial support or are able to get additional bank loans, you're out of luck."*

However, many respondents also indicated that though the cost was high, the **benefits** of the Law Practice Program were **valuable**. These ideas, for the most part, were also reported by the candidates who participated in the Law Practice Program Focus Groups; an emergent theme in Focus Groups was that four-month work placements are too short for candidates to leave an impact on the workplace organization, and may therefore jeopardize hire-back.

Still, some respondents, especially in Year Two, indicated they were **"well-paid,"** and that there was **"not much"** or **"no negative impact."** The following response from a Year Two candidate expresses a more positive look on the financial impact of the LPP:

*"It was difficult to have no pay for the 4 months, but luckily I secured a placement that paid very well. However, despite the struggle, the nature of the exposure is much more beneficial than a multitude of articling positions. Prior to selecting the LPP, I had interviewed with and been offered 2 unpaid articling positions that would have been 10 months long and zero chance of hire-back, no opportunity to hold a part-time job outside of the role. The LPP allowed me to maintain a part-time job, and I got a paid placement and have been hired back. Overall, I can't complain because it worked out for me, but I can imagine that the financial impact can be very difficult for those who didn't get the same paid opportunities."*

### **Articling Program**

The Articling Program Survey for Candidates provided information as to remuneration for articling placements and the benefits of articling in having articling organizations pay for Licensing Process fees, providing paid time off for studying for and writing the Licensing Examinations, and hiring-back candidates post-call. These results for **Year One** and **Year Two** are summarized as follows:

- In Year One and Year Two, 97% of respondents indicated their articling placement was paid
- Year One, 57% of respondents reported their Licensing Process fees were paid for by their articling organization; Year Two, 54%
- Year One, 43% of respondents declared their articling organization provided paid time off to study for and write the Licensing Examinations; Year Two 42%
- Year One, *Remuneration* gained a "Quite Satisfied" or "Most Satisfied" rating from about 51% of the articling candidates; Year Two, 54% rated they were "Quite Satisfied" or "Most Satisfied" with *Remuneration*

When articling candidates were asked if they had any comments about their pay, 30% of the respondents in **Year One** and 26% of the respondents in **Year Two** commented. Essentially, responses fell into three main themes: (1) wages were **too low**; many respondents used the term “**minimum wage**” and suggested that the wages did **not cover cost of living** or **wages outside of Toronto were considerably lower than in Toronto**; (2) wages were **fair, competitive, “the going rate for”** their location, or **reasonable** with many respondents listing their annual or monthly salaries; and (3) a few respondents took to **criticizing the Law Society of Upper Canada for the costs of licensing and the perceived low rate of pay** for articling positions. Criticism of the Law Society of Upper Canada for licensing fees and low wages tended to be long, and some ripe with vitriol.

Very few candidates indicated that their wages were “**great.**” Theme number 1 of the aforementioned was mentioned the most.

When asked about the financial impact of the Experiential Training Requirement of the Licensing Process, commentary in both **Year One** and **Year Two** was generally critical of **costs** and associated **fees** attached to the Licensing Process, especially for those whose firms did not pay their fees. Some respondents felt increased costs were **attributed to the Law Practice Program**. Other respondents commented that the financial impact was mitigated by their articling firm paying their fees.

## 11. Effect on Career Goals

### Law Practice Program

In **Year One**, when asked, a very small portion of candidates said they would change career paths away from the practice of law. One candidate said, “Obviously it’s a fact of circumstance that we all need money and we can’t find a job so I will look in and around the legal profession. I don’t know what changed my mind, but I guess that my disillusion surrounding what it means to be a lawyer had to do with it.”

In **both evaluation cohorts**, a few LPP candidates also said that the broad exposure in practice areas and different placement settings helped give them perspective and solidify their career trajectories. A few mentioned that they would feel competent working in many areas of law because of their training. A comment from a Year Two candidate summarizes these notions well:

*“(The LPP) broadened my horizons by introducing me to not only practice areas I hadn’t considered, but also helped me narrow down what kind of practice I wanted. It also forced me to pay close attention to the legal field as a whole and how important innovation was to the future of a successful practice.”*

In **Year Two**, when asked if the LPP had changed their minds on their career goals, 63% of respondents said “No.”

Figure 39 (next page) shows a **Year One** and **Year Two** comparison of results of practice type consideration between the Year One and Year Two LPP Entry Survey and Exit Surveys. This figure shows us that the percentage of respondents selecting “Private Practice” did not change over time in Year One, but increased on the Exit Survey in Year Two. There were more increases in the percentage of respondents that selected “Practising but not in a law firm” and “Non-practising” in Year One, while these categories declined in proportion from Entry to Exit in Year Two. The proportion of those who were “Undecided” decreased over time from about 26% to 21% in Year One and from about 31% to 23% in Year Two.

### SECTION ELEVEN SUMMARY

- ❖ Effects on career goals tend to be more positive than negative for both pathways.
- ❖ Broad exposure to different practice areas helped candidates in the LPP solidify their career trajectories.
- ❖ More candidates in Year Two of the LPP were considering Private Practice by the end of the LPP than compared to Year One.
- ❖ There were increases in considerations of practice in Civil Litigation - Plaintiff and Poverty Law over time in each LPP cohort.
- ❖ Over 40% of candidates in the Articling Program reported effects on career goals on the Articling Program Survey. However, most of the effects were shifts in focus for areas of post-license practice consideration.

### Comparison of LPP Candidates' Post-License Type of Practice Consideration on the LPP Entry and Exit Surveys (Year One and Year Two)

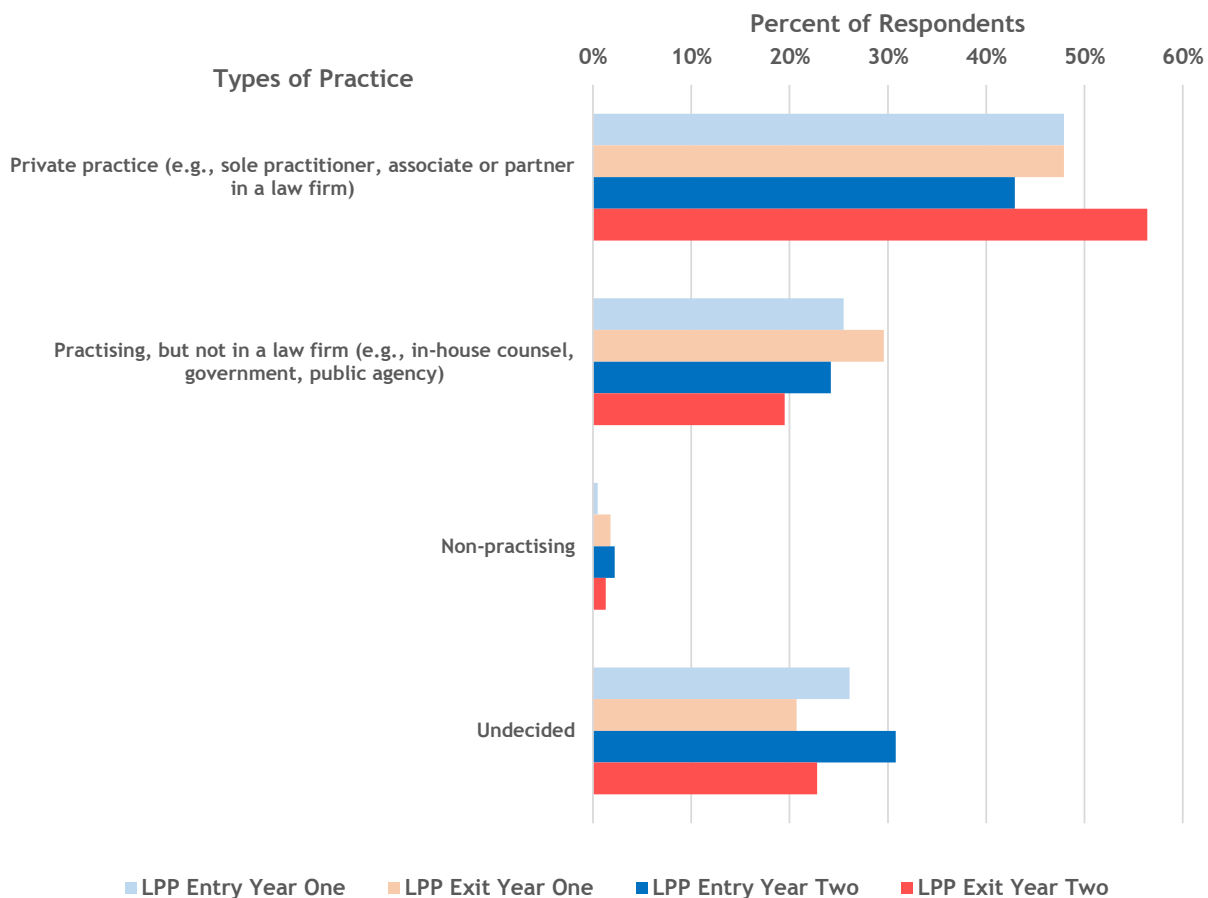


Figure 39. Comparison of LPP Candidates' Post-License Type of Practice Consideration on the LPP Entry and Exit Surveys (Year One and Year Two)

Figure 40 (next page) shows a comparison of candidates' post-license areas of law considerations<sup>32</sup> from the Law Practice Program Entry Survey and the Law Practice Program Exit Survey in both **evaluation cohorts**. Candidates were given the option to select one or more areas of law on the surveys. The most-selected areas on the LPP Entry Survey tended to be the most-selected areas on the LPP Exit Survey as well in both cohorts. However, over time from Entry to Exit, we see declines in the Corporate Commercial, Family, Immigration, Human Rights,

<sup>32</sup> When asked about placement considerations (areas of practice, and location), candidates responding to surveys were allowed to select more than one option, hence totals exceed 100%.

Real Estate areas. The “Undecided” category increased in Year One and decreased in Year Two. There were increases from Entry to Exit in both cohorts in Civil Litigation – Plaintiff and Poverty Law areas.

### Comparison of LPP Candidates’ Post-license Areas of Law Consideration on the LPP Entry and Exit Surveys (Year One and Year Two)

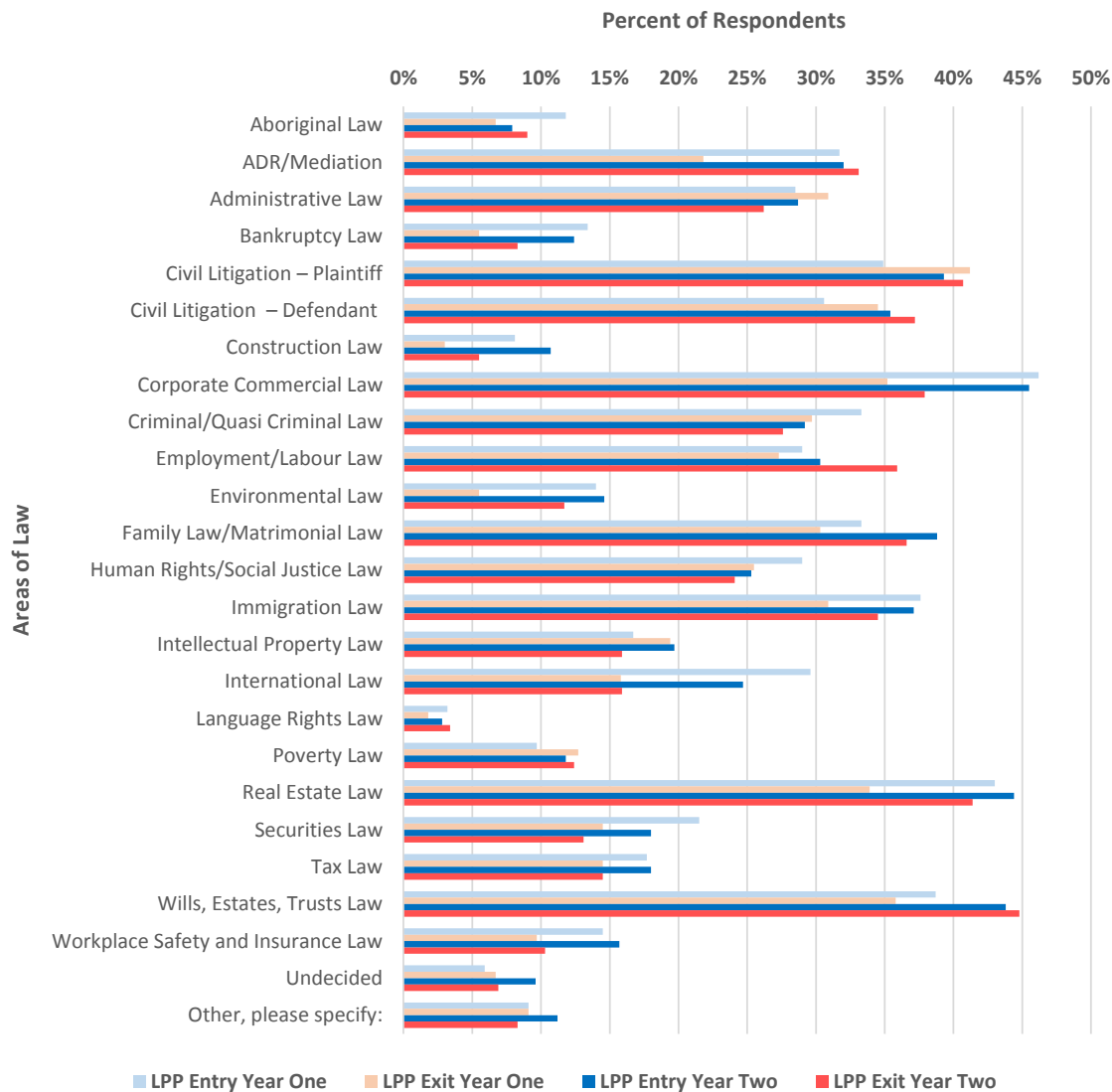


Figure 40. Comparison of Areas for Practice Consideration on the LPP Entry and Exit Surveys (Year One and Year Two)

### Articling Program

On the Articling Program Survey for Candidates for **both cohorts**, almost half the respondents (46% in Year One and 41% in Year Two) reported that the Articling Program had changed their minds about their career goals. This result is consistent to what was reported in the Articling Program Focus Groups. An emergent theme in the Articling Program Focus Groups, especially in **Year One**, was that there is a lack of resources and significant workplace demands while articling and this lead to high stress and contemplation whether the profession is worth pursuing.

A comment from the Year One Articling Program Focus Groups, illustrates this theme that was more prevalent in Year One:

*The current state of articling enables candidates to be treated as cheap labour. Culture promotes emotional physical and mental taxation, and it should be regulated to avoid future problems in life (depression, anxiety, drugs, suicide).*

When asked to explain how the Articling Program changed their career goals, most of these responses in **both cohorts** were about **shifts in focus of actual areas of practice** rather than career changes. Yet a few of the responses were expressions of **career changes** that will take candidates away from the practice of law.

Other comments about a career change in the Articling Program Focus Groups included:

*Candidates' mention that they cannot afford to change their career goals, until their student debt is paid off.*

*Articling helped inform candidate of the changes she would like to make in pursuing her legal career.*

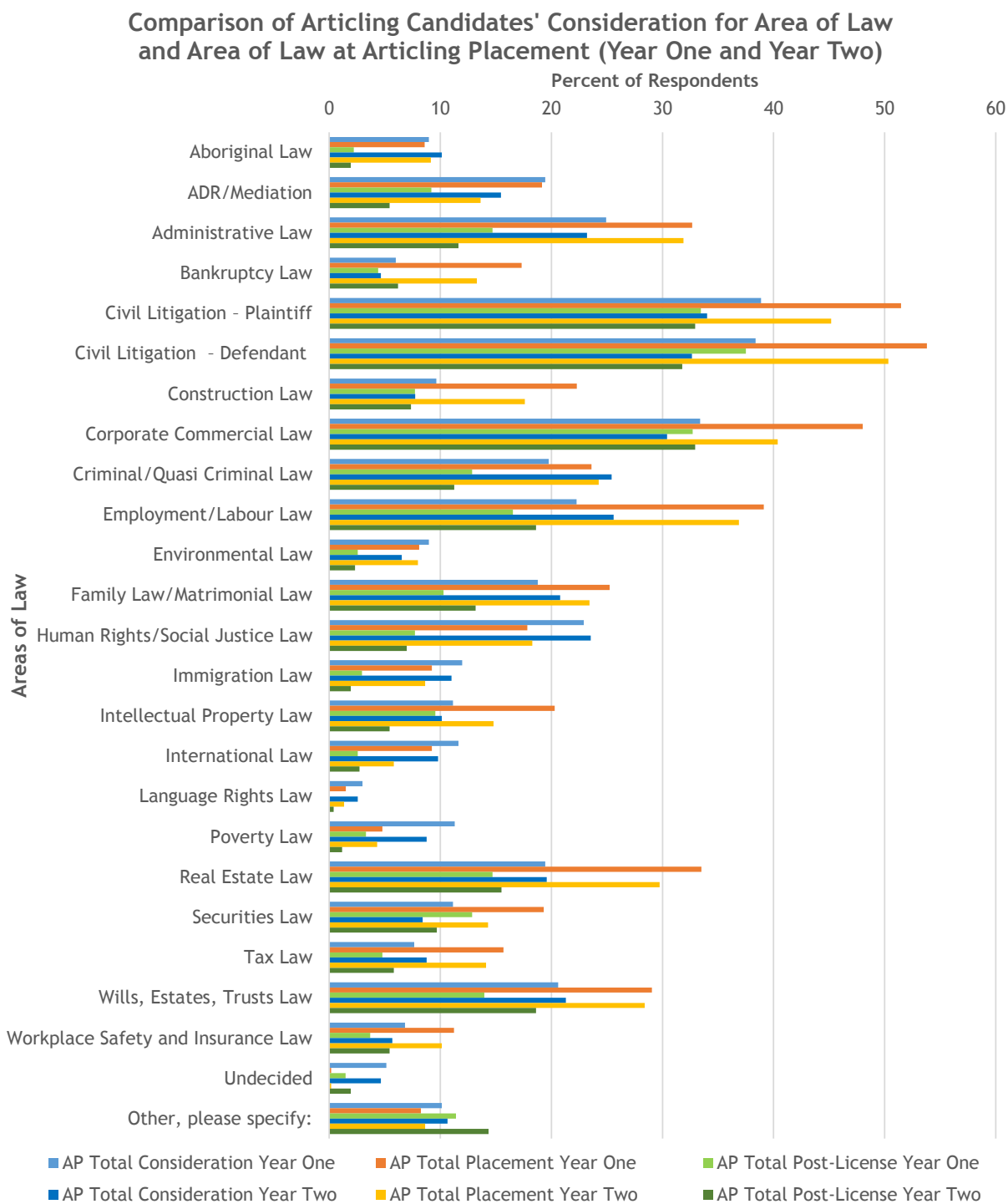
*Candidates questioned whether or not they would want to pursue law anymore during darker periods in articling; questioned whether it was worth the lifestyle, getting sick (mentally and physically).*

*Demands of the profession are harsh and there is not a lot of support out there, so really need to consider a career change.*

*"I thought that I knew what areas I was interested in based on my schooling but after articling found that I liked another practice area that wasn't on my radar before. Also, I was able to gain a better understanding of the type of work that each practice group does and consider whether it aligns with my future career plans."*

Figure 41 (forthcoming) shows us that the candidates articling on **both evaluation cohorts**, more candidates were placed in the areas of law of Civil Litigation - Plaintiff, Civil Litigation – Defendant, Corporate Commercial Law, Labour Law and Real Estate Law in the greatest proportions than were considering practice in those areas. The effect of these placements on their career goals may be surmised by the third bar for each cohort, as these are the post-license placements. These third bars match in size the first bars, considerations for practice more so than with the second bars, the placement areas. This result may be an indication that the articling candidates in each cohort are practising in areas more aligned to their considerations for practice

than their actual placement practices, which is a positive impact on career path and perhaps career goals as well.



*Figure 41. Comparison of Articling Candidates' Consideration for Area of Law and Area of Law at Articling Placement (Year One and Year Two)*

### *Comparison of Candidates' Post-License Types of Practice Preference between LPP and Articling Program in Year One and Year Two*

Figure 42 shows the comparison between results from this Articling Program Candidates' Survey and the results from the Law Practice Program Survey for both **evaluation cohorts**. We see that those respondents enrolled in the Articling Program were considering private practice in a much larger proportion (67% to 45% in Year One and 63% to 56% in Year Two) than their colleagues who responded to the Law Practice Program Entry Surveys, and about the same proportion of these groups (4% or less) were considering not practicing. This latter result contradicts what was reported in the Focus Groups in Year One sessions, as many of those participants from the Articling Program suggested that they would be altering their career choice to outside of law practice. However, in the Year Two Articling Program Focus Groups the notion of not practising did not surface as prevalently as in Year One, but on the Year Two survey, those in the Articling Program selected "Non-practising" at double the proportion than in Year One.

Proportionally, more respondents from the Law Practice Program Exit Surveys were considering "Practicing but not in a law firm" or were "Undecided" than their colleagues in the Articling Program.

### Comparison of Candidates' Post-license Types of Practice Consideration between LPP and Articling Program (Year One and Year Two)

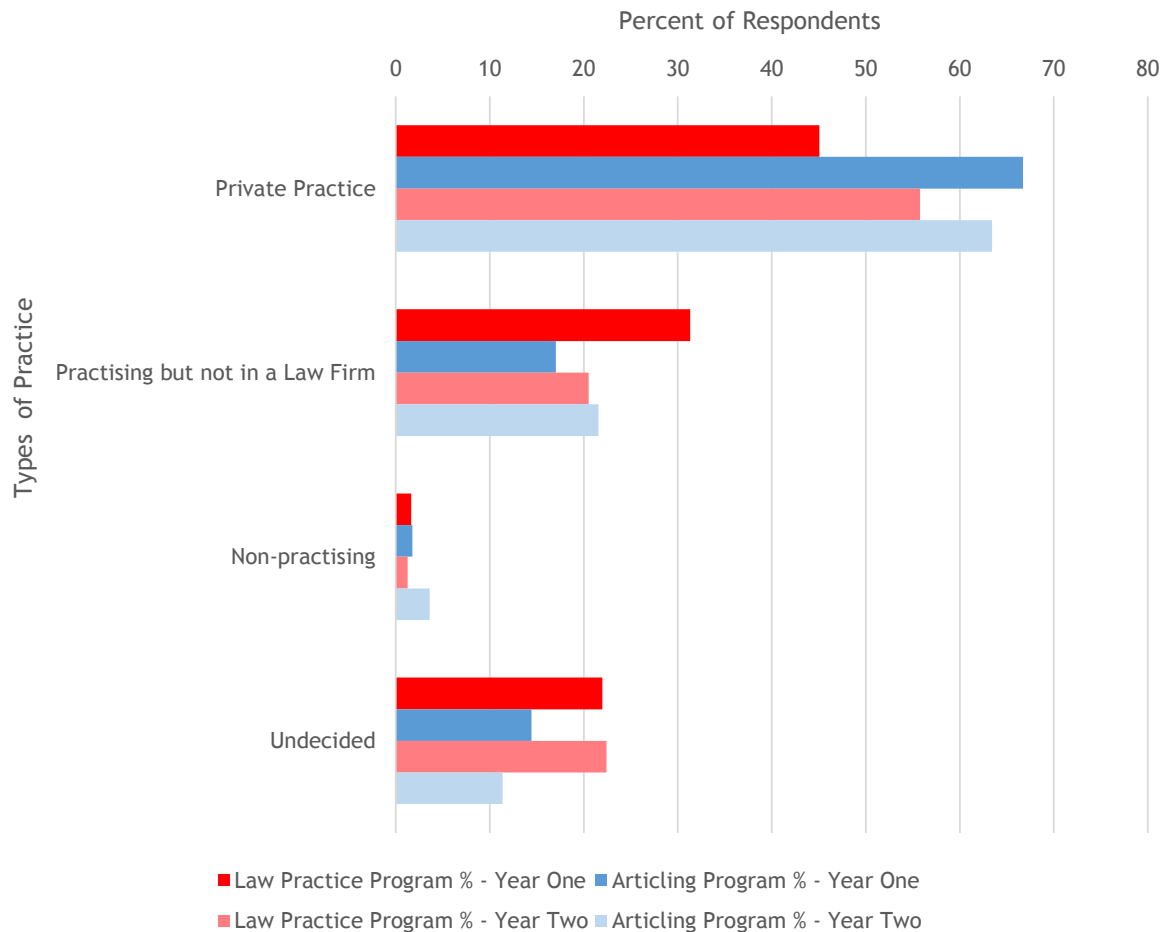


Figure 42. Comparison of Types of Practice for Consideration between LPP and Articling Program (Year One and Year Two)

## 12. Call to the Bar, Hire-Backs, Withdrawal from Program, and Year One Post License Practice Data

### Law Practice Program

- Year One, 59% or 141 LPP candidates were expecting to be called to the Bar in June 2015; Year Two, 57% were expecting to be called to the Bar in June 2016
- Of the Year One cohort, those expecting to be called, 34% said they would be hired back by their work placement organization; Year Two, 32% of those expecting to be called to the Bar said they would be hired back by their work placement organization.
- Year One, 83% of those respondents who graduated from a Canadian law school indicated they expect to be called to the Bar in June 2015 compared to just 56% of their internationally-educated colleagues; Year Two, 79% of those respondents who graduated from a Canadian law school indicated they expect to be called to the Bar in June 2016 compared to just 65% of their internationally-educated colleagues.
- 15% of LPP candidates originally enrolled in the program withdrew in Year One, and this number grew to 18% in Year Two

### Articling Program

- Year One, 94% of the respondents indicated they expected to be called to the Bar in June of 2015; Year Two, 92% of the respondents indicated they expected to be called to the Bar in June of 2016
- Of the 94% that expected to be called to the Bar in Year One, 48% said they would be hired back by their articling organization; Year Two, of the 92% that expected to be called to the Bar, 47% said they would be hired back by their organization
- Less than 1% of candidates in the Articling Program withdrew during Year One; and 1% withdrew from the Articling Program in Year Two.

## SECTION TWELVE SUMMARY

- ❖ Just under 60% of candidates in the LPP reported that they expect to be called to the Bar in their licensing year, compared to just over 90% of the candidates in the Articling Program.
- ❖ Of those who expected to be called to the Bar in their licensing year, about one-third of candidates in the LPP expected to be hired back, compared to almost half of the candidates in the Articling Program.
- ❖ There are more lawyers from the Articling Program than from the LPP who are practising law in their first year: 82% versus 67%.
- ❖ One-quarter (41 lawyers) of the LPP new lawyers are Sole Practitioners, compared to 6% from the Articling Program (86 lawyers).
- ❖ Only 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business*, when 48% of the new lawyers who articulated are working in this capacity.

### *Comparing the Pathways on Calls to the Bar*

Tables 6 and X below shows **Year One and Year Two**, respectively, data on a critical outcome of the *pathways*, the number and proportion of candidates in each that have been called to the Bar. This summary shows that more than 9 out of 10 candidates in the Articling Program were called to the Bar in both June 2015 and June 2016, while just under 6 out of 10 candidates in the Law Practice Program were called at the same times. So, almost a third fewer candidates by proportion in the LPP than in the Articling Program planned to be called to the Bar during their year in the *pathways*.

Forty-three percent (43%) of articling candidates who responded to the **Year One** survey and 42% of the respondents from the **Year Two** survey said they took a paid leave from their placement to study for and write the Licensing Examinations. The LPP does not provide this opportunity. The LPP Providers strongly recommend that candidates complete both the Barrister and Solicitor Licensing Examinations prior to beginning the LPP, although they are not required to do so. Candidates who plan to write one or both examinations during the LPP training course are permitted a day off to write each examination, but no additional time away from the program for studying is available.

It was also noted in the LPP Focus Groups, especially in **Year One**, that the expectations of the LPP may have precluded Licensing Examination preparation.

**Table 7: Number of Candidates Who Were Expecting to be Called to the Bar and Called to the Bar in June 2015 (Year One)**

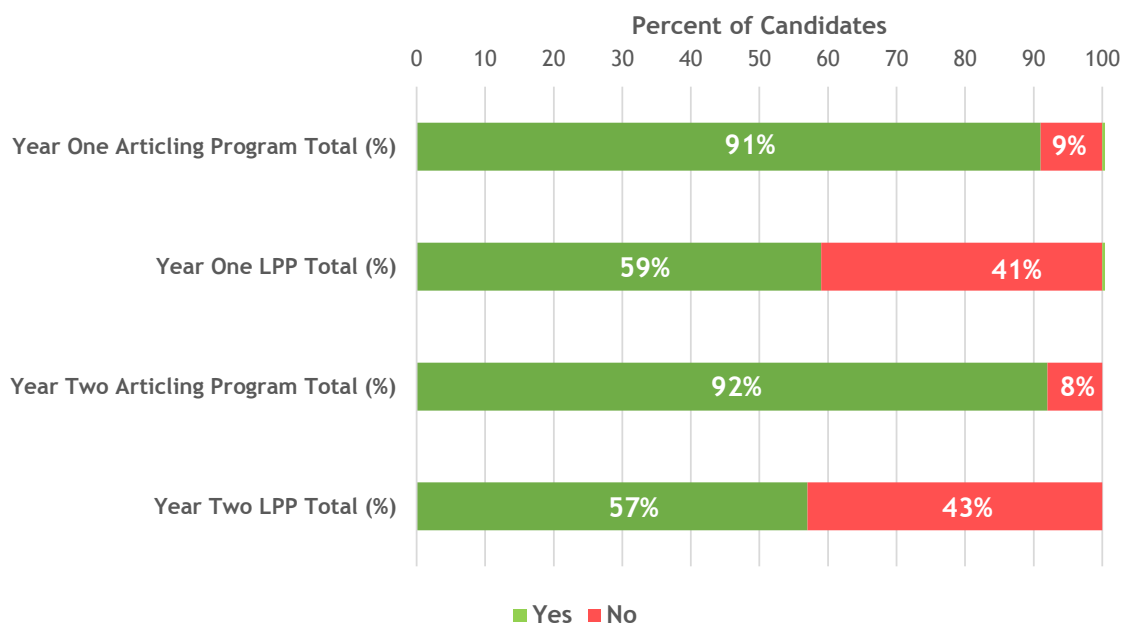
Categories	Articling Program		LPP	
Expecting to be called to the Bar in June 2015	1,337	92%	141	59%
Called in June 2015	1,323	91%	141	59%
Expectation to be hired back at placement organization after call to the Bar	48% of survey respondents indicating expectation to be called to the Bar		35% of survey respondents indicating expectation to be called to the Bar	

**Table 8: Number of Candidates Who Were Expecting to be Called to the Bar and Called to the Bar in June 2016 (Year Two)**

Categories	Articling Program		LPP	
Expecting to be called to the Bar in June 2016	1,278	92%	132	59%
Called in June 2016	1,283	92%	131	57%
Expectation to be hired back at placement organization after call to the Bar	47% of those survey respondents indicating expectation to be called to the Bar		32% of those survey respondents indicating expectation to be called to the Bar	

Figure 43 below illustrates a comparison of the proportions of candidates who were called to the Bar between the pathways in **both evaluation cohorts**.

### Comparison of Proportions of Candidates in both Pathways who were Called to the Bar in June of their Licensing Year ( Year One and Year Two)



**Figure 43. Comparison of Proportions of Candidates in both Pathways who were called to the Bar in June of their Licensing Year (Year One and Year Two)**

### *Law Practice Program Hire-backs*

As mentioned, in **Year One**, about two-thirds (59%) of LPP candidates were called to the Bar in June 2015. In **Year Two**, 57% were called to the Bar in June 2016.

In both cohorts, those that indicated they expect to be called to the Bar in June of their licensing year on the survey were asked if they would be hired back by their work placement organization following their call to the Bar. For **Year One**, 35% of the 105 LPP candidates that responded on the survey that they expected to be called to the Bar in June 2015, were expecting to be hired back, which is indicative of **36** candidates in total. In **Year Two**, a similar figure of 32% of the 94 candidates that responded on the survey that they expect to be called to the Bar in June 2016 were expecting to be hired back, which is indicative of **30** candidates. In **both cohorts** then, about two-thirds of those candidates indicated that they had not been hired back by their work placement organization.

**So, out of the Year One cohort 36/238 (15%) and in the Year Two cohort 30/230 (13%) were expecting to be hired back after being called to the Bar in 2015.**

In **Year One**, of the LPP candidates that said that they expect to be hired back by their work placement organization, most indicated that they would working in Corporate Commercial Law, Real Estate Law and Wills, Estates and Trusts Law. In **Year Two**, the LPP candidates that expected to be hired back by their work placement organization, most indicated that they would working in Civil Litigation – Defendant, Family Law/Matrimonial Law, Real Estate Law, and Civil Litigation – Plaintiff.

### *Canadian-Educated versus Internationally-Educated*

In **Year One**, a slightly larger proportion of the respondents who were graduates of law schools outside of Canada (38%) indicated that they would be hired back by their work placement organization after their call to the Bar than their counterparts who graduated from law schools in Canada (31%), and this result held true for **Year Two** as 32% of the internationally-educated and 25% of the Canadian-educated indicated they would be hired back by their placement organization.

### *Comparing the Pathways on Hire-backs*

Figure 44 on next page illustrates that over the two years of the evaluation, the candidates in the Articling Program have greater expectations to be hired back by their placement organization (48% and 47%, in Year One and Year Two, respectively) than their colleagues in the Law Practice Program (34% and 32%, in Year One and Year Two, respectively). In sum, however, in both *pathways* in each year, less than half of the respondents who expected to be called to the Bar in their licensing year expected to be hired back by their placement organization.

## Comparison of Candidate Expectations to be Hired Back Post-Licensing (Year One and Year Two)

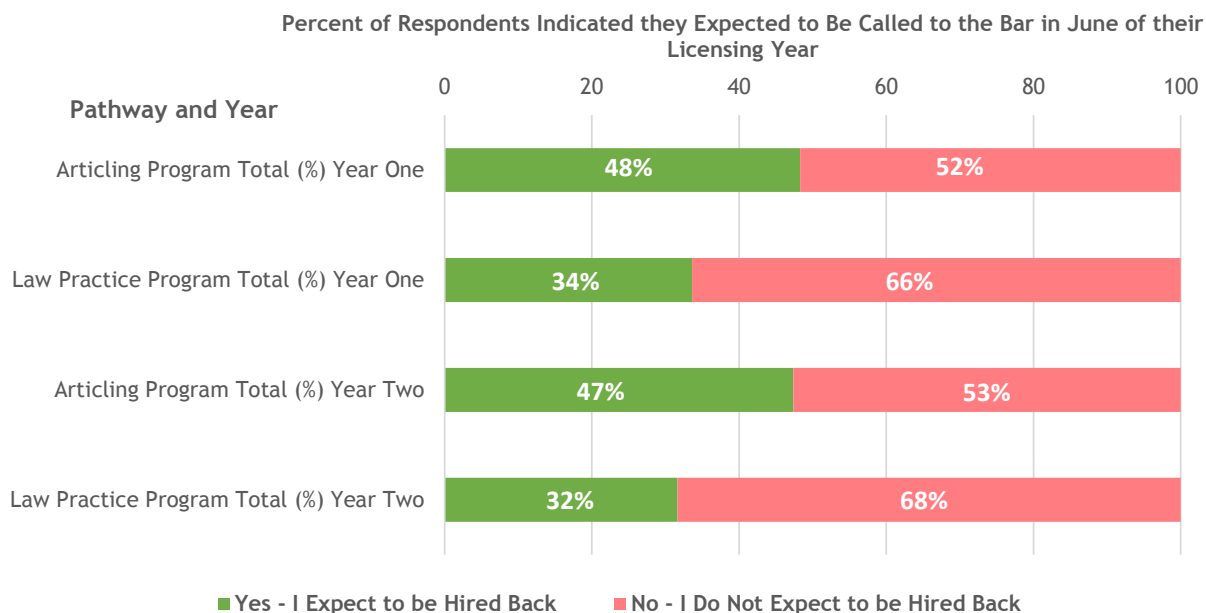


Figure 44. Comparison of Candidate Expectations to be Hired Back Post-Licensing (Year One and Year Two)

### Withdrawal from the Program

As noted, in Year One 15% of those enrolled in the LPP withdrew from the program and just 1% of candidates in the Articling Program withdrew. In Year Two, withdrawals from the LPP were up to 18%, and the withdrawals from the Articling Program remained at 1%.

On LPP Withdrawal Surveys in both Year One and Year Two, most of the respondents indicated they withdrew from the LPP to seek and/or accept an articling position. The most responses from candidates in the LPP on their Withdrawal Surveys focused on looking for and finding an articling placement; in **Year One** almost half (48%) of the responses indicated that the candidate had found an articling placement and of those 11 respondents that indicated they had found an articling placement, eight of the placements or around 73% were paid. Most responses in **Year Two** (75% in total) focused on looking for and finding an articling placement. Fifteen or almost two-thirds (~63%) of the responses indicated that the candidate had found an articling placement. Of the 15 respondents who indicated they had found an articling placement, **all of them** reported the placements were paid. **These data suggest that an articling position was the first choice for experiential training for the majority of the respondents and when they did secure articles, they withdrew from the LPP.** Very few of the withdrawals from the LPP led to withdrawals from the Licensing Process.

### Year One Post License Practice Data

Seventy percent (70%) or 167 out of the 238 candidates in the Year One LPP evaluation cohort were called to the Bar in June or September 2015. Ninety-four percent (94%) or 1,371 out of the 1,455 candidates in the Year One Articling Program evaluation cohort, were called to the Bar in June or September 2015. First-year practice information for these candidates, obtained through their 2015 Lawyer Annual Reports, is presented next.

#### Post License Practice Type

Figure 45 illustrates the status/type of practice of the new lawyers from each pathway who were called to the Bar in 2015.

We see that the greatest difference between the two pathways is the number of new lawyers who are employed as an *Associate in a Professional Business in Ontario*. A total of 26 new lawyers or 16% of the LPP cohort are working as an *Associate in a Professional Business in Ontario* and 658 new lawyers or 48% of the Articling Program cohort is working in this capacity.

There is 25% (or 41 lawyers) from the LPP cohort who are practising as a *Sole Practitioner*, which is 19% more than those lawyers in the Articling Program group, which has 86 lawyers or 6% of the total who are working as a *Sole Practitioner*.

There are proportionally more lawyers who completed the LPP who classified themselves as *Retired or Not Working*; a total of 25 lawyers in the LPP cohort (15%) classified themselves this way as opposed to 95 lawyers or 7% of those in the Articling Program cohort.

Finally, there is a greater percentage of lawyers in the LPP group (18 lawyers or 11%) than the Articling Program group (47 lawyers or 3%) that are *Otherwise Employed in Ontario*.

### Comparison of Status/Type of Practice New Lawyers from Each Pathway (Year One)

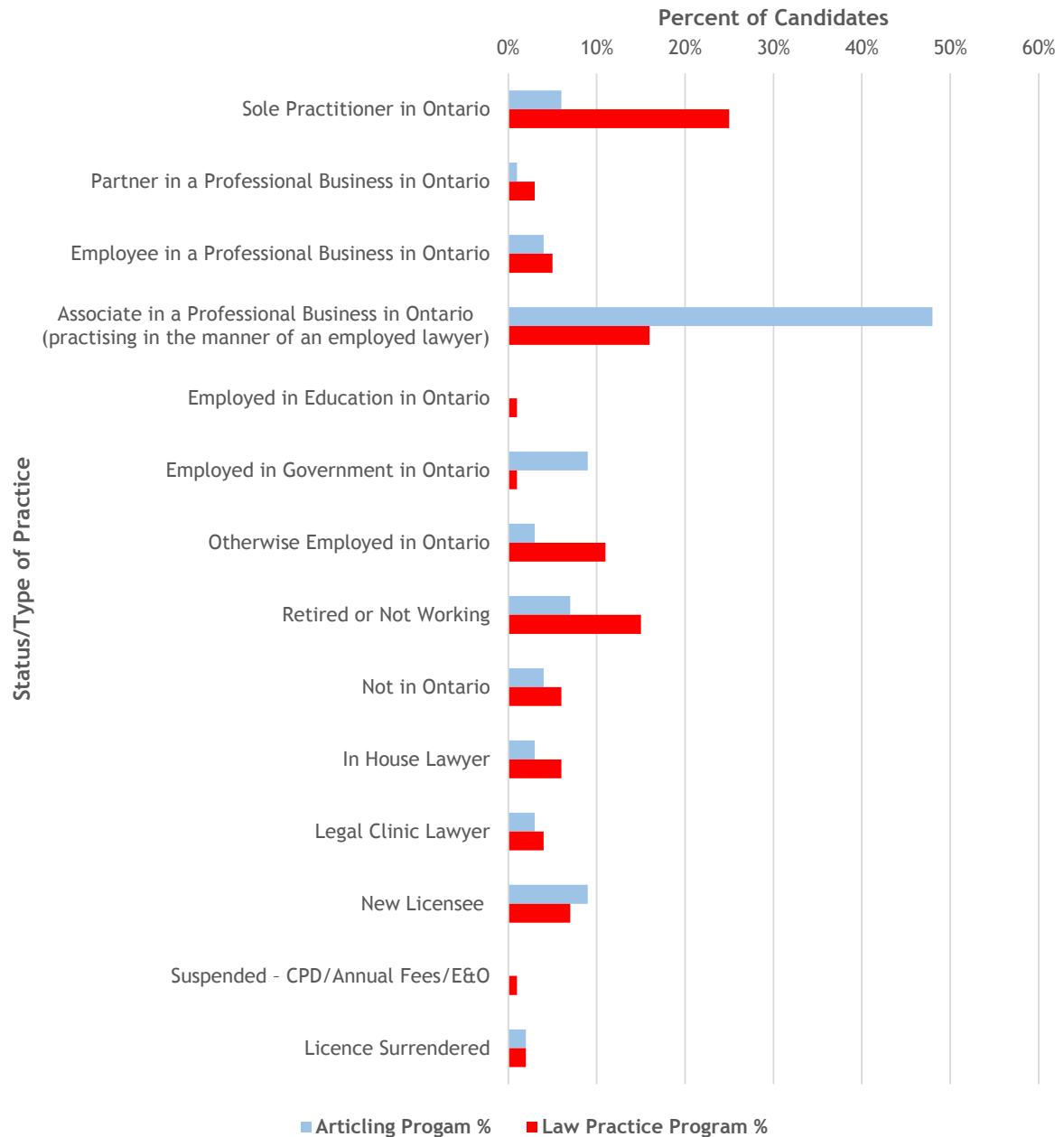


Figure 45. Comparison of Status/Type of Practice New Lawyers from Each Pathway (Year One)

### Post License Practice Areas and Location

Of those who were called to the Bar in 2015, 124 lawyers from the LPP (67%) are practising law and 1,133 lawyers from the Articling Program (82%) are practising law. When looking at the areas of practice and location of practice for these groups, there is very little difference between the two.

With regard to practice areas, we looked at those lawyers in each pathway who practice in a particular area of law 25% or more of their time. When comparing the percentages of these lawyers in each group, we see a slightly higher percentage of lawyers from the LPP practising in Real Estate Law 25% or more of their time (20 lawyers), than lawyers from the Articling Program (82 lawyers).

We also note that, based on percentages in each group, there are more lawyers from the Articling Program who practice in the areas of Civil Litigation Defendant Law 25% or more of their time (224 from the Articling Program versus 9 from the LPP), and the same is true for those practising in Corporate Commercial Law (235 from Articling Program versus 16 from the LPP).

Proportionately more lawyers from the LPP (21 or 17% of LPP versus 86 or 7% from the Articling Program) are practising in Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton). This 10% difference in the Central West region is balanced by 10% more lawyers from the Articling Program working in Toronto.

### 13. Value of the Law Practice Program and the Articling Program

Feedback from both the LPP and the Articling Program Focus Groups in **both evaluation cohorts** indicate that both *pathways* share these common traits that represent value to candidates:

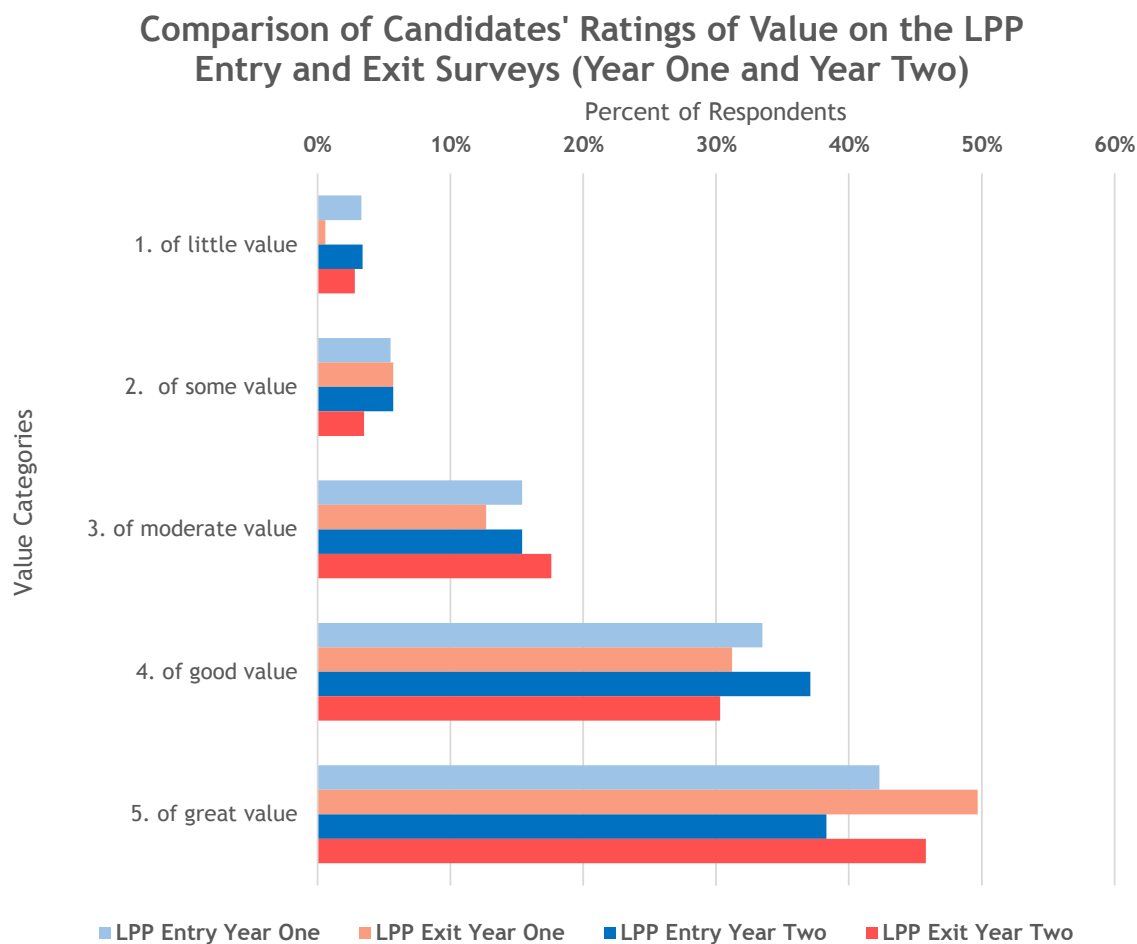
- Broad exposure in different content areas as well as various legal styles but through different vehicles:
  - In LPP, broad exposure came in training course and was universal; in Articling, broad exposure was across individuals who were in different work placement organizations/settings
- Opportunity to explore what they liked and what they didn't
- Gaining practical experience and applying theory to practice
- Networking and mentorship (formal and informal)
- Appearing more marketable
- Building employer-trust, and growth marked by increased responsibility
- Mentors/Principals that are qualified and involved notably improve the quality and thus value of experiential learning

#### Law Practice Program

Figure 46 shows a comparison of the Ratings for Value results from the Law Practice Program Exit Survey with those from the Law Practice Program Entry Survey for **both evaluation cohorts**. We see that in both years a smaller proportion of candidates selected “of little value” and a larger proportion selected “of great value” on the Exit Survey than on the Entry Survey.

### SECTION THIRTEEN SUMMARY

- ❖ 81% of Year One LPP candidates and 76% of the Year Two LPP candidates said the LPP was “of good” or “of great” value.
- ❖ Candidates’ perceptions of value for the LPP increase over time in both cohorts.
- ❖ Sources of value are stressed as the practical nature of the training in the LPP as well as the broad exposure to practice areas and the mentors/networking.
- ❖ The work placements, including the process for finding a work placement, remuneration and the duration of work placements, were considered to be the sources of least value for candidates in the LPP.
- ❖ 75% of Year One articling candidates rated the Articling Program as “of good value” or “of great value”. This number dropped to 69% in Year Two.
- ❖ Candidates in the Articling Program reported the practical experience and tasks such as file carriage, as well as their Principals as mentors, as the greatest sources of value.
- ❖ The source of least value as reported by both candidates and Principals in the Articling Program were the enhancements, such as the Record of Experiential Training and the Experiential Training Plan.



*Figure 46. Comparison of Candidates' Ratings of Value on the LPP Entry and Exit Surveys (Year One and Year Two)*

When LPP candidates were asked on the Exit Survey to tell us about the most valuable aspect of the LPP and how this aspect may be improved upon, if necessary, there were 156 responses to this question, which a response from 91% of the respondents for **Year One**, and there were 141 responses, or a response from about 90% in **Year Two**.

The main emergent themes in **both cohorts** were dominated by the **“training course,”** or **“training component”** and its **“practical” nature**, its exposure of the candidates to **“real world”** scenarios and **“files,”** and **“exposure”** to a **“variety,”** and **“depth”** of **“different of areas of law”** practice. **“Firm management”** and **“managing files”** were mentioned many times as the most valuable aspect of the training course, as it fostered **skill development and**

**independence** in the candidates. Further, the **mentoring** and related **networking** were also frequently mentioned as most valuable.

When the candidates were asked on the Exit Survey to tell us about the least valuable aspect of the LPP and how this aspect may be improved upon, there were also 156 responses for **Year One** and 141 responses for **Year Two**; and a great many focused on the **work placement**. Specifically, the **process for finding a work placement, remuneration of work placements** and the **duration of work placements were the main sub-themes here**. This sentiment matched what was reported in the Law Practice Program Focus Groups in each cohort.

Commentary on the process for finding a work placement was aimed at the perceived **“lack of transparency,”** and the perception the process did not **“involve candidates”** well, was **“not understandable.”**

**Remuneration** was a hot topic as candidates reported that all of the work placements should be remunerated, when in reality not all were.

Some candidates indicated that the **four-month work placement was not enough time** to gain ample experience in the specific areas of law practice.

Next most mentioned as the least valuable aspect of the Law Practice Program were components of the **training course** such as the **Real Estate Module, meeting times and protocols** and the **lack of feedback on assignments**.

Finally, while the in-person weeks were sometimes criticized, many respondents, especially in **Year Two**, suggested more of this type of interaction would be beneficial. Further, in a Year Two LPP Focus Group, there was consensus sentiment that candidates in the LPP were not in the “pipeline of law school, to summer at a big law firm, to Bay Street,” so sending Bay Street lawyers to speak to the LPP candidates as panelists was not effective as the LPP candidates viewed themselves as “on completely different career paths” from the panel speakers, so they did not find the panel sessions valuable.

#### Special Needs and Characteristics of the Franco-Ontarian Legal Community

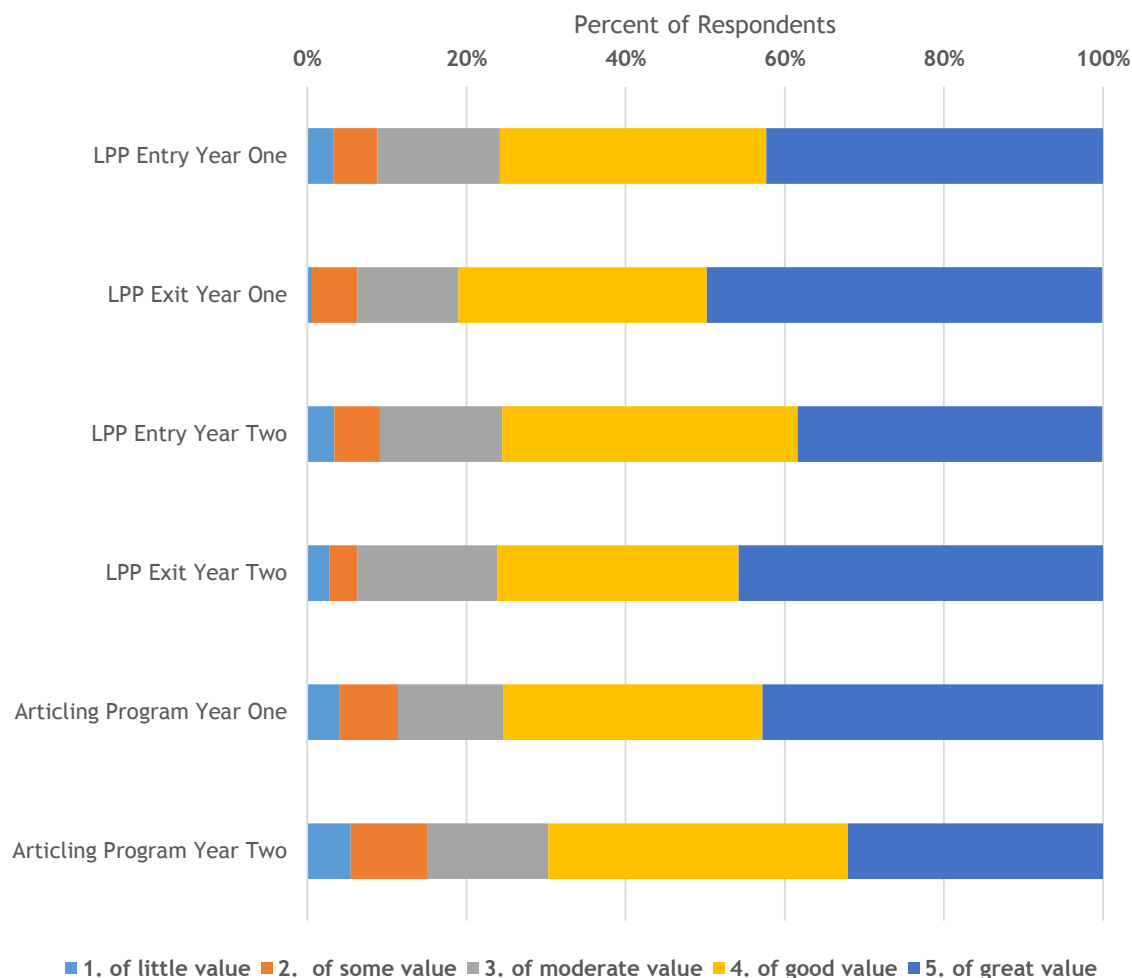
When the French LPP candidates were asked to describe how the LPP addresses the special needs and characteristics of the Franco-Ontarian legal community, 12 out of a possible 13 respondents in **Year One** answered the question. The answers to this question and were mostly **positive** in terms of the Law Practice Program, especially delivered in French, providing **access to justice** for these candidates and the communities they will serve. In **Year Two**, none of the survey respondents answered this question.

#### Articling Program - Candidates

Figure 47 (next page) shows that in **Year One** and **Year Two** that while the respondents to the Articling Program Candidates’ Survey were generally positive in their ratings of value for the Articling Program, they were not as positive as their colleagues who responded to the LPP Exit Surveys. The ratings for “of great value” actually dropped considerably from **Year One** (43%) to

**Year Two** (32%) in the Articling Program. Seventy-five (75%) of articling candidates rated the Articling Program as “of good value” or “of great value” in **Year One**, but this number also dropped to 69% in **Year Two**.

### Comparison of Candidates' Value Ratings between the Articling Program and the LPP (Year One and Year Two)



*Figure 47. Comparison of Candidates' Value Ratings between the Articling Program and LPP (Year One and Year Two)*

In both **Year One** and **Year Two**, when the articling candidates were asked to tell us what the most valuable aspect of the Articling Program is, a majority of the candidate comments were aimed at the “**hands-on,**” “**valuable experience,**” “**practical experience,**” or “**actual experience**” in the “**various areas**” of “**law practice**” that the Articling Program provides.

Respondents listed specific aspects of these experiences as well, such as **“file carriage,” “client interaction,”** and **“working with lawyers.”** The next emergent theme was focused on the ability of candidates to work with **“amazing,” “wonderful,” “experienced” “Principals,”** and **“Mentors”** in their articling placements. These lawyers provided the candidates with valuable **“guidance,” “feedback”** and **“supervision.”** A third emergent theme, though not expressed in the quantities of the first two, centered on provision of commentary for **improvement** of the Articling Program.

When the articling candidates were asked to tell us what the least valuable aspect of the Articling Program, responses could be slotted into three main themes. Much of the commentary on least valuable was aimed at various pieces such as the **“Experiential Training Plan,” “RET,”** the **“PRP”** or **“Ethics”** course, and the **“Bar Exams.”** Each of these topics were considered a **“waste of time,” “outdated”** or **“useless.”** The next emergent theme was the **“administrative tasks”** or **“menial tasks”** candidates felt like they had to perform in their articling placement. The third emergent theme could be categorized as the **“high costs,” “low wages,”** and **“long hours”** respondents reported as representing **“unrealistic standards”** and the **“stressful environment”** they were subjected to in the Articling Program.

#### *Articling Program - Principals*

A good majority (88% in Year One and 81% in Year Two) of the Articling Principals reported that the Articling Program was “of good value” or “of great value.” Figure 48 on the next page shows Principals were more positive on their value ratings than candidates in both years.

### Comparison of Value Ratings for the Articling Program between Articling Principals and Articling Candidates (Year One and Year Two)

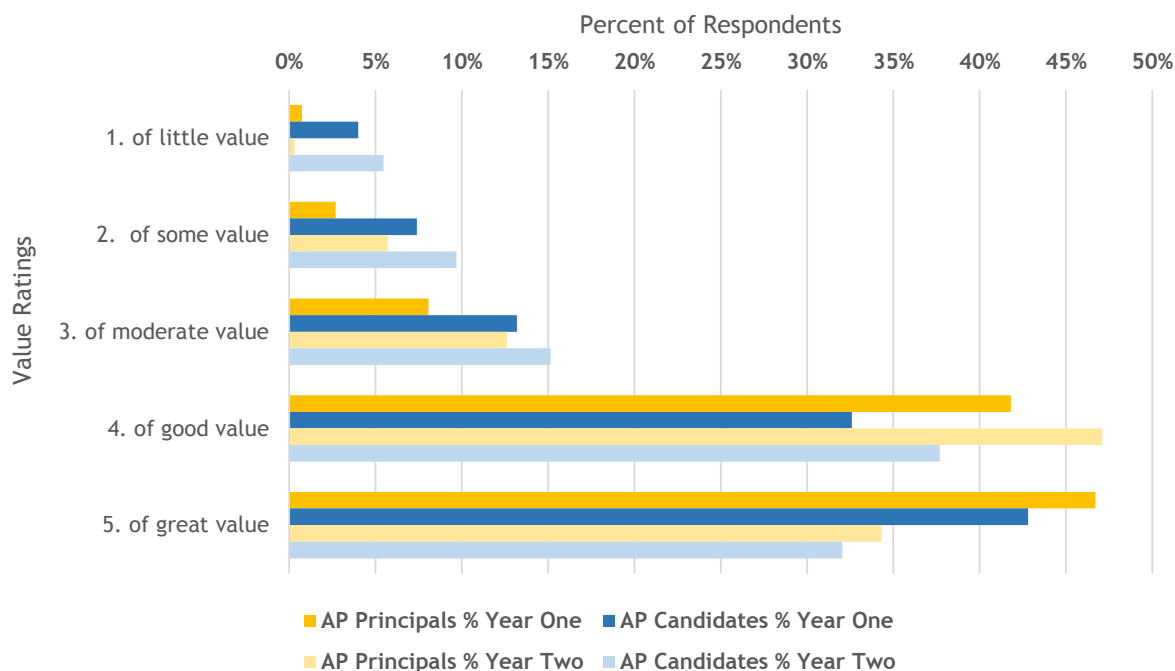


Figure 48. Comparison of Value Ratings for the Articling Program between Articling Principals and Articling Candidates (Year One and Year Two)

When the Articling Principals were asked what they felt was the most valuable aspect of the Articling Program, the majority of the comments were directed at the **“practical,” “hands-on” “experience”** in **“real world”** settings with **“broad exposure”** to many **“areas of law.”**

Another emergent theme, though not mentioned as frequently as the first, was what the candidate gains from their Principal, which was characterized as an opportunity to work **“side by side”** with real lawyers, **“mentorship,”** a **“network,”** and **“feedback.”** The third theme, and certainly not built on the quantity of comments as the others was the formal Law Society **“Articling Program”** or their firm’s **“articling program”** in general, with some comparison to the **“LPP”**; a few of these comments mentioned some of the **enhancements.**

The following quote from the Year Two data exemplifies these themes:

*“You cannot replace hands on experience with a course or course work. Being out in the field, dealing with real situations, real clients, lawyers on the other side and having to*

*manage clients, expectations, deadlines, etcetera is invaluable. It provides hands on experience missing in all other training for lawyers.”*

When asked, the Articling Principals said the least valuable aspects of the Articling Program were the **Enhancements** to the Articling Program, in which two sub-sets of comments were evident: (a) the **mechanics/logistics** of completing the online forms/tools, which were characterized as “**red tape**” and “**paperwork;**” and (b) the **relevance** and **merit** of the **reporting tools** or the **skills competencies** to specific types of settings or specific areas of law. The second broad theme was the **Articling Program** itself in terms of its **duration** and **focus**. The third theme was the notion “**nothing**” was the least valuable aspect of the Articling Program.

In both **Year One** and **Year Two**, many comments were made to suggest that the **Experiential Training Program** should be more individualized to each articling experience. Respondents felt that it was too broad and many competencies were not applicable to the professional setting, for example:

*“The entire Experientail (sic) Training Program regime, in my view, is a failure. It tries to be a “one size fits all” and fails to recognize that not every articling experience will offer the ability to gain the same competencies. It is burdensome and adds little, other than administrative headaches, to the articling experience.”*

According to the Principals’ Value Ratings for Aspects of the Articling Program (see Figure 49), the greatest proportion of responses for “of great value” was in *Providing the candidate with opportunities to meet the experiential training competencies* with about 9% in **Year One** and 12% in **Year Two**, which are relatively low amounts compared to the proportions of ratings for the other response categories. Generally speaking, the majority of responding Principals rated these aspects of the Articling Program in the “of some value” to the “of good value range.”

All of the aspects of the Articling Program that were part of the enhancements received a substantial proportion (> 25%) of responses at “of little value,” except *Appraising the performance of the candidate on the five specific tasks related to the performance appraisal competencies* in Year Two, which was at about 18% for “of little value.” Generally, between 38% (Year Two) for *Appraising the performance of the candidate on the five specific tasks related to the performance appraisal competencies* and 60% (Year One) for *Preparation and filing of the Experiential Training Plan* of respondents indicated the enhancements were “low value” or “of some value.”

However, it should be noted that three statements that represent the enhancements to the Articling Program (*Preparation and filing of the Experiential Training Plan*, *Appraising the performance of the candidate on the five specific tasks related to the performance appraisal competencies*, and *Preparation and filing of the Record of Experiential Training in Articling Program*) were rated more positively in **Year Two** than in **Year One**.

## Principals' Value Ratings for Aspects of the Articling Program (Program Year One and Year Two)

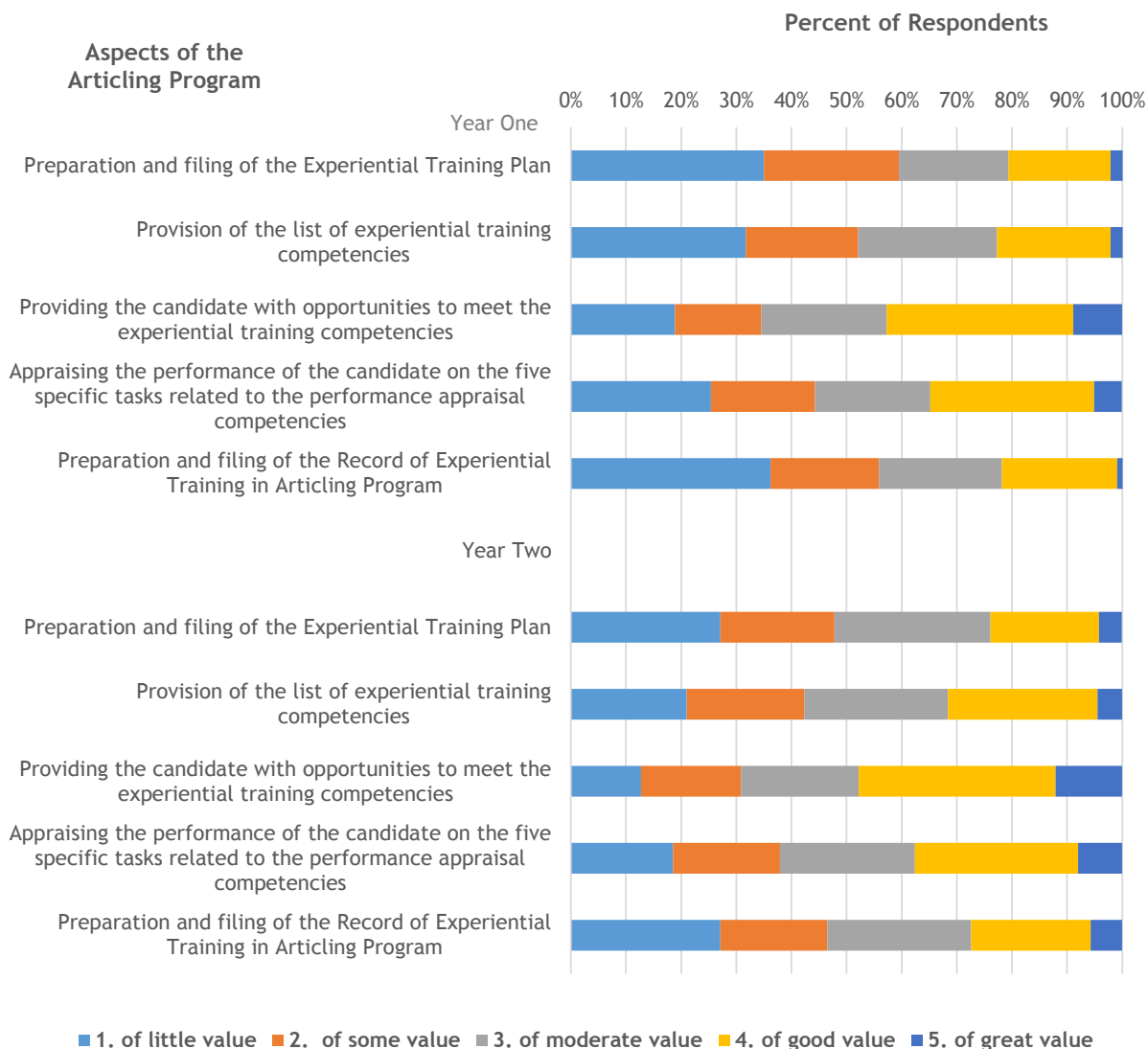


Figure 49. Principals' Value Ratings for Aspects of the Articling Program (Year One and Year Two)

### The Enhancements to the Articling Program

Many comments from Articling Principals and articling candidates were critical of the enhancements to the Articling Program, ranging from the **online form submission process** to the **relevancy of competencies** for specific areas of law or to size of firms, to Law Society **surveys** and the **limited utility** and **mandatory nature** of the reporting process, especially

as some respondents felt their firms were doing a good job of training pre-call lawyers prior to the enhancements.

The Enhancements to the Articling Program were also mentioned most as the “Least Valuable Aspect” of the Articling Program; two sub-sets of comments about them were evident: (a) the **mechanics/logistics** of completing the online forms/tools, which were characterized as “**red tape**” and “**paperwork;**” and (b) the **relevance** and **merit** of the **reporting tools** or the **skills competencies** to specific types of settings or specific areas of law, for example:

*“Although the ETC & PEC (sic) are somewhat helpful as checklists, their appraisal and filing is of little value. This, even more so when many of them do not apply to the areas of practice/articling experience of the students.”*

Focus group feedback in both **evaluation cohorts** informed us that articling candidates and their Principals saw little to no value in the Experiential Training Plan; it was completed for compliance with the Law Society only.

## 14. Findings

While these findings are still considered preliminary, they are based on two licensing years' worth of data, including post-licensing information about Year One candidates. Findings, which are becoming more stable are presented in thematic area aligned to the four main evaluation questions (see page 10). Each theme will be discussed separately. We are reminded here that the goals for competency development in each pathway are the same, but the way each aim to achieve those goals differ substantively. Any variances between the pathways in the achievement of these goals may be attributable, at least in part, to their dissimilar structures and delivery.

### *a) Effectiveness of each of the Pathways in Providing Transitional Experiential Training in Defined Areas of Skill and Tasks Considered Necessary for Entry-Level Practice*

#### *Fairness*

Both *pathways* are providing exposure to the experiential training competencies, growth in practical skills development, and access to mentors and their feedback. However, the quality and timeliness of feedback from the mentors, supervisors and Principals vary. The timeliness of feedback, at least in the LPP, is less of an issue in Year Two, than it was in Year One.

#### *LPP is Second Tier Experiential Training*

There is a notion expressed by candidates in the LPP and even some Articling Principals that the LPP is a second tier experiential training. The LPP is a new program and there is general lack of accurate awareness of it in the legal community, which helps stigmatize the LPP.

Some of the LPP Focus Group participants expressed that this notion of stigma is linked to nomenclature, for example, "LPP candidate" versus "articling candidate," when both could be "students at law." In any case, there seems to be a difference between the two types of candidates in the eyes of the profession. In some instances, the notion that candidates in the LPP are still in school, because they attend the training course at Ryerson University or the University of Ottawa, contributes to a general feeling of inequality among the *pathways*.

Also, some of the LPP Focus Group participants suggested that marketing and branding of the LPP and its association with Ryerson, which does not have a law school, is partially to blame for the sense of inequality among the pathways, contributing to the stigmatization of the LPP. However, survey data was not representative of the Focus Group comments about marketing or branding of the Ryerson LPP.

On a small-scale but very real basis, a candidate in one of the Year One LPP Focus Groups who was completing a work placement in the same organization and at the same time as an articling candidate became visibly upset at the way s/he was treated at the placement organization compared to the articling candidate in terms of remuneration and responsibilities given. Further, in a Year Two LPP Focus Group, there was consensus sentiment that candidates in the LPP were not in the "pipeline of law school, to summer at a big law firm, to Bay Street," so sending Bay Street lawyers to speak to the LPP candidates as panelists was not valuable, as the LPP candidates

viewed themselves as “on completely different career paths” from the panel speakers. These examples are the manifestation of the stigma associated with the LPP.

#### Length of Work / Articling Placement

There are several related findings here that contribute to unfairness in the *pathways*:

- Work placements are 10 months in Articling Program versus four months in LPP, so there is more time in Articling Program to perform “real world” tasks and direct network with practising lawyers;
- LPP only paid for four months – if they were paid, and almost 30% in Year One and 27% in Year Two were not compared to 3% of articling placements in both years;
- Candidates expressed there was less time for supervisors to build trust, therefore limited responsibility in the LPP compared to the Articling Program;
- In total there is not as much “real world” experience in the LPP as in the Articling Program as even with the LPP training course, as there is only a total of eight months of experiential training versus 10 months in the Articling Program;
- More than half of the articling candidates get their Licensing Process fees paid for by their articling placement organization and 42% - 43% of articling candidates get their articling organization to pay their salary for the week as they study for and write the Licensing Examinations. There are no comparable quantitative data for the LPP, but Focus Group data suggest that candidates in the LPP are not afforded these benefits.

#### Program Withdrawal, Call to the Bar and Hire-Back Rates

Further contributing to a sense of unfairness among the pathways is the ever-important metrics of withdrawal from the program, being called to the Bar and being hired back by the placement organization. For example:

- 15% of LPP candidates originally enrolled in the program withdrew, while less than 1% of candidates in the Articling Program withdrew during Year One; these numbers were 18% withdrawal for the LPP and 1% withdrawal for the Articling Program in Year Two.
- Year One: 59% of LPP candidates were called to the Bar in June 2015; 91% of Articling Program candidates were called that month. Year Two: 57% of LPP candidates were called to the Bar in June 2016 and 92% of articling candidates were called in June 2016.
- Based on Year One survey results, 34% of LPP candidates were expected to be hired back after becoming licensed; 48% of articling candidates were expected to be hired back. Based on Year Two survey results, 32% of LPP candidates were expected to be hired back after becoming licensed; 47% of articling candidates were expected to be hired back.

#### Accessibility

##### Choice

The LPP is not first choice for almost two-thirds of the LPP candidates in Year One and almost three-quarters of the candidates in Year Two; most candidates would prefer to do the Articling Program instead. However, data show that the LPP is servicing proportionally more candidates than the Articling Program from each of the following demographic categories: internationally-

educated, *Racialized*, *Age 40+* and *Francophone*. Internationally-educated candidates indicated in greater proportions than their Canadian-educated colleagues that the LPP was their first choice for experiential training.

#### Finding a Work / Articling Placement

From the Focus Group data, we know that many of the candidates in the Articling Program secure their articling position through the firm they had summered with and do not participate in the on-campus interview process for articling positions. Still, we also know that a good many candidates in the Articling Program apply to several firms and go through numerous interviews to secure their articling position.

We also know that many of the candidates in the LPP have also gone through the on-campus interview process and been unsuccessful in securing an articling position. Further, the process to secure a work placement in the LPP was deemed unfair by some as they were forced to take the first work placement offered to them, regardless of fit for area of practice, location or remuneration. All told, the candidates in the LPP expressed they had a lack of choice when it came to securing a work placement. Both groups of candidates, however, were generally satisfied with their articling / work placement locations.

#### Post-Call Practice Consideration

In terms of practice types, there is a marked difference between the candidates' considerations. For example, Year One survey data suggests that two-thirds of respondents in the Articling Program were considering private practice at the end of their program where just 45% of respondents to the LPP Exit surveys were considering the same. About the same proportion of articling candidates in Year Two were considering private practice, but the proportion of candidates in the LPP considering the same increased to 55%. Further, about 31% of the LPP survey respondents were considering practising law but not in a firm, while just 17% of the Articling Program survey respondents considered the same in Year One. However, in Year Two, just about one-fifth of each pathway reported on their surveys that were considering practising but not in a law firm. So, fewer candidates in the LPP were opting for non-law firm practice considerations in Year Two than Year One, and this result in opposite the results for candidates in the Articling Program. It is unclear what these data mean at this point, and should be looked at again with the Year Three Cohort. Finally, an equal proportion of about 75% of each of LPP and Articling Program survey respondents were considering practice in the GTA, where the majority of the jobs are.

#### Post-Call Practice (Year One)

Proportionally, there are more lawyers from the Articling Program than from the LPP who are practising law in their first year post-call: 82% versus 67%.

One-quarter (41 lawyers) of the LPP new lawyers are Sole Practitioners, compared to 6% from the Articling Program (86 lawyers).

Only 16% of the new lawyers from the LPP are working as an *Associate in a Professional Business*, compared to 48% of the new lawyers who articulated who are working in this capacity.

### Financial Impact

Based on the data at-hand we may surmise that the (negative) financial impact would be greatest on the candidates in the LPP as the candidates earn money for less time (4 months) versus their colleagues in the Articling Program who earn for 10 months. Further, there is a considerably greater proportion of placements in the LPP than the Articling Program that are unpaid. Also, as already noted, many candidates in the Articling Program have their articling organizations pay for their Licensing Process fees and provide paid time off to prepare for and write the Licensing Exams. Finally, we know from the Focus Group data that many candidates in the LPP had to take on part-time jobs to supplement their income during the Licensing Process, and still some others in the LPP were told they would not be able to keep a part time job during the training course, so they gave up their part time jobs to complete the LPP.

### Objectivity

There is a good level of consistency in the objectivity of the candidates' performance assessments in the LPP training course, as they are all evaluated on the same competencies doing the same tasks, using the same metrics. When the LPP candidates move into their work placements, the competencies their performance is appraised on are from the nine competency areas, using a pass/fail or complete/incomplete scale.

The enhancements to the Articling Program bring consistency and objectivity to the performance appraisal of the candidates' competencies on the five tasks, as well as provide an objective metric for planned and realized competency exposure. Though about 75% of Principals on the surveys agreed or strongly agreed that the Articling Program is objective in appraisal of candidates' performance, only about one-third on average of them saw "good" to "great" value in the formal appraisal of candidates' performance.

**It is important to note here that the objectivity described above does not guarantee demonstrated competency mastery as there is a lack of standardization in how the competencies are assessed between each pathway. Further to the lack of standardization is the lack of assessment rigour in the process which exposes an inherent risk of the Articling Program and the LPP: leaving the sign-off of the readiness for practice of the candidate in the hands of the Articling Principals or LPP Providers and out of the hands of the regulator.**

### Value and Effectiveness

From the Record of Experiential Training in Articling Program reporting, it seems that articling candidates' training goals are being met for the most part, that is when competency exposure is possible in the particular training context.

Both the LPP and Articling Program show high participant ratings for value and effectiveness, as candidates are provided with:

- Hands-on, real world experience and applying theory to practice;
- Growth opportunities in standardized competency areas;
- Some choice to practice in different areas and settings;
- Mentorship and networking experience; and in many cases
- Remuneration.

Specifically, for example:

- Candidates in the LPP provided the highest effectiveness ratings to their workplace Supervisors, especially in Year Two;
- Candidates in the Articling Program rated *Quality of the learning experience* the most effective aspect of the Articling Program;
- More candidates in the French LPP gave their program “of great value” ratings than any other group of candidates, and in general, the candidates in the LPP by proportion provided the most “of great value” ratings for their program;
- Candidates in the Articling Program reported the most growth in *Fact Investigation and Legal Research*, as well as *Drafting and Legal Writing*; and
- More Articling Principals than candidates by proportion rated the Articling Program of “great value,” but the data suggests the Principals were rating articling in general, or their specific articling program, and not the enhanced Articling Program.

Both Articling Principals’ and candidates’ perceptions of the enhancements to the Articling Program have not been positive for the most part. There are notions expressed in the survey and Focus Group data that the Record of Experiential Training in Articling Program was viewed only as a compliance piece and had no real impact on candidates’ experiences or growth in the competency areas. Further, many of the experiential training competencies were described as inapplicable or irrelevant in specific practice types and areas.

Additionally, there is a feeling among Principals that what they were doing in providing transitional, experiential training for lawyer candidates in the past was fine and there is no need for the enhancements. In fact, Principals rated the enhancements the least valuable aspects of the Articling Program both quantitatively and qualitatively. Finally, the perception that the new reporting requirements were a waste of time or needless paperwork was fairly prevalent among the respondents to the Principals’ and candidates’ surveys.

#### *b) Supporting Candidates’ Opportunity to Obtain the Transitional, Experiential Training Requirement of the Licensing Process*

Thus far it is safe to say that the Law Practice Program has attracted proportionally more internationally-educated, *Racialized*, *Francophone* and *Age 40+* candidates than the Articling Program. Slightly more than half (51% on average) of the candidates in the LPP are internationally-educated candidates. Further, almost two-thirds of the candidates in the LPP did not enroll as their first choice for transitional experiential training. Graduates of Canadian law schools, which make up slightly less than half of the LPP candidate population, withdraw from the LPP at twice the frequency of their internationally-educated counterparts. Further, about one in seven candidates in the LPP withdraw compared to one in a hundred in the Articling Program. Many of the candidates that withdraw from the LPP chose not to answer a survey as to why they withdrew, and of those that did respond to the survey, the majority left the LPP because of financial obligations.

The most responses from candidates in the LPP on their Withdrawal Surveys focused on looking for and finding an articling placement; in Year One almost half (48%) of the responses indicated that the candidate had found an articling placement and of those 11 respondents that indicated they had found an articling placement, eight of the placements or around 73% were paid. Most responses in Year Two (75% in total) focused on looking for and finding an articling placement. Fifteen or almost two-thirds (~63%) of the responses indicated that the candidate had found an articling placement. Of the 15 respondents who indicated they had found an articling placement, all of them reported the placements were paid. These data suggest that an articling position was the first choice for experiential training for the majority of the respondents and when they did secure articles, they withdrew from the LPP.

Additionally, and as previously noted, there appears to be a sentiment among candidates that there is a “stigma” attached to the LPP that may hamper a graduate in obtaining employment. However, we have not heard the relevant thoughts from employers or post-call graduates of the LPP at this point, so any “stigma” associated with LPP as far as obtaining employment is merely speculation. However, some preliminary post-call data on Year One candidates show that are more sole practitioners from the LPP than the Articling Program, and the former has proportionally fewer *associates* than the latter. Further, in general, there are more practising lawyers from the Articling Program (82%) than from the LPP (67%) from the Year One cohort. Still, these numbers are proxy measures, and to conclude there is any employment stigma associated with the LPP, we will require more useable data from employers.

In the Articling Program, where the majority of candidates are recent graduates of Canadian law schools and not *Aboriginal*, *Francophone* or part of an equality-seeking community in the Ontario legal profession, the compliance with the new reporting requirements is excellent in terms of percentage of Experiential Training Plans filed, but there are substantial amounts of “N/A” in competency areas.

What we do know about the Articling Program reporting thus far is that complete competency coverage in the placement is difficult, especially in non-law firm placement settings. We also know that there was some concern in Year One, stemming from lack of clarity, over what the possible repercussions are for candidates that do not get full competency coverage in articling. This concern did not materialize to the same extent in Year Two.

### **Career Path**

There was a sense from the Focus Groups that the *pathways* programs affected candidates’ career paths. We know via surveys and Focus Groups data that the LPP provided those who did not obtain an articling position or did not seek an articling position, with another path toward Licensing. This was especially true for internationally-educated, *Racialized* and *Francophone* candidates, as they are represented in the LPP in greater proportions than in the Articling Program. We also heard in the Year One Focus Groups, exclusively from the Articling Program candidates that the demands of articling, that are financial, emotional (stress), and physical (e.g., working long hours) have turned many away from law practice. Again, these sentiments did not materialize to the same extent in the Year Two Focus Groups. However, the Articling Program Candidates’ Survey data do not bear the demands of articling out to the same extent as the Focus Groups for Year One. Many Articling Program candidates responding to the surveys in both years

suggested that career paths were being slightly adjusted in what may be construed in a positive way, to different areas of law practice, rather than away from law practice altogether.

*c) Effectiveness of One Pathway over the Other in Delivering Transitional Experiential Training in Defined Areas of Skills and Tasks Considered Necessary for Entry-Level Practice*

**Performance Assessments**

It is clear from the data at-hand that performance measurement has occurred in the LPP training course and in the articling placements with the new tools. Data from these performance measures show that all the candidates in the LPP and the vast majority of the candidates in the Articling Program met or exceeded the expectations for their competency development. We also understand that there may be some consideration of a possible common final culminating assessment for candidates in both *pathways*, but one does not exist currently. This brings to light the current lack of commonality among the performance assessment regimes of the two *pathways*.<sup>33</sup>

The measurement tools in each program are different and these tools used dissimilar five-point scales in Year One, and then Ryerson moved to a three-point scale in **Year Two**, which makes the assessment scales between the pathways even more incongruent. However, we understand that both programs are delivered substantively different, that is their structures are dissimilar, even though theoretically they are addressing similar competency development, which is the purpose for the pathways delivery.

But, a lack of performance assessment commonality makes a comparison of pathway effectiveness based on candidate performance in the defined areas of skills and tasks invalid. In other words, it is very difficult, if not impossible, under the current measurement model to make an apples to apples comparison between the two *pathways* of candidate performance in the competency areas.

However, if the goal of *effectiveness* for the LPP and Articling Program in delivery of essential entry-to-practice level skills competency, is to state that each, both or none of the pathways are *effective based on their own measures of delivery effectiveness*, without accounting for competency mastery, the current model of candidates' performance measurement on the skills competencies will suffice.

**Other Measures that Provide Purpose to the Delivery**

To judge the effectiveness of one *pathway* over the other in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice will rely not just on perceptual measures, which are subjective, but on some key performance metrics such as hire-back rate and rate of being called to the Bar, which are measures of the purposeful end-products of the Licensing Process. Ultimately, this *purpose* of the pathways delivery we believe cannot be extricated from the delivery itself. Therefore, these metrics are the goal of the Licensing

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<sup>33</sup> The primary author of this report, a Canadian Evaluation Society Credentialed Evaluator, also earned his doctorate degree in psychometrics and educational measurement and is a nationally-recognized expert in the field of credentialing program development, including professional licensure and certification assessment development. He has developed and evaluated high-stakes credentialing programs Fortune 500 companies and Canada's accounting and restructuring and insolvency professionals.

Process and the only common metrics in this vein between the programs. Having said that, it is then clear that after two years of the *Pathways* project, data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice.

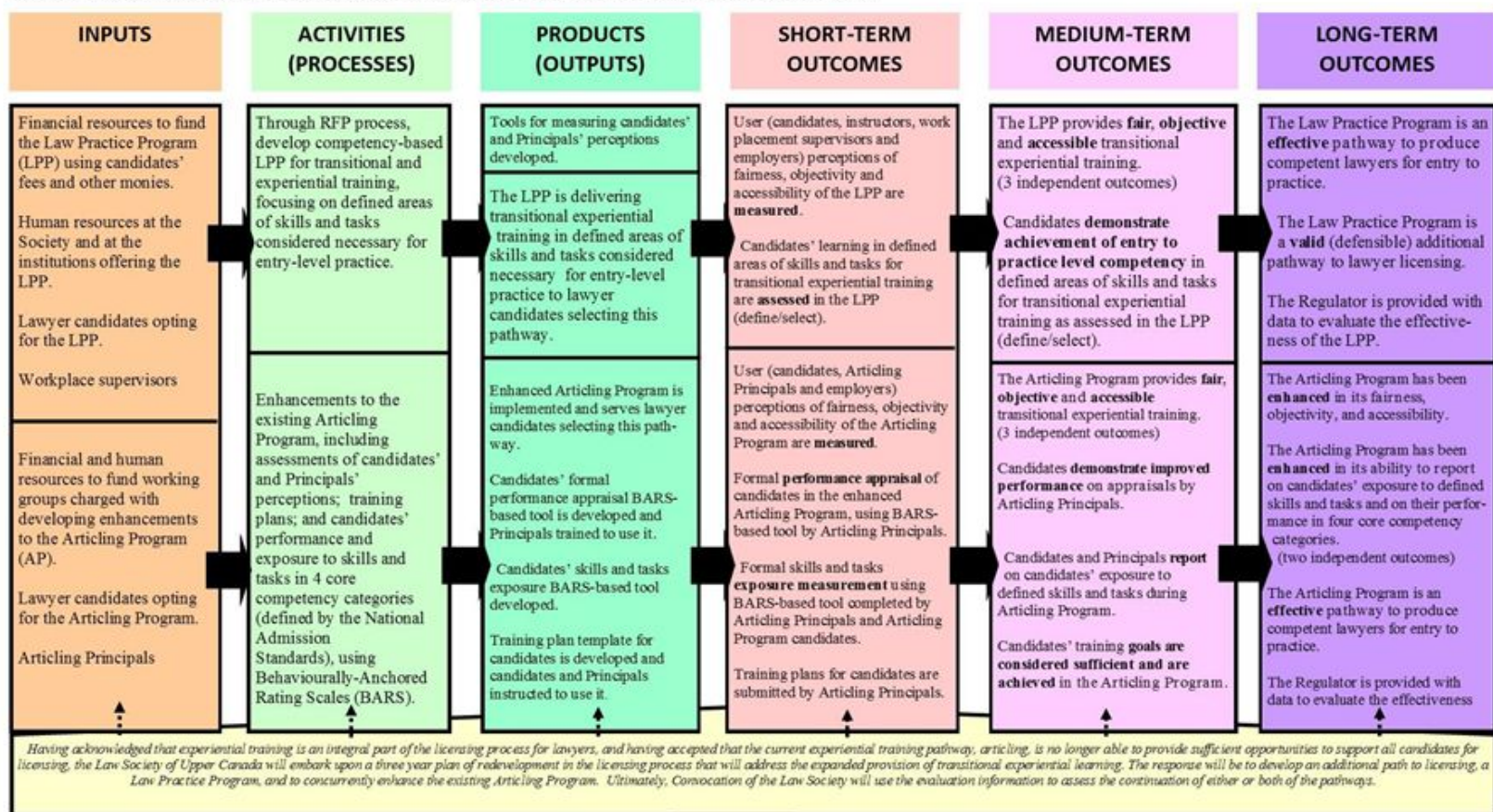
However, we do not have to make this determination now, especially since we have post-licensing data from just one cohort at this juncture. But would it be surprising if we made the same determination after three years of this study? This evaluator's opinion is no, based on the common, key metrics. How much of an advantage do candidates in Articling have over their LPP colleagues in being prepared for the call to the Bar and being hired-back, based on the structure of the pathways and not on competency development within each pathway? It is very difficult to disentangle these data to conclusively determine how many more candidates from articling than from the LPP we should expect to be called to the Bar and hired back, based on the perceived advantages of the structure of their pathway versus the structure of the LPP. So perhaps, we need to re-visit the wording of this evaluation question, Question #4 from our Evaluation Framework, or at least define more clearly how, or with what data, we may best answer this question.



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## Appendix 1

The Law Society of Upper Canada *Pathways to the Profession Pilot Project Logic Model—Version 4.2 (December 4, 2014)*

## CONTEXT



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## Appendix 2

The Law Society of Upper Canada

Evaluation of the Pathways to the Profession Pilot Project

V.2.0

The Law Society of Upper Canada *Pathways to the Profession Pilot Project* Evaluation Framework

Evaluation Question	Short-Term Outcomes	Medium-Term Outcomes	Long-Term Outcomes	Target Group	Methodology (Data Collection)	Dimension (Data)	Timelines
<b>1. Does the Law Practice Program (LPP) provide licensing candidates with effective transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?</b>	User (candidates, instructors, work placement supervisors and employers) perceptions of <u>fairness</u> , objectivity and accessibility of the LPP are measured.	The LPP provides <b>fair</b> transitional experiential training.	The Law Practice Program is an <b>effective</b> pathway to produce competent lawyers for entry to practice.	Candidates	LPP Entry Survey	Profile of LPP candidate including experiences and needs	September 2014, 2015, 2016
		The LPP provides <b>objective</b> transitional experiential training.		Candidates, Instructors, Work Placement Supervisors	LPP Survey	Perceptions of the value of the LPP with focus on fairness, objectivity and accessibility	April 2015, 2016, 2017
		The LPP provides <b>accessible</b> transitional experiential training.		New calls (LPP)	Post-Entry to Practice Survey Post-Entry to Practice Focus Group	Perceptions of the value of the LPP with focus on rating of transitional skills training for entry to practice	November 2015, 2016 and 2017
	Candidates' learning in defined areas of skills and tasks for transitional experiential training are <b>assessed</b> in the LPP (define/select).	Candidates <b>demonstrate achievement of entry to practice level competency</b> in defined areas of skills and tasks for transitional experiential training as assessed in the LPP (define/select).	The Law Practice Program is a <b>valid</b> (defensible) additional pathway to lawyer licensing.	Candidates	LPP assessments on defined areas of skills and tasks - submitted by LPP provider	Candidates' performance in the LPP	January 2015, 2016 and 2017 and in May 2015, 2016 and 2017
			The Regulator is provided with data to evaluate the effectiveness of the LPP.	Employers	Focus group for employers of new calls (LPP)	Perspectives on quality of candidates from LPP	November 2015, 2016 and 2017



Evaluation Question	Short-Term Outcomes	Medium-Term Outcomes	Long-Term Outcomes	Target Group	Methodology (Data Collection)	Dimension (Data)	Timelines
2. Does the Articling Program provide licensing candidates with effective transitional training in defined areas of skills and tasks considered necessary for entry-level practice?	User (candidates, Articling Principals and employers) perceptions of activities, fairness, objectivity and accessibility of the Articling Program are <b>measured</b> .	The Articling Program provides <b>fair</b> transitional experiential training.	The Articling Program has been <b>enhanced</b> in its fairness, objectivity, and accessibility.	Candidates and Articling Principals	Articling Program Survey	Perceptions of the value of the Articling Program with focus on fairness, objectivity and accessibility	May 2015, 2016, 2017
		The Articling Program provides <b>objective</b> transitional experiential training.		New calls (Articling Program)	Post-Entry to Practice Survey Post-Entry to Practice Focus Group	Perceptions of the value of the Articling Program with focus on rating of transitional skills training for entry to practice	December 2015, 2016 and 2017
		The Articling Program provides <b>accessible</b> transitional experiential training.	The Articling Program is an <b>effective</b> pathway to produce competent lawyers for entry to practice.			Perspectives on quality of candidates from Articling Program	December 2015, 2016 and 2017
	Formal <b>performance appraisal</b> of candidates in the Articling Program, using BARS-based tool by Articling Principals.	Candidates <b>demonstrate improved performance</b> on appraisals by Articling Principals.	The Articling Program has been <b>enhanced</b> in its ability to report on candidates' exposure to defined skills and tasks and on performance in four core competency categories. (two independent outcomes)	Employers	Focus group for employers of post-call lawyers	Performance of Articling Program candidates in four core competency categories	August through May of each Articling year
	Formal skills and tasks <b>exposure measurement</b> using BARS-based tool completed by Articling Principals and candidates.	Candidates and Principals <b>report</b> on candidates' exposure to defined skills and tasks during Articling Program.		Candidates	BARS-based performance appraisal by Principals	The skills and tasks candidates have been exposed to in Articling Program	August through May of each Articling year
		Candidates' training <b>goals are considered sufficient and are achieved</b> in the Articling Program.	The Regulator is provided with data to evaluate the effectiveness of the Articling Program.	Candidates	BARS-based exposure measurement by Principals and candidates		
	Training plans for candidates are submitted by Articling Principals.			Candidates	Training plan submissions and evaluations	Achievement and sufficiency of training goals	August through May of each Articling year

Evaluation Question	Short-Term Outcomes	Medium-Term Outcomes	Long-Term Outcomes	Target Group	Methodology (Data Collection)	Dimension (Data)	Timelines
3. How does each pathway, LPP and Articling, support the licensing candidates' opportunity to obtain the transitional experiential training requirement of the Licensing Process?	All of the above for Evaluation Questions 1 and 2.	All of the above for Evaluation Questions 1 and 2.	All of the above for Evaluation Questions 1 and 2.	All of the above for Evaluation Questions 1 and 2.  Candidates (Equity)	All of the above for Evaluation Questions 1 and 2.  Equity Candidates' Focus Group	All of the above for Evaluation Questions 1 and 2.  Perceptions of LPP and Articling Program experiences for equity candidates.	See above.  April/May 2015, 2016 and 2017.
4. Is one Pathway, LPP or Articling, more effective in delivering transitional experiential training in defined areas of skills and tasks considered necessary for entry-level practice?	All of the above for Evaluation Questions 1, 2, and 3.	All of the above for Evaluation Questions 1, 2, and 3.	All of the above for Evaluation Questions 1, 2, and 3.	All of the above for Evaluation Questions 1, 2, and 3.	All of the above for Evaluation Questions 1, 2, and 3.	All of the above for Evaluation Questions 1, 2, and 3.	See above.

## Appendix 3

Pathways to the Profession Evaluation Focus Groups 2015 (Year One) General Emergent Themes		
Law Practice Program Themes	Themes Common to both the Law Practice Program & Articling Program	Articling Program Themes
<p><u>Low Value:</u></p> <ul style="list-style-type: none"> <li>• More timely feedback in training course is necessary for it to be useful to candidates</li> <li>• Training course was fast-paced; lacked much needed depth in areas</li> </ul> <p><u>Fairness:</u></p> <ul style="list-style-type: none"> <li>• Unfair work placement process:               <ul style="list-style-type: none"> <li>○ Forcing candidates to take the first call-back though it may not be in their best interest</li> <li>○ Opacity regarding, location, and salary conditions</li> </ul> </li> <li>• Unawareness of the LPP program in the legal community facilitates a disparity of treatment between LPP candidates and Articling candidates in the same work placement organization               <ul style="list-style-type: none"> <li>○ Heavily linked to the nomenclature (e.g., candidate v candidate; LPP v Articling)</li> </ul> </li> <li>• 4 month work-placements are too short for candidates to leave an impact on workplace organization, may jeopardize hire-back.</li> </ul>	<p><u>Value:</u></p> <ul style="list-style-type: none"> <li>• Broad exposure in different content areas as well as various legal styles but through different vehicles:               <ul style="list-style-type: none"> <li>○ In LPP broad exposure came in training course and was universal; in Articling, broad exposure was across individuals who were in different work placement organizations/settings</li> <li>○ Opportunity to explore what they liked and what they didn't</li> </ul> </li> <li>• Gaining Practical Experience &amp; applying theory to practice</li> <li>• Networking and mentorship (formal and informal)</li> <li>• Appearing more marketable</li> <li>• Building employer-trust, and growth marked by increased responsibility</li> </ul> <p><u>Practical Skills Development:</u></p> <ul style="list-style-type: none"> <li>• Broad in LPP training course, focused in articling placement setting</li> </ul>	<p><u>Low Value:</u></p> <ul style="list-style-type: none"> <li>• Articling Principals &amp; candidates saw little to no value in the Experiential Training Plan; completed for compliance with LSUC</li> <li>• Articling candidates saw little or no value on aspects of Articling set out by the Law Society (e.g., PRP Course, Licensing Examinations)</li> </ul> <p><u>Feedback:</u></p> <ul style="list-style-type: none"> <li>• Feedback on candidate performance was context-specific (firm-size, principal style, area of law), and ranged from formal to "no news is good news"</li> <li>• Candidates' experiential learning and development of skills, measured by being given increased responsibility</li> </ul> <p><u>Fairness:</u></p> <ul style="list-style-type: none"> <li>• Out-of province or out-of country candidates are disadvantaged in access to articling positions</li> <li>• Candidates request transparency from the LSUC regarding increases to licensing fees</li> <li>• Lack of resources and significant workplace demands for articling candidates lead to high stress and contemplation whether the profession is worth pursuing</li> </ul>

Pathways to the Profession Evaluation Focus Groups 2016 (Year Two) General Emergent Themes		
Law Practice Program Themes	Themes Common to both the Law Practice Program & Articling Program	Articling Program Themes
<p><b>Low Value:</b></p> <ul style="list-style-type: none"> <li>Aspects of training were rushed and underdeveloped; candidates should have the option to pursue certain areas of law in greater depth</li> <li>Lack of consequences in response to errors or inadequate performance within training component</li> <li>Mixed feedback regarding effectiveness of panels: candidates unable to relate to career paths of panelists</li> </ul> <p><b>Fairness:</b></p> <ul style="list-style-type: none"> <li>LPP is not yet a widely recognized program, leading to concerns that it is publically perceived as “second-tier”</li> <li>Job search process required more structure; lacked clarity regarding application protocols and deadlines</li> <li>Placements should be longer: <ul style="list-style-type: none"> <li>Candidates require more time within workplace organization to develop skills and make a significant impact</li> <li>Mentors have less incentive to fully invest in placement experience due to the short duration</li> </ul> </li> <li>Francophone candidates satisfied with LPP accommodations for Franco-Ontarian community</li> </ul>	<p><b>Value:</b></p> <ul style="list-style-type: none"> <li>Practical career development: <ul style="list-style-type: none"> <li>Exposure to a range of content areas allowed candidates to realize personal strengths and interests</li> </ul> </li> <li>Networking, mentorship, and integration into the local job market</li> <li>Mentors/Principals that are qualified and involved notably improve the quality of experiential learning</li> </ul> <p><b>Fairness:</b></p> <ul style="list-style-type: none"> <li>Job search structure: <ul style="list-style-type: none"> <li>LPP Candidates prefer more autonomy in choosing which placement offer to accept</li> <li>Articling Program candidates feel pressure to secure placement positions during early recruitment cycles, rather than wait to apply to more desirable positions</li> </ul> </li> <li>Candidates request transparency from LSUC regarding program statistics (intake, graduation, employment)</li> </ul> <p><b>Practical Skills Development:</b></p> <ul style="list-style-type: none"> <li>Safe environment to transition from theoretical knowledge to practical application; good balance between education and practice</li> <li>Increased communication between LSUC and employers regarding candidates’ range of competencies may prevent candidates from feeling underutilized throughout placement</li> </ul>	<p><b>Low Value:</b></p> <ul style="list-style-type: none"> <li>Candidates had little to no input in developing Experiential Training Plans; should be more individualized; often completed as an LSUC requirement rather than a genuine form of assessment</li> </ul> <p><b>Feedback:</b></p> <ul style="list-style-type: none"> <li>Feedback on candidate performance was context-specific (firm-size, principal style, area of law), and ranged from formal to “no news is good news” <ul style="list-style-type: none"> <li>Mandatory feedback sessions would improve consistency and quality of principal involvement</li> </ul> </li> </ul> <p><b>Fairness:</b></p> <ul style="list-style-type: none"> <li>Articling process puts those who are interested in social justice/child protection work at a disadvantage; deficit of paid opportunities and effective job search resources</li> <li>Out-of province or out-of country candidates are disadvantaged in access to articling positions due to the interviewing timelines</li> </ul>

**TAB 3**



## **Report to Convocation September 22, 2016**

### **Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones**

**Committee Members**  
Dianne Corbiere, Co-Chair  
Julian Falconer, Co-Chair  
Sandra Nishikawa, Vice-Chair  
Gina Papageorgiou, Vice-Chair  
Marion Boyd  
Suzanne Clément  
Robert Evans  
Avvy Go  
Howard Goldblatt  
Marian Lippa  
Isfahan Merali  
Sidney Troister  
Tanya Walker

**THE REPORT IS PROVIDED FOR INFORMATION ON SEPTEMBER 22, 2016, AND  
FOR DECISION AT CONVOCAION ON DECEMBER 2, 2016.**

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Ekua Quansah – 416-947-3425)**

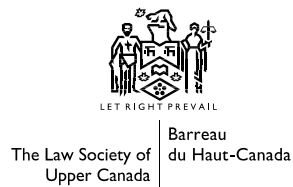
## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on September 8, 2016. Committee members, benchers Julian Falconer, Co-Chair, Sandra Nishikawa, Vice-Chair, Gina Papageorgiou, Vice-Chair, Marion Boyd, Suzanne Clément, Robert Evans, Avvy Go, Howard Goldblatt, Marian Lippa, Isfahan Merali and Sidney Troister attended. Elder Myeengun Henry and Kathleen Lickers, representative of the Indigenous Advisory Group, Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, also participated. Staff members Darcy Belisle, Hyacinth Khin, Marian MacGregor, Ekua Quansah, Susan Tonkin and Grant Wedge were present.

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**Tab 3.1**

**WORKING TOGETHER FOR CHANGE:  
STRATEGIES TO ADDRESS ISSUES OF SYSTEMIC RACISM IN THE LEGAL  
PROFESSIONS**

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**Challenges Faced by Racialized Licensees Working Group**

**Final Report**

**Working Group Members**

**Janet Leiper, Chair**

**Raj Anand, Chair**

**Julian Falconer, Vice-Chair**

**Howard Goldblatt, Vice-Chair**

**Marion Boyd**

**Robert Burd**

**Dianne Corbiere**

**Avvy Go**

**William McDowell**

**Isfahan Merali**

**Malcolm Mercer**

**Sandra Nishikawa**

**Susan Richer**

**Raj Sharda**

**Baljit Sikand**

**Prepared by the Equity Initiatives Department  
(Ekua Quansah – 416-947-3425)**

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## Executive Summary

*"Inclusion is not about bringing people into what already exists; it is making a new space, a better space for everyone."<sup>1</sup>*

This Report represents the final stage of a lengthy consultative and study exercise which has led to the conclusion that racialized licensees face widespread barriers within the professions at all stages of their careers. As the title "Working Together for Change" bears out, the Challenges Faced by Racialized Licensees Working Group is confident that there is a unique opportunity for change, based on collaborative, concrete steps to implement solutions. That said, the challenges faced by racialized licensees are both longstanding and significant. In our view, the Law Society must take a leadership role in giving legal workplaces reasonable deadlines to implement steps that are important to bringing about lasting culture change. The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*.

Reform in addressing barriers faced by racialized licensees is an essential component of ensuring a healthy and successful legal profession, and to advancement of the public interest — goals that we all share and must achieve.

### Background

The Law Society of Upper Canada (The Law Society) has a duty to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario and to protect the public interest. Furthermore, the Law Society is committed to adhering to its obligations under the *Human Rights Code*. In fulfilling its mandate, the Law Society integrates equality and diversity values and principles into all of its policies, practices and programs. The Law Society works to ensure that the law and the practice of law are reflective of all the people of Ontario, including Indigenous peoples, Francophones and equality-seeking communities. The Law Society also seeks to ensure that its workplace and the legal professions are free of harassment and discrimination.

In 2012, the Law Society created the Challenges Faced by Racialized Licensees Working Group ("the Working Group") to:

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- b. identify factors and practice-challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
- c. consider best practices for preventative, remedial and/or support strategies;

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<sup>1</sup> Dei, G.S.N. (2006). Meeting equity fair and square. Keynote address to the Leadership Conference of the Elementary Teachers' Federation of Ontario, held on September 28, 2006, in Mississauga, Ontario, quoted in "Realizing the Promise of Diversity, Ontario's Equity and Inclusive Education Strategy", online: Queen's Printer for Ontario <http://www.edu.gov.on.ca/eng/policyfunding/equity.pdf>

- d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee ("EAIC") and other committees, to address these challenges.

### The Working Group's Approach

Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

In order to fulfil its mandate, the Working Group gathered information about the challenges faced by racialized licensees using consultant and community engagement processes.<sup>2</sup> Further information about this part of the Working Group's activities can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

The Working Group reviewed all of the information gathered through the engagement process and drafted a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*.<sup>3</sup>

Convocation approved the consultation paper in November 2014, and the Working Group consulted with over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public throughout the province of Ontario between January and March 2015. The Working Group met with organizational stakeholders and members of the Law Firms Diversity and Inclusion Network. The Working Group also received feedback from 45 individuals and organizations in the form of written submissions.<sup>4</sup>

### Engagement Process Results

The qualitative and quantitative data the Working Group obtained from the engagement process identified widespread barriers experienced by racialized licensees within the legal professions at all stages of their careers. Examples of challenges faced in the legal professions include discrimination and stereotyping, negotiating concepts of "culture" and "fit", and lack of mentors, networks and role models. Participants also noted that race-based barriers are often complicated by additional intersecting experiences of discrimination based on gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants in the engagement process believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions. Generally,

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<sup>2</sup> Referred to as "the engagement process".

<sup>3</sup> Available at: <http://www.lsuc.on.ca/racialized-licensees/>.

<sup>4</sup> Written submissions for which the Law Society received consent to post publicly are available online at <http://www.lsuc.on.ca/racialized-licensees/>.

participants noted the vulnerability of racialized licensees in the legal professions in the context of professional regulation and discipline.

## Consultation Process Results

The information gathered from the consultation process is summarized as follows:

- Consultation participants expressed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces.
- The Working Group heard a broad range of views on the issue of demographic data collection. However, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”.
- The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity.
- The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees. Generally, the Working Group heard that there is no “one size fits all” model for mentoring.
- Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging.
- A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory Continuing Professional Development (CPD) training on cultural competence, unconscious bias, and anti-racism.
- Participants suggested updating the *Rules of Professional Conduct*<sup>5</sup> and the *Paralegal Rules of Conduct*<sup>6</sup> to specifically address systemic discrimination and subtle forms of discrimination.

## Objectives

The Working Group has distilled the themes in the consultation into the following three objectives:

1. Inclusive legal workplaces in Ontario;<sup>7</sup>

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<sup>5</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>6</sup> *Paralegal Rules of Conduct* The Law Society of Upper Canada available on-line at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

<sup>7</sup> Working Group members’ opinions differ as to the definition of “legal workplace”. The majority of Working Group members believe that all law firms, in-house legal departments, government legal departments, clinics and other practise settings in Ontario should be subject to the requirements outlined in the recommendations. Other

2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Working Group makes 13 recommendations in order to meet these objectives. They fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

## Recommendations

### **Recommendation 1 – Reinforcing Professional Obligations**

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

### **Recommendation 2 – Diversity and Inclusion Project**

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

### **Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices**

The Law Society will:

- 1) require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;
- 2) require a representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement;
- 3) require a representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

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members of the Working Group, however, believe that at this time, government legal departments and in-house legal departments should not be required to comply with the mandatory recommendations as government and in-house licensees are employees whose hiring, promotion and retention are client decisions. Government and in-house legal departments should, however, be encouraged to engage in the mandatory activities outlined in this report. The definition of “legal workplaces” used in the report is that of the majority perspective.

#### **Recommendation 4 – Measuring Progress through Quantitative Analysis**

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

#### **Recommendation 5 – Measuring Progress through Qualitative Analysis**

The Law Society will measure progress by:

- 1) asking licensees to answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

#### **Recommendation 6 – Inclusion Index**

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

#### **Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey**

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

#### **Recommendation 8 – Progressive Compliance Measures**

The Law Society will consider developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

### **Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions**

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society;
- 3) require each licensee to complete, once every three years, three hours of an accredited program focused on equality and inclusion, which will count as the licensee's professionalism hours for that year;

### **Recommendation 10 – The Licensing Process**

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

### **Recommendation 11 – Building Communities of Support**

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

### **Recommendation 12 – Addressing Complaints of Systemic Discrimination**

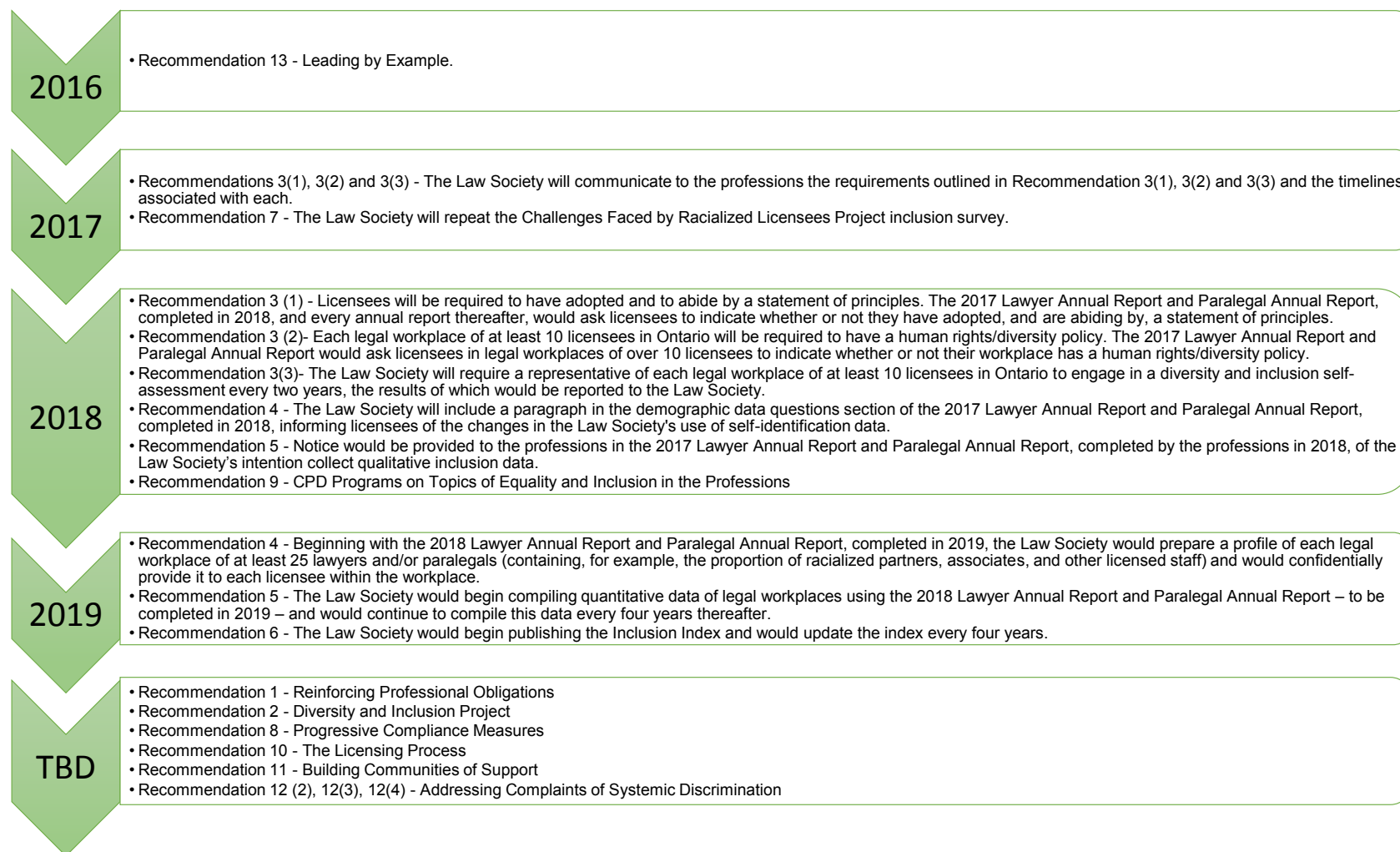
The Law Society, in light of the findings of this project and emerging issues in the professions, will:

- 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address complaints of systemic discrimination;
- 2) revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;
- 3) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and
- 4) create a specialized and trained team to address complaints of discrimination.

**Recommendation 13 – Leading by Example**

- 1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:**
  - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;**
  - b) measuring quantitative progress through a census of the workforce or other method;**
  - c) measuring qualitative progress by conducting inclusion surveys;**
  - d) conducting regular equality, diversity and inclusion self-assessments; and**
  - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;**
  - f) publishing relevant findings from b), c), d) and e); and**
  - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.**
- 2) The Law Society will:**
  - a) conduct an internal diversity assessment of the bench composition and publicize the results;**
  - b) provide equality and inclusion education programs for Convocation on a regular basis.**

## Timeline for Implementation of Recommendations



## Introduction

*“What we need to do is learn to respect and embrace our differences until our differences don’t make a difference in how we are treated.”*

— Yolanda King<sup>8</sup>

## Background

The Law Society of Upper Canada (“The Law Society”) is the governing body for more than 50,000 lawyers and 8,000 paralegals in Ontario. The Law Society is committed to advancing equality, diversity and inclusion in the legal professions — a commitment which includes addressing any barriers faced by lawyers and paralegals to full and active participation in the professions. The Law Society’s *Rules of Professional Conduct* and *Paralegal Rules of Conduct* specifically prohibit discrimination and harassment and speak to lawyers’ and paralegals’ responsibility to adhere to human rights laws in Ontario.

Since 2001, the proportion of racialized lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>9</sup> This is compared to 23% of the Ontario population who indicated in the 2006 Canada Census that they are racialized and 26% of the Ontario population who indicated in the 2011 National Household Survey that they are racialized.<sup>10</sup> The Law Society’s Statistical Snapshot of Paralegals from the Paralegal Annual Report 2014 also show a high proportion of racialized paralegals at 34% of the paralegal profession.<sup>11</sup> The Law Society’s Statistical Snapshots of Paralegals also indicate that 34% of licensed paralegals in Ontario are racialized.

A review of statistical data, research findings and anecdotal evidence suggested that, notwithstanding their increase in representation, racialized lawyers face challenges in the practice of law. The Law Society also noted a lack of information about the challenges faced, if any, by racialized paralegals.

In 2012, the Law Society created the Challenges Faced by Racialized Licensees Working Group (“the Working Group”) to:

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- b. identify factors and practice-challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;<sup>12</sup>
- c. consider best practices for preventative, remedial and/or support strategies; and

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<sup>8</sup> Daughter of Martin Luther King

<sup>9</sup> Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: Law Society of Upper Canada, April 2010) [Ornstein Report] and 2014 Statistical Snapshot of Lawyers from the Lawyer Annual Report 2014 at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-lawyers.html>

<sup>10</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>11</sup> Statistical Snapshot of Paralegals from the Paralegal Annual Report at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-paralegals.html> (paralegals).

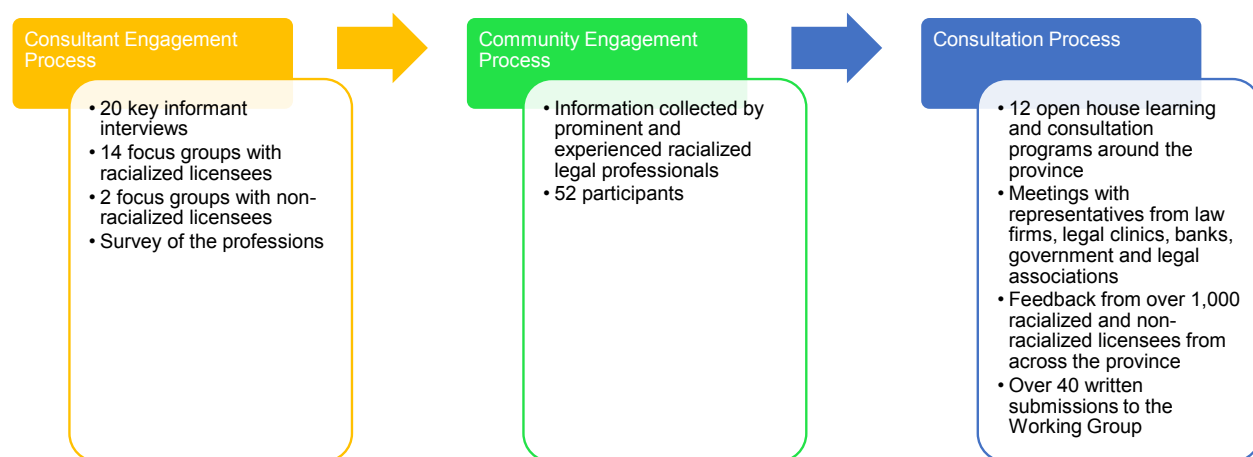
<sup>12</sup> The Working Group considered available information regarding the experience of racialized licensees in the regulatory process and determined that there is more work to be done. The preliminary work thus far will be continued.

- d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee ("EAIC") and other committees, to address these challenges.

Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

### The Process: Listening and Learning

The members of the Working Group began their work by conducting a review of the data and literature available on the challenges faced by racialized licensees. The Working Group then gathered information about the challenges using an engagement process, followed by an extensive consultation process.<sup>13</sup>



The qualitative and quantitative data obtained from the engagement processes identified **widespread barriers experienced by racialized licensees within the professions at all stages of their careers.**

Through the consultation process, the Working Group received rich feedback on questions organized under the following themes:

- Enhancing the internal capacity of organizations;
- Mentoring, advisory services and networking;
- Enhancing cultural competence in the profession;
- Discrimination and the role of the complaints process; and
- The operations of the Law Society of Upper Canada.

A detailed overview of the results of the engagement processes and the consultation process can be found at Appendix A.

<sup>13</sup> Further information about this part of the Working Group's work can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

## Recommendations: Framework to Address the Challenges Faced by Racialized Licensees

### On Racism and Initiatives for Change

*“Effective responses to racial discrimination and racial profiling start with acknowledging that racism exists.”<sup>14</sup>*

— Ontario Human Rights Commission

The Working Group acknowledges that the legal profession operates in a broader social context in which racism continues to negatively impact the lives of racialized people. During the consultation phase, a participant noted that society could currently be at an inflection point – a point at which there is a significant possibility for change in the way in which the professions engage with equality and diversity principles and practices.

Recently, the Ontario government announced the establishment of an Anti-Racism Directorate tasked with “increas[ing] public education and awareness of racism to create a more inclusive province” and “apply[ing] an anti-racism lens in developing, implementing and evaluating government policies, programs and services.”<sup>15</sup> Similarly, in November 2015, the Ontario Public Service (OPS) launched an Anti-Racism Action Plan. This plan focuses on “preventing race-based discrimination and harassment; further diversifying the public service at every level, including senior management; and increasing OPS employees’ awareness of racism and its impacts.”<sup>16</sup>

In the academic sphere, in February 2016, University of Toronto committed to collecting race-based data from its students in an effort to “tackle a lack of representation in the lecture hall among some groups and lend hard numbers to the push for equity in the public realm.”<sup>17</sup> In the area of child welfare, in June 2016, children’s aid societies agreed to collect race-based data to address concerns that there are a high number of black and Indigenous children in care.

On the popular culture front, in early 2016, media attention turned to #OscarsSoWhite<sup>18</sup> — Hollywood actors and filmmakers who were speaking up against the lack of diversity in the nominations for the Academy Awards. Those who work in Hollywood note that the lack of diversity and inclusion goes

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<sup>14</sup> *Fishing without fear: Report on the inquiry into assaults on Asian Canadian anglers* (Ontario Human Rights Commission, 2008) available at <http://www.ohrc.on.ca/en/fishing-without-fear-report-inquiry-assaults-asian-canadian-anglers/2-naming-racism>

<sup>15</sup> “Ontario Establishing an Anti-Racism Directorate: Government Working to Advance Equality for All Ontarians”, online: Queen’s Printer for Ontario <https://news.ontario.ca/opo/en/2016/02/ontario-establishing-an-anti-racism-directorate.html>

<sup>16</sup> *Ibid.*

<sup>17</sup> “U of T to track race-based data of its students”, online: *Toronto Star* <https://www.thestar.com/news/gta/2016/02/22/u-of-t-to-track-race-based-data-of-its-students.html>

<sup>18</sup> The hashtag was created in 2015 by April Reign, a former attorney who was disappointed by the lack of diversity and inclusion among Oscar nominees. For more information, please see: <http://www.latimes.com/entertainment/envelope/la-et-mn-april-reign-oscars-so-white-diversity-20160114-story.html>

beyond the Academy Awards, with one director noting, “I was meeting with potential investors, and right away everybody’s like, “It’s an Asian-American cast. It’ll never sell.”<sup>19</sup>

Race and racism are also at the forefront of issues in the justice system — from the overrepresentation of black and Indigenous peoples in federal prisons<sup>20</sup> to police violence to calls for judicial diversity and beyond. In spring 2016, Black Lives Matter Toronto, “a coalition of black Torontonians working in solidarity with communities/individuals seeking justice from state-sanctioned violence”<sup>21</sup> occupied the space in front of Toronto Police Headquarters for two weeks to protest police violence against the black community. Acknowledging that racialized communities are “over-represented and subject to different treatment in the justice system as a whole”,<sup>22</sup> Legal Aid Ontario is currently developing a strategy to “identify the legal needs and to protect the legal rights of racialized communities in the justice system”.

Additionally, the Ontario Human Rights Commission is currently working on a new policy on racial profiling that will “provide guidance on combatting racial profiling in a range of institutional and community settings” and “seek to support and enable Ontario organizations, legal decision-makers and affected community members to better identify, address and prevent racial profiling as a prohibited form of discrimination under the Ontario *Human Rights Code*.”<sup>23</sup>

The information outlined is only a snapshot of the efforts in Ontario and beyond to address racial discrimination. The Working Group is encouraged by these initiatives and is hopeful that implementation of the recommendations listed in this report will lead to systemic change.

## Guiding Principle

*“Nothing about Us, Without Us”<sup>24</sup>*

The Working Group’s recommendations stem from an intention to create long lasting systemic change within the professions. The recommendations are put forward in an effort to support the Law Society’s ongoing commitment to ensure that both the law and the practice of law are reflective of all peoples in Ontario and that the professions are free of discrimination and harassment. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* speak to the special responsibility of lawyers and paralegals to adhere to the requirements of human rights laws in Ontario, including the obligation not to discriminate.

In working towards achieving the Working Group’s overriding objective, establishing partnerships is important. How we do this is integral to what we do, and ‘we’ are all lawyers and paralegals, not just the Law Society. The Law Society’s consultation was successful in part because the Working Group used a spirit of open inquiry. The consultation was also well attended. There was general acceptance that there is a problem and that it is time to address it.

<sup>19</sup> “What It’s Really Like to Work in Hollywood”, online: *The New York Times*

<http://www.nytimes.com/interactive/2016/02/24/arts/hollywood-diversity-inclusion.html>

<sup>20</sup> The Correctional Investigator of Canada, “Annual Report of the office of the Correctional Investigator 2014-2015” available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>

<sup>21</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

<sup>22</sup> “Racialized communities strategy”, online: Legal Aid Ontario [http://legalaid.on.ca/en/news/newsarchive/2016-06-13\\_racialized-communities-strategy.asp](http://legalaid.on.ca/en/news/newsarchive/2016-06-13_racialized-communities-strategy.asp)

<sup>23</sup> “Towards a new OHRC policy on racial profiling”, online: Ontario Human Rights Commission [http://www.ohrc.on.ca/en/news\\_centre/towards-new-ohrc-policy-racial-profiling](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>24</sup> Saying from the Latin “Nihil de nobis, sine nobis”.

The Working Group heard offers to assist with mentoring, that changes are beginning to happen within firms, that the Law Society should support work that is already being done, and that legal workplaces are willing to share best practices and collaborate to create effective models for progressive change in all parts of the professions. Representatives of the Working Group spoke with firms that provide unconscious bias training to all members, firms that have affinity groups in their workplace and firms that are actively participating in the Law Firm Diversity and Inclusion Network. There were requests that the Law Society not impose mandatory hiring targets and timetables, but accelerate a culture change that has already begun as a result of business imperatives, changing demographics and the interests expressed by clients, students, lawyers, paralegals and indeed the public.

At the same time, the Working Group heard concerns that the identified challenges were longstanding, and that change would occur very slowly without strong leadership from the Law Society. The Working Group heard generally that the Challenges Faced by Racialized Licensees Project has raised the profile and understanding of these issues, but the Working Group was also urged to use the Law Society's authority to effect change.

To satisfy these goals, the Working Group concluded that the Law Society should use a combination of voluntary and mandatory measures, fulfilling its multiple roles in the public interest as change agent, facilitator, resource and regulator. The Law Society's authority to adopt mandatory measures must be interpreted and understood in light of its rights and obligations under the *Human Rights Code* to protect the public interest balanced with the current explicit authority under the *Law Society Act*<sup>25</sup> and *By-Laws*<sup>26</sup> and recent jurisprudence. Within this overarching goal, partnerships with legal workplaces and associations are essential to the success of the proposed measures and projects detailed below.

## Objectives

The Working Group has identified the following three objectives:

1. Inclusive legal workplaces in Ontario;<sup>27</sup>
2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Working Group puts forward the following recommendations in order to meet these objectives. It is anticipated that in order to implement a number of the mandatory recommendations, the Law Society will need to consider appropriate by-law amendments. Additionally, the Law Society will need to invest in information technology that will allow it to effectively record and analyze progress across workplaces. The Working Group has contemplated budgetary considerations in developing these

<sup>25</sup> R.S.O. 1990, c. L.8 available at <http://www.ontario.ca/laws/statute/90l08>.

<sup>26</sup> Available at <http://www.lsuc.on.ca/by-laws/>.

<sup>27</sup> Working Group members' opinions differ as to the definition of "legal workplace". The majority of Working Group members believe that all law firms, in-house legal departments, government legal departments, clinics and other practise settings in Ontario should be subject to the requirements outlined in the recommendations. Other members of the Working Group, however, believe that at this time, government legal departments and in-house legal departments should not be required to comply with the mandatory recommendations as government and in-house licensees are employees whose hiring, promotion and retention are client decisions. Government and in-house legal departments should, however, be encouraged to engage in the mandatory activities outlined in this report. The definition of "legal workplaces" used in the report is that of the majority perspective.

recommendations and it is anticipated that a senior staff implementation working group will be involved in implementing the recommendations.

The recommendations fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

## Recommendations

### Accelerating Culture Shift

#### **Recommendation 1 – Reinforcing Professional Obligations**

**The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.**

The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the professional and ethical obligations of lawyers and paralegals. The Working Group recommends that in order to ensure that licensees infuse the principles of equality, diversity and inclusion into their everyday practice, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and/or the Commentaries be reviewed to determine how this objective can be advanced.

#### **Recommendation 2 – Diversity and Inclusion Project**

**The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.**

The Working Group recommends that the Law Society engage in a collaboration between, for example, legal associations, government legal departments, the Law Firms Diversity and Inclusion Network (“LFDIN”), Legal Leaders for Diversity and Inclusion (“LLD”), sole practitioners, licensees in private practice, and law schools to develop and support diversity and inclusion policies, programs and practices intended to address the challenges faced by racialized licensees. The project would focus on the following areas:

- Developing resources on competency hiring, unconscious bias training, barriers to inclusion in the workplace, affinity group development, contract compliance and best practices within firms and workplaces;
- Considering the assignment of work and career development, particularly understanding the impact of cultural homophily on career development;<sup>28</sup> and

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<sup>28</sup> The notion of ‘like’ reaching out to ‘like’ or the tendency of individuals to associate and bond with similar others.

- Working with law schools to create or provide better sources of information on what is needed to apply, interview and succeed in a larger legal workplace. This could include enhancing or using the On Campus Interview ("OCI") process for the dissemination of information. This would also include outreach to the National Committee on Accreditation ("NCA") candidates.

The proposed project would build upon the Law Society's experience with its Justicia Project, created in 2008 with the goal of retaining and advancing women in private practice. The project saw more than 55 law firms voluntarily sign agreements with the Law Society to develop practical resources for law firms and women lawyers. The Justicia resources addressed topics such as: leadership, career advancement, business development, flexible work arrangements and parental leave.

A number of participants in the engagement and consultation processes supported the creation of a diversity project similar to the Justicia Project.

During the consultation process, the Working Group received feedback from a number of legal workplaces that were actively engaging in work related to enhancing diversity and inclusion in their workplaces. The Working Group also heard from legal workplaces that would benefit from support in developing diversity and inclusion policies and practices.

The Working Group concluded that a Justicia-type project would benefit the professions by creating a space where legal workplaces can openly discuss challenges in addressing the barriers faced by racialized licensees in the professions and by creating a forum to document and share best practices. Furthermore, legal workplaces could develop, in advance and with the support of the Law Society, policies that they will be required to have in place under Recommendation 3.

Currently, a number of large firms are engaged in a collaborative diversity initiative through the LFDIN and in-house counsel through LLD. Unlike the Justicia Project, which was focused on private practice, the proposed project would bring together legal workplaces from various practice environments and practice areas, in addition to associations and law schools to discuss overlapping concerns and to work on collaborative solutions.

In 2009, the Law Society of England and Wales ("LSEW") created the Diversity and Inclusion Charter (the "Charter"). The LSEW describes the Charter as follows:

The purpose of the Charter is to help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients. This is achieved by helping practices to record and measure their procedures against a set of diversity and inclusion standards and by providing them with opportunities to share best practice advice and guidance with colleagues from across the profession. To date over 300 practices have signed up to the Charter, representing more than a third of all solicitors in private practice.

The Diversity and Inclusion Charter is a public commitment by legal practices to promote the values of diversity, equality and inclusion throughout their business. Whether it's through recruitment, retention, career progression or training and

development, all our signatories are committed to improving opportunities for people in the legal profession, regardless of their background or circumstances.<sup>29</sup>

Practices that commit to the Charter are required to report biennially and show how well they are meeting their Charter commitments, and where more work needs to be done. Practices complete an online self-assessment report about their progress and performance. The results are published in aggregate by the LSEW and used to identify trends, successes and areas for improvement.

The Charter is accompanied by a set of protocols to help practices fulfil their commitments in key areas, such as reporting and monitoring, flexible working and procuring legal services. In addition, checklists, best practice guidance, case studies and toolkits are available.

The LSEW has also developed diversity and inclusion standards to help the signatories complete their annual self-assessment form. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards. The Diversity and Inclusion Standards are accompanied by best practice guidance that provide examples of positive diversity and inclusion practices, as well as advice on where to get more help or information.

The Barreau du Québec, following a consultation regarding the challenges faced by racialized licensees practising in Québec, developed a three-year action plan, which includes creating Justicia-type project to increase the recruitment, retention and advancement of racialized licensees.<sup>30</sup> In June 2016, the Barreau launched *Projet Panorama*, a project aimed at recruiting, retaining and advancing lawyers from ethnocultural groups within law firms and legal departments in Québec.<sup>31</sup> Participants have committed to compiling demographic statistics, sharing and implementing best practices, measuring progress in terms of hiring, retention and advancement, implementing measures to enhance diversity and inclusion, and publishing annual reports of work accomplished.<sup>32</sup>

### **Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices**

**The Law Society will:**

- 1) require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;**
- 2) require a representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement;**
- 3) require a representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and**
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.**

<sup>29</sup> "Diversity and Inclusion Charter" online: The Law Society of England and Wales

<http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-inclusion-charter/>

<sup>30</sup>, "For a More Inclusive Profession – The Forum Project" online: Barreau du Québec

[http://www.barreau.qc.ca/pdf/publications/Rapport\\_Profession\\_Inclusive\\_4pages-en.pdf](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

<sup>31</sup> "Project Panorama", online: Barreau du Québec <http://www.barreau.qc.ca/fr/avocats/equite/panorama/>

<sup>32</sup> *Ibid.*

To ensure the consistent implementation of this recommendation, the Law Society will guide licensees in the development of statements of principles, and legal workplaces in the development of policies and self-assessment tools. In consultation with legal workplaces, it will develop resources, such as templates, guides and model policies.

It is anticipated that the nature of the policies and self-assessment tools will vary based on the size and type of legal workplace. As a result, we propose that the Law Society, through the diversity and inclusion project described in Recommendation 2, develop the templates for the statements of principles, policies and self-assessment tools in collaboration with legal workplaces that wish to participate in the project. We believe that this approach would increase the awareness of legal workplaces, begin the cultural shift, create greater buy-in and allow for the development of resources that take into account the realities of legal workplaces.

The Working Group believes that the Law Society should minimize unnecessary burdens, and recognize that many licensees and workplaces have already moved forward proactively with equality measures on their own. Licensees and workplaces will be free to adopt templates and model policies where appropriate to their needs, or to create their own statements of principles and policies that include the elements covered by the Law Society's sample documents, but tailor them to their specific contexts.

The stages for the implementation of this recommendation would be as follows:

- Stage 1: In 2017, the Law Society would communicate to the professions the requirements outlined in Stages 1-3.
- Stage 2: By January 1, 2018, licensees would be required to have adopted and to abide by a statement of principles, and each legal workplace of at least 10 licensees in Ontario would be required to have a human rights/diversity policy as described above.
- Stage 3: The 2017 Lawyer Annual Report ("LAR") and Paralegal Annual Report ("PAR"), which would be completed by licensees in early 2018, and every annual report thereafter, would ask licensees to indicate whether or not they have adopted, and are abiding by, a statement of principles. The 2017 LAR and PAR would also ask licensees in designated legal workplaces to indicate whether or not their legal workplace has a human rights/diversity policy.
- Stage 4: By the end of 2018, and every two years thereafter, the Law Society would require a representative of each designated legal workplace of at least 10 licensees in Ontario to engage in a diversity and inclusion self-assessment. Legal workplaces would then report to the Law Society on whether they had completed the self-assessment and, if not, explain their reasons for not having done so.

The Working Group believes that requiring licensees to make a clear commitment to equality, diversity and inclusion will encourage licensees to consider their individual roles in creating lasting change.

Section 4.1 of the commentary under section 2.1-1 of the *Rules of Professional Conduct* reads as follows:

A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of

the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.<sup>33</sup>

Similarly, section 2.03 of the *Paralegal Rules of Conduct* state “the principles of the *Ontario Human Rights Code* and related case law apply to the interpretation of this rule [the rule on *Harassment and Discrimination*].”<sup>34</sup>

A number of consultation participants supported the Law Society’s role in setting guidelines for equality, diversity and inclusion in the professions and requiring legal workplaces to report on their progress in this area. As one group of consultation participants noted, “This would increase the accountability and transparency of legal workplaces in their treatment of racialized licensees, while encouraging a culture of compliance across the province.”<sup>35</sup>

The Working Group considered requesting that legal workplaces voluntarily adopt policies. The research and the consultation process, however, made clear that the challenges faced by racialized licensees are both longstanding and significant. In our view, the Law Society must take a leadership role in giving legal workplaces reasonable, but fixed, deadlines to implement steps that are important to achieve lasting change. Indeed, many of these steps have been taken, or will be taken by legal workplaces voluntarily, because of their acknowledged importance.

The Working Group concluded that required minimum standards of equality, diversity and inclusion will reinforce the human rights responsibilities of licensees — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*. Furthermore, as the Ontario Human Rights Commission (“OHRC”) notes:

In addition to addressing obligations under the *Human Rights Code*, the adoption and implementation of an effective anti-racism vision statement and policy has the potential of limiting harm and reducing liability. It also promotes the equality and diversity goals of organizations and institutions and makes good business sense.<sup>36</sup>

It is the Working Group’s intention that legal workplaces will take this opportunity to implement comprehensive equality, diversity and inclusion policies, and will consider whether progress is being achieved, by engaging in periodic self-assessment.

Some organizations have adopted a similar approach by creating a “comply or explain” approach. For example, the Ontario Securities Commission (“OSC”) requires companies regulated by the OSC to disclose the following gender-related information: the number of women on the board and in executive positions; policies regarding the representation of women on the board; the board or nominating committee’s consideration of the representation of women in the director identification and selection process; and director term limits and other mechanisms of renewal on their board.<sup>37</sup> The OSC requires

<sup>33</sup> *Rules of Professional Conduct*, *supra* note 4.

<sup>34</sup> *Paralegal Rules of Conduct*, *supra* note 5.

<sup>35</sup> Participating legal association.

<sup>36</sup> “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination>

<sup>37</sup> “Increasing Gender Diversity In Corporate Leadership”, online: Queen’s Printer for Ontario <http://news.ontario.ca/mof/en/2014/12/increasing-gender-diversity-in-corporate-leadership.html>

companies to either report their implementation or consideration of the items listed above, or to explain their reasons for not doing so.

The Working Group's recommendation that legal workplaces of at least 10 licensees in Ontario complete a self-assessment about diversity performance, and report the results to the Law Society stems from an intention to have legal workplaces engage in dialogue and reflection on the current state of diversity and inclusion within their workplace, and an intention to encourage legal workplaces to work proactively to advance diversity and inclusion efforts.

The Working Group has reviewed the Canadian Bar Association's ("CBA") guide *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide for Law Firms*.<sup>38</sup> The document was drafted to "assist lawyers and firms by providing practical guidance on law firm structures, policies and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled".

The document contains a detailed self-evaluation tool for firms, the *CBA Ethical Practices Self-Evaluation Tool*, which outlines 10 key areas of ethical infrastructure and provides questions related to firm policies and procedures under each identified area.<sup>39</sup>

The self-evaluation tool is modelled on the approach used in New South Wales for regulation of incorporated legal practices. Rather than being required to follow specific rules, the firms are required to self-assess whether their practices and policies are effective in ensuring professional conduct and to establish practices and policies that are effective in their specific context. The result has been a two-third reduction in client complaints for firms regulated in this way.<sup>40</sup>

A similar approach has been used for the assessment of diversity performance. The U.S.-based Minority Corporate Counsel Association has developed the *Diversity Self-Assessment Tool for Law Firms*, in an effort to "stimulate thought and open a dialogue within a firm regarding how to advance its diversity efforts."<sup>41</sup> Firms are asked to assess diversity performance in the following areas: leadership and commitment, professional development, recruitment and retention, representation/demographics, workplace culture and diversity, and external face of the firm.

The Law Society of England and Wales ("LSEW") also asks firms that have signed on to its Diversity and Inclusion Charter to complete a self-assessment (discussed previously in Recommendation 2).

In addition to the information gathered through the self-assessment, legal workplaces would be encouraged to conduct their own comprehensive inclusion surveys to establish benchmarks and identify and address concerns related to workplace culture. The Law Society has developed a number of model policies and guides to assist law firms in their efforts to ensure that their policies and practices

<sup>38</sup> Canadian Bar Association, "Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide" (Ottawa: Canadian Bar Association, 2014)

<sup>39</sup> Canadian Bar Association, "CBA Ethical Practices Self-Evaluation Tool" (Ottawa: Canadian Bar Association, 2014)

<sup>40</sup> Tahlia Ruth Gordon, Steve A. Mark, Christine Parker, "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW" (2010) Journal of Law and Society, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1527315](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>41</sup> "A Diversity Self-Assessment Tool for Law Firms, online: Minority Corporate Counsel Association <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&PageID=996>

are in keeping with equality and diversity principles. Again, the Law Society would develop sample inclusion survey templates, which would be shared with the profession.

### Measuring Progress

The Working Group proposes, based on the consultation findings and our review of the literature and best practices on measuring systemic change that both the Law Society and legal workplaces should partner in collecting and analyzing qualitative and quantitative information about diversity. The Law Society would collect demographic data through the annual LAR and PAR, and qualitative information through a periodic questionnaire and a quadrennial province wide cultural inclusion survey similar to the one conducted by Stratcom on behalf of the Law Society in 2013. Legal workplaces of a sufficient size would obtain both quantitative and qualitative information about their workplaces in order to analyze the results, and ultimately an inclusion index would be published by the Law Society.

The 2012 CBA guide, *Measuring Diversity in Law Firms: A Critical Tool for Achieving Diversity Performance*, identifies two types of data for measuring a law firm's diversity performance — self-identification data and diversity climate data. Self-identification data is collected “to assess the representativeness of [a] firm's workforce”<sup>42</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>43</sup>

The collection of both self-identification data and diversity climate or inclusion data provides a more complete picture of diversity and inclusion in the professions. In *Data & Diversity in the Canadian Legal Community*, Dean Lorne Sossin and Sabrina Lyon, basing their conclusion on extensive interviews, a review of ongoing policy initiatives and a comprehensive analysis, state “generating rigorous and meaningful data, both quantitative and qualitative, would advance a culture of inclusion and accountability in the Canadian justice community”.<sup>44</sup>

### **Recommendation 4 – Measuring Progress through Quantitative Analysis**

**Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyer Annual Report and the Paralegal Annual Report so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.**

<sup>42</sup> Canadian Bar Association, “Measuring Diversity in Law Firms: A Critical Tool for Achieving Performance” (Ottawa: Canadian Bar Association, 2012)

<sup>43</sup> *Ibid.*

<sup>44</sup> Sabrina Lyon and Lorne Sossin, “Data and Diversity in the Canadian Justice Community”, Vol. 10, No. 5 (2014) Osgoode Legal Studies Research Paper No. 12/2014 at 2, [Data and Diversity] available at <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps>.

*“...what gets measured can help organizations understand how effective their programs and policies are; where they have issues; and what relevant and reasonable goals they can establish to improve performance.”<sup>45</sup>*

— Canadian Institute of Diversity and Inclusion

Since 2009, the Law Society has collected demographic data based on race, Indigenous identity, gender, Francophone identity, disability, and lesbian, gay, bisexual, transgender and queer (“LGBTQ”) identity through the Lawyer Annual Report and the Paralegal Annual Report. Self-identification questions were included in the annual reports to inform the Law Society of the extent to which the professions are reflective of the broader community they serve, to help meet the needs of the public, and to develop programs to enhance the diversity of the professions. These demographic data are analyzed and published in aggregated form under the following categories: age, year of call, type of employment, size of firm (for those in private practice), and region.<sup>46</sup>

In the consultation paper, the Working Group highlighted the importance of gathering and maintaining demographic data, providing the following reasons for engaging in this practice:

- a. Firms can demonstrate that they value equality, diversity and inclusion in their firm’s culture;
- b. Maintaining demographic data allows firms to monitor diversity in recruitment and advancement and to adjust policies and practices accordingly;
- c. Diversity, and data on diversity, assist firms in attracting a strong talent base at all levels. The pool of law students is increasingly diverse, and so is the pool of legal talent. Graduating law students are often interested in the diversity characteristics of the legal workplaces to which they can apply;
- d. Such data can be a tool to increase a firm’s competitiveness. Numerous large clients in the U.S., and now in Canada, issue requests for proposals (“RFPs”) to select their legal counsel, requiring firms to produce demographic data of their workforce. For example, the Bank of Montreal’s Legal, Corporate & Compliance Group (“LCCG”) requires disclosure of a firm’s diversity statistics as part of its RFP process for legal suppliers;<sup>47</sup>
- e. Demographic data assist firms to enhance their client services and professional reputation, and to become role models by ensuring representation at all levels;
- f. Demographic data provide background and incentives for firms to develop programs that enhance inclusion; and
- g. The information may assist in developing initiatives to enhance access to justice.

Dean Lorne Sossin and Sabrina Lyon, in their article *Data & Diversity in the Canadian Legal Community*, also underline the importance of data collection, noting that while “collecting and publishing data on diversity will not in and of themselves make the justice community more inclusive, it is difficult if

<sup>45</sup> “What Gets Measured Gets Done: Measuring the ROI of Diversity and Inclusion”, online: Canadian Centre for Diversity and Inclusion <http://ccdi.ca/wp-content/uploads/2016/06/CCDI-Report-What-Gets-Measured-Gets-Done.pdf>

<sup>46</sup> *Supra* note 9 & note 11

<sup>47</sup> “Diversity metrics will influence what firms BMO’s legal department does business with: Fish”, online: Canadian Lawyer Magazine <http://www.canadianlawyermag.com/5302/Diversity-metrics-will-influence-what-firms-BMOs-legal-department-does-business-with-Fish.html>

not impossible to see how the justice community could become more inclusive without meaningful data.”<sup>48</sup>

The options outlined in the Consultation Paper regarding data collection largely focused on the collection of demographic data, including:

- collecting demographic data of licensees through the LAR and PAR, publicly reporting the demographic data based on firm size and disclosing to firms their own demographic data;
- working with firms to develop consistent templates for demographic data collection and encouraging firms to collect such data on a regular basis;
- setting parameters for the voluntary collection of demographic data by firms and requiring firms to report either that they are collecting this information or the rationale for not collecting such data; and
- setting parameters for mandatory collection of demographic data by firm.

Throughout the consultant and community engagements and the consultation process, the Working Group heard concerns from some participants that the information obtained from the Challenges Faced by Racialized Licensees Project would be shelved and the project would not result in meaningful change. By engaging in periodic litmus tests of equality and inclusion in the professions, the Law Society will ensure that its efforts to address the challenges faced by racialized licensees are ongoing and will evolve based on the issues identified by the inclusion surveys. As the OHRC notes, “When data is gathered, tracked and analyzed in a credible way over time, it becomes possible to measure progress and success (or lack of it). Budgets, policies, practices, processes, programming, services and interventions can then be evaluated, modified and improved.”<sup>49</sup>

The Legal Services Board (“LSB”), the independent body responsible for overseeing the regulation of lawyers in England and Wales, has taken a proactive approach to gathering demographic data. In 2011, the LSB published statutory guidance outlining its expectation of approved regulators to measure levels of diversity and mobility in the legal workforce. Approved regulators, including the Solicitors Regulation Authority,<sup>50</sup> now require all practices they regulate to collect, report and publish data annually on the diversity of their workforce. The LSB has cited transparency as the rationale for requiring the publication of diversity data.<sup>51</sup>

Information about the demographic composition of legal workplaces would be compiled through the Lawyer Annual Report and Paralegal Annual Report data, which would comprise of the statistical snapshots of the professions as a whole and the data compiled for each firm. This data would be provided to each legal workplace on an annual basis. In considering privacy concerns of individual licensees and the Law Society’s ability to ensure confidentiality, the Working Group has suggested that this recommendation be applicable only to legal workplaces of at least 25 licensees in Ontario.

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<sup>48</sup> *Supra* note 44.

<sup>49</sup> “Count me in! Collecting human rights-based data” at 11, Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2494>.

<sup>50</sup> “Diversity data collection”, online: Solicitors Regulation Authority <http://www.sra.org.uk/diversitydata/>

The Working Group has considered the input received from the engagements and the consultation process and proposes the following stages for the collection of self-identification data by firm:

- Stage 1: The Law Society would continue to measure the representation of racialized licensees using the information in the 2016 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2017, by providing the demographic data in aggregate form to the public as general snapshots of the professions in 2018.
- Stage 2: The introductory paragraph of the self-identification demographic questions of the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, would be adapted to inform licensees of the change in the Law Society's use of the self-identification data.
- Stage 3: Beginning with the 2018 LAR and PAR, completed by licensees in 2019, the Law Society would prepare a profile (containing, for example, the proportion of racialized partners, associates and other licensed staff) of each legal workplace of at least 25 lawyers and/or paralegals, and would confidentially provide it to each licensee within the workplace.

### **Recommendation 5 – Measuring Progress through Qualitative Analysis**

**The Law Society will measure progress qualitatively by:**

- 1) asking licensees to answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and**
- 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered.**

The qualitative information about legal workplaces would be gathered by asking licensees inclusion questions about their legal workplace using a tool that would allow for the information to be compiled and provided to each legal workplace. This information would be collected by the Law Society with the purpose of tracking trends over time and refining and developing programs and initiatives to address the challenges faced by racialized licensees and other equality-seeking groups.

Licensees would be asked about their experiences in their workplaces, including subjects such as career advancement opportunities, feelings of belonging, and experiences of discrimination. The questions would be drafted with the assistance of stakeholders and experts in the diversity and inclusion field. Much like the current demographic questions in the Lawyer Annual Report and the Paralegal Annual Report, answers would be voluntary. The information would be shared in aggregate form with considerations of privacy and confidentiality taken into account, with legal workplaces of at least 25 lawyers and/or paralegals.

The Working Group proposes the following stages for the collection of qualitative data:

- Stage 1: Notice would be provided to the professions in the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, of the Law Society's intention collect qualitative inclusion data.

- Stage 2: The Law Society would begin compiling quantitative data of legal workplaces using the 2018 Lawyer Annual Report and Paralegal Annual Report – to be completed in 2019 – and would continue to compile this data every four years thereafter.

### **Recommendation 6 – Inclusion Index**

**Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).**

The Working Group has considered a number of options for data collection and has arrived at the recommendations to measure progress outlined in Recommendations 3(3) (self-assessment), 4 and 5. The Working Group also believes that accountability and transparency are key to increasing equality and diversity in the professions. Members of the Working Group have considered a number of methods to ensure that these principles are reflected in the recommendations. The Working Group has decided that in addition to gathering qualitative and quantitative data about legal workplaces, the creation and publication of an inclusion index – an index that would include legal workplaces' assessments of their diversity and inclusion-related achievements and that would allow legal workplaces to demonstrate their performance and progress – would advance the goals of equality, diversity and inclusion. The Law Society would create this index and would determine the categories of information to be included in the index, as well as the weight provided to each category.

The Working Group is of the view that a public inclusion index would serve the many objectives cited earlier in relation to the benefits of collecting demographic data. The index would be a valuable tool for legal workplaces and the Law Society to determine whether there is progress in the professions. Legal workplaces could also use the index to attract prospective clients and to recruit talent.

A number of consultation participants as well as courts and commentators<sup>52</sup> have stated that to truly understand the equality and inclusion climate in a workplace, it is necessary to look at both quantitative and qualitative data. Sossin and Lyon exemplify this perspective, noting that “a blended ‘index’ of quantitative and qualitative factors best responds to the need for outcomes to matter (how many diverse lawyers a legal workplace is able to recruit relative to the available pool of candidates) and the need for inputs to matter (a legal workplace’s policies, participation in proactive recruitment, establishing an inclusive firm culture, etc.).”<sup>53</sup>

As Sossin and Lyon note, “the process of collecting and disseminating qualitative and quantitative data is not just an end in itself (to promote transparency, accountability, profile, etc.) but a means to developing responsive and effective policies [...] a range of innovations are already in place to build on – from mentorship programs, to career orientation and outreach, to equity and inclusion officers within legal workplaces, to media and public information campaigns.”<sup>54</sup>

<sup>52</sup> Raj Anand, “Real Change? Reflections on Employment Equity’s Last Thirty Years” in Carl Agócs, *Employment Equity in Canada: The Legacy of the Abella Report* (Toronto: University of Toronto Press, 2014)

<sup>53</sup> *Supra* note 44.

<sup>54</sup> *Ibid.*

The LSEW publishes an annual diversity and inclusion report, which includes the results of self-assessments completed by the signatories to the Diversity and Inclusion Charter. According to the LSEW, “all signatories are required to self-assess against a set of standards and report on diversity data across their organisation, with smaller practices responding to a set of questions tailored to the needs of smaller firms”.<sup>55</sup> Although the data is collected by firm, it is published in aggregate form. In 2015, 341 firms submitted their self-assessment information to the LSEW.

For the last 10 years, the Black Solicitors Network (“BSN”), also based in the UK, has published The BSN Diversity League Table, a comprehensive report on diversity and inclusion in the legal profession, on an annual basis. The LSEW is the main sponsor of this initiative. According to the LSEW:

The Diversity League Table has become an invaluable resource for the legal profession. Each year, the performance of participating law firms and chambers is measured across a range of demographic profiles. This provides an opportunity for firms to compare their performance against peers across key areas. The Diversity League Table also offers an opportunity to monitor the sector as a whole, facilitating a more diverse and transparent profession.<sup>56</sup>

The LSEW further notes that the LSEW Diversity and Inclusion Charter and the BSN Diversity League Table are complementary initiatives, as they both “provide comprehensive data sets [and] promote collaboration in equality and diversity matters and best practice across a range of key business areas”.<sup>57</sup>

The Diversity League Table includes aggregate demographic data based on gender, ethnicity, LGBTQ and disability status, published by firm. Firms also provide information about policies & practices, specifically addressing the following categories: Monitoring; Leadership and Policy; External Face; Staff Development and Support; and Recruitment, Promotion and Retention. Firms are then given a score and a rank, based on the quantitative and qualitative data obtained. In 2015, 56 firms and chambers participated in the Diversity League Table.<sup>58</sup>

A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>59</sup>

The Law Society believes that stakeholder participation in the development of the inclusion index is important, such as the participation of the LFDIN, LLD and associations with mandates to represent racialized licensees.

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<sup>55</sup>“Diversity and Inclusion Charter annual report 2015”, at p.9 online: Law Society of England and Wales.

<sup>56</sup> “Diversity League Table 2015”, online: Black Solicitors Network <http://satsuma.eu/publications/DLT2015/>

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> For example see:

Stonewall Top 100 Employers

<http://www.stonewall.org.uk/get-involved/workplace/workplace-equality-index;>

The Canadian Centre for Diversity and Inclusion is currently piloting an Employer Inclusivity Index with employers in Alberta

[http://ccdi.ca/products/workplace-solutions/diversity-data-analytics/;](http://ccdi.ca/products/workplace-solutions/diversity-data-analytics/)

Pride at Work Canada’s LGBT Inclusion Index

<http://prideatwork.ca/get-involved/index/>

The Working Group suggests that the Law Society create a similar inclusion index to those described above, which would reflect the demographic information about the composition of each legal workplace and would include scores and rankings based on the presence or lack thereof of equality-related policies and practices. The Law Society would report this information by legal workplace for all legal workplaces with over 25 licensees. The Law Society would begin publishing the inclusion index in 2019 and would update the index every four years.

### **Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey**

**The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>) The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.**

The Stratcom survey was sent to all licensees, both racialized and non-racialized, in 2013. The anonymous 35-question survey included questions on topics such as: career opportunities and professional growth; disrespect and disadvantage; career setbacks; barriers to entry and advancement; and stereotyping.

In order to evaluate the success of the proposed initiatives and to identify any potential areas where barriers to inclusion may remain, the Working Group proposes repeating the Challenges Faced by Racialized Licensees Project inclusion questions within the abovementioned timeline. The proposed timeline is based on the Working Group's understanding and acknowledgement that systemic change will take time to occur.

### **Recommendation 8 — Progressive Compliance Measures**

**The Law Society will consider developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.**

The Working Group, having outlined some mandatory initiatives in the aforementioned recommendations, recognizes that there must be mechanisms in place to deal with non-compliance. The Working Group recommends that the Law Society take a progressive compliance approach with legal workplaces that do not meet the requirements outlined in the recommendations. The Working Group envisions a gradation of responses, beginning with remedial approaches, such as meeting with representatives of legal workplaces to discuss concerns with their policies and/or practices, to disciplinary approaches if there is deliberate non-compliance with requirements, despite multiple warnings, or no efforts are made to address systemic barriers.

## Educating for Change

### **Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions**

#### **The Law Society will:**

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;**
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and**
- 3) require each licensee to complete, once every three years, a three hour accredited program focused on equality and inclusion, which would count as the licensee's professionalism hours for that year.**

The Working Group recommends that the Law Society launch an innovative three hour accredited program focused on topics such as equality and inclusion in the professions to assist licensees with promoting these principles. The Law Society would also support legal workplaces in developing their own three hour programs that could be accredited by the Law Society. This would allow legal workplaces and legal associations to build their capacity in this area while addressing the needs of their membership base. The Law Society would work with associations to develop criteria for accreditation and to assist legal workplaces and legal associations in developing their own accredited courses. Programs could be delivered in any format already approved under the eligible education activities criteria available on the Law Society website.

In order to create awareness and engagement of the professions, the Law Society would require each licensee to complete, once every three years, three hours of an equality and inclusion accredited program. These programs would meet professionalism CPD requirements for the year in which the hours were taken. The monitoring of these activities to confirm completion of hours would be the same as any monitoring conducted to confirm completion of professionalism hours. No additional oversight would be required.

Training sessions could cover topics such as unconscious bias, the impact of daily verbal, behavioural and environmental indignities, the value of diversity and inclusion, understanding power and privilege and addressing discrimination and harassment.

The Working Group also suggests that the Law Society, as part of its commitment to providing accessible education, offer an online program on topics related to equality and inclusion in the professions. Such program could contain a video presentation with best practices and links to resources, for licensees who wish to complete their professionalism requirements in an online environment. If delivered online, the program could consist of integrated learning modules with integrated polling or test questions, as already done in various contexts including the *Accessibility for Ontarians with Disabilities Act* training and existing Law Society CPD programs.

The Working Group considered the option that the Law Society provide voluntary accredited CPD programs on topics such as equality and inclusion in the professions. However, the Working Group has determined that participation in equality and inclusion-related education is essential to address the challenges faced by racialized licensees. The OHRC notes, in its *Policy and Guidelines on Racism and*

*Racial Discrimination*, that “mandatory education, training and development initiatives” may be required for an anti-racism policy and program to be effective.<sup>60</sup>

The Working Group initially considered training that would focus on “cultural competence”. Ritu Bhasin, a lawyer consultant in this area, defines cultural competence as “how we connect with people who are different than us” or “The ability to relate to others comfortably, respectfully and productively.”<sup>61</sup> A significant number of consultation participants agreed that mandatory CPD would assist in addressing the challenges faced by racialized licensees. A number of consultation participants emphasized the need for training to be delivered through an anti-discrimination or anti-oppression lens. The same participants noted discomfort with the term “cultural competence” due to the focus on understanding difference or “the other” as opposed to encouraging reflection on power and privilege. Consequently, the Working Group has chosen to focus the training on the principles of equality and inclusion, incorporating concepts of unconscious bias and cultural homophily.

The *Rules of Professional Conduct* speak to the responsibility of lawyers to recognize the diversity of the Ontario community. Both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* require that licensees protect the dignity of individuals and respect human rights laws in force in Ontario. Equality and inclusion training will assist licensees in understanding their obligations under the rules.

### **Recommendation 10 – The Licensing Process**

**The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.**

The Working Group wishes to integrate the topics of cultural competency, equality and inclusion into the Licensing Process, as appropriate, including within the reference materials for licensing, and in any program or course work that is completed during the Licensing Process.

A number of consultation participants emphasized the importance of incorporating teachings of equality and inclusion into the Licensing Process. For example, one participant noted that integrating cultural competence training in the Licensing Process would be “well-suited to ensuring that a strong foundation of diversity awareness and cultural consciousness is in place from the beginning of an individual’s legal career.”<sup>62</sup>

The Entry-Level Solicitor Competencies and the Entry-Level Barrister Competencies both include the following section under Ethical and Professional Responsibilities:

19. respects human rights (e.g. does not engage in sexual harassment, discrimination or other human rights violations) (Rules 6.3-0 and 6.3.1. (Part of 24))

<sup>60</sup> Policy and Guidelines on Racism, *supra* note 36 at 50.

<sup>61</sup> Ritu Bhasin is quoted in “Cultural Competence: An Essential Skill in an Increasingly Diverse World”, (Toronto: LawPRO Magazine, 2014, Volume 13, Issue 2), available at [http://www.practicepro.ca/LawproMag/Cultural\\_Competence\\_Bhasin.pdf](http://www.practicepro.ca/LawproMag/Cultural_Competence_Bhasin.pdf)

<sup>62</sup> Law firm representative.

Additionally, under Client Communications, both sets of competencies include the following:

192. recognizes and is sensitive to clients' circumstances, special needs and intellectual capacity (e.g. diversity, language, literacy, socioeconomic status, disability, health).

Similarly, the Paralegal Competencies, under Ethical and Professional Responsibilities, read:

3. Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g. does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).

Under section 27(2) of the *Law Society Act* and section 8(1) of By-Law 4, *Licensing*, a recipient of a lawyer or paralegal licence is also required to be of good character. The Law Society has indicated that adherence to human rights and equality principles should be considered in a determination of good character. The November 2013 Submission on The Federation of Law Societies of Canada's National Suitability to Practise Standard Consultation Report<sup>63</sup> identifies that "specific reference to respect for and adherence to human rights and equality principles sends an important message to those entering the professions."

The Working Group believes that the integration of equality and inclusion information, presented through an anti-discrimination or anti-oppression lens, will assist in preparing candidates to be competent members of the professions.

## Implementing Supports

### **Recommendation 11 – Building Communities of Support**

**The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.**

In considering this recommendation, the Working Group noted that in November 2013, the Law Society created a Mentoring and Advisory Services Proposal Task Force to consider mentoring and advisory services models. The Working Group provided input to the Task Force on the development of models to best address the needs and facilitate the success of racialized licensees. The Task Force provided its final report to Convocation in January 2016. Convocation approved the creation of a law practice and advisory services initiative, which, at the outset of its implementation, "...will focus on providing supports for already identified communities of need, namely, sole practice and small firm licensees, new licensees, racialized licensees, those seeking succession planning supports and those within certain defined practice areas."<sup>64</sup>

<sup>63</sup> "Federation of Law Societies of Canada – Suitability to Practise Standard" – Report to Convocation, November 21, 2014 – Professional Regulation Committee, online: The Law Society of Upper Canada [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2013/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convov2013_PRC.pdf)

<sup>64</sup> "Law Practice Coach and Advisor Initiative" – Final Report to Convocation, January 28, 2016 – Mentoring and Advisory Services Proposal Task Force [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-january-2016-mentoring.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

Data gathered through the LAR and PAR show that 24% of racialized lawyers are in sole practice and 33% of racialized lawyers practice in legal workplaces of two to five. Similarly, 25% of racialized paralegals are in sole practice. Engagement and consultation process participants highlighted the vulnerability of racialized sole practitioners in the professions — emphasizing the need for sole practitioners and licensees in small firms to have strong mentors and networks. The Working Group also recognizes that it is essential to be responsive to the needs and challenges of racialized licensees in a broad range of practice/work settings and practice areas, which will require approaches that are not “one size fits all”.

The Law Society currently offers mentorship initiatives that will be enhanced by the new Law Practice Coach and Advisor Initiative.<sup>65</sup> Additionally, the Law Society, in partnership with legal associations and community groups, offers educational programs to promote discussion among members of the professions and the public on the challenges and opportunities for Francophone, Indigenous and equality-seeking communities in the legal professions. These Equity Legal Education events are often followed by networking receptions for members of the professions.

The Working Group heard that there is a need for increased, and in some cases, revamped, mentoring and networking initiatives to combat the isolation faced by racialized sole practitioners and racialized licensees practising in small firms. In considering potential mentoring and networking initiatives to support racialized licensees, the Working Group has identified the following objectives:

1. Encourage the development of communities of support in the professions, including facilitating the search for multiple points for direction and assistance (e.g. peers, subject-matter experts, ethics sounding boards);
2. Increase the capacity of legal associations to reach more licensees for trusted, nonjudgmental advice; and
3. Foster connections for licensees who feel isolated, recognizing that feeling professionally isolated is not limited to those in small firms and sole practitioners or those in certain practice areas.

The Working Group highlighted the importance of working with legal associations in meeting the abovementioned objectives. The Working Group is also mindful of different types of mentoring, including both advisory services and coaching.<sup>66</sup>

As a first step, the Working Group proposes the following:

- Enhanced use of technology to facilitate the development of communities of trust;
- Enhanced networking opportunities.

#### *Enhanced Use of Technology to Facilitate the Development of Communities of Trust*

The Working Group believes that any successful mentorship initiative should reach racialized licensees across the province. This proposal would involve the robust use of technology to increase the ability of racialized licensees to access information and support, with the goal of enhancing learning, competence and success. For example, the Law Society could work with associations of racialized licensees, where appropriate, to create an online resource centre for racialized lawyers and paralegals.

<sup>65</sup> *Ibid.*

<sup>66</sup> Advisory services are shorter and more focused in scope, whereas coaching services address longer term career goals.

This resource centre could act as a hub to bring together the various mentorship initiatives available around the province. The resource centre could include materials geared toward the needs, concerns and unique situations of licensees in sole practice, associations of sole practitioners and small partnerships. Resources could cover topics such as finding a mentor, action plans for mentor-mentee relationships, networking, and the benefits of joining associations. The resource centre could also include a forum for racialized licensees to discuss topics relevant to their practice environments and a podcast series on a range of topics related to race and racism in the professions and supports for racialized licensees.

The Working Group has also considered an initiative that would involve working with stakeholders, existing mentoring groups and others to develop the technology that would allow any licensee (racialized or otherwise) to have access to a diverse group of mentors. It may be helpful to ask licensees to indicate whether they are interested in participating in such a program when they fill out their LAR or PAR or through other methods, such as the Law Society Portal. Alternatively, mentors and mentees could be matched using a mobile application (app) with programmed algorithms to increase the potential of having successful relationships. Similar mobile apps have been created to assist with the search for a mentor or mentee in other industries.<sup>67</sup> For example, Menteer, a free, open source online platform,<sup>68</sup> works to match job seekers and mentors. Potential mentors and mentees are asked to answer a series of questions about their skills, interests and backgrounds to assist with finding suitable matches to meet their needs. Mentees are provided with a number of mentor profiles, which the algorithm has determined would be a good fit. Mentors wait for mentees to communicate with them to ask if they would like to establish a mentor-mentee relationship.<sup>69</sup>

#### *Enhanced Networking Opportunities*

This project involves reviewing current practices around Law Society events and events co-hosted with equality-seeking legal associations to ensure that networking events are affordable, inclusive and relevant to licensees.

### **Recommendation 12 – Addressing Complaints of Systemic Discrimination**

**The Law Society, in light of the findings of this project and emerging issues in the professions, will:**

- 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address complaints of systemic discrimination;**

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<sup>67</sup> See Menteer, Glassceiling  
<https://www.menteer.ca/>  
<https://www.glassbreakers.co/>

<sup>68</sup> Any organization can use the code from this online platform, free of charge. The platform can be customized to meet the specific needs of the organization.

<sup>69</sup> “App service Menteer wants to help you find a mentor”, online: CBC Radio <http://www.cbc.ca/radio/spark/277-digital-vellum-reclaiming-ephemera-room-escape-games-and-more-1.2975606/app-service-menteer-wants-to-help-you-find-a-mentor-1.2975660>

- 2) **revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;**
- 3) **create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and**
- 4) **create a specialized and trained team to address complaints of discrimination.**

#### *Discrimination and Harassment Counsel Program (DHC)*

The Working Group recommends that the Discrimination and Harassment Counsel Program (DHC) undergo a review of its function, processes and structure. Although the DHC Program does not maintain self-identification information about complainants, it is noteworthy that for the 10-year-period of 2003 to 2012, only 16% of complaints of discrimination were based on race, 3% on ethnic origin, a nominal number on ancestry and place of origin, while 26% and 50% of complaints were based on the grounds of disability and sex, respectively. This is in contrast with the applications received at the Human Rights Tribunal where 22% of applications are based on race, 16% on colour, 17% on ethnic origin, 15% on place of origin and 13% on ancestry with 54% of applications based on disability and 25% based on sex, pregnancy and gender identity.<sup>70</sup> The lower proportion of race-based complaints to the DHC Program warrants a review of the DHC Program to identify possible barriers to accessing that program, more particularly by members of the racialized, Indigenous and disability communities.

The objective of the review will be to identify how this role can be better used to address discrimination and harassment in the professions, including systemic discrimination. The review would include methods to increase outreach. It would also address the provision of supports for those who experience such conduct and want to find ways of altering such behaviour, improving workplaces, and resolving issues internally.

#### *Rules of Professional Conduct and Paralegal Rules of Conduct*

The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the responsibility of licensees to respect human rights laws — more specifically, not to engage in discrimination or harassment. The Law Society may investigate complaints of systemic discrimination; however, this is not widely known. The Working Group recommends explicitly stating in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* that systemic discrimination is considered a violation of the rules. The Working Group also recommends that the rules make clear that reprisal for complaints of discrimination and harassment is prohibited.

#### *Specialized Professional Regulation Team*

The Working Group recognizes that racism is complex and can manifest itself in subtle ways. The Working Group recommends that the Law Society create a specialized team of Professional Regulation staff members to address complaints of racial discrimination. The members of this team would undergo extensive training on issues of race and racism in order to prepare them to effectively handle these types of complaints.

<sup>70</sup>“Social Justice Tribunals Ontario: 2013-2014 Annual Report, online: Social Justice Tribunals Ontario <http://www.sjto.gov.on.ca/documents/sjto/2013-14%20Annual%20Report.html>

Please note that in both the DHC report and the Human Rights Tribunal Report, many applications and complaints claim discrimination based on more than one ground and as a result there may be double counting.

*Review Professional Regulation Processes to Effectively Address Systemic Discrimination*

Along with the creation of a specialized team of Professional Regulation staff members to address complaints of discrimination, including racial discrimination, it is suggested that the Law Society review its complaints process to consider ways to collect data from different sources and identify instances of systemic discrimination. It is recommended that the Law Society consider specific processes to effectively address systemic discrimination.

Racialized consultation participants described discriminatory experiences that had serious impacts on their careers, including career opportunities and earnings. Some described experiences of overt discrimination, such as situations of being on the receiving end of racist jokes, comments or assumptions.

In addition to the barriers identified through the Challenges Faced by Racialized Licensees Project, in its 2009 *Aboriginal Bar Consultation*<sup>71</sup>, the Law Society found that 26% of Indigenous lawyers felt that their Indigenous status was a negative factor in their experiences in the professions and the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.

It is clear from the Working Group's engagement and consultation processes that discrimination based on race is a daily reality for many racialized licensees; however, many participants stated that they would not file a discrimination complaint with the Law Society for various reasons, including fear of losing their job, fear of being labeled as a troublemaker, and other reprisal-related concerns. Participants also noted that although racism can be experienced on an individual basis, racial discrimination can also be institutional or systemic in nature. Participants did not believe that an effective process was available at the Law Society to address systemic complaints. The Working Group heard from a number of participants who stated that a system of anonymous complaints would assist in alleviating some of the concerns about reporting cases of racial discrimination.

The Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry, which was mandated to inquire into a significant number of sexist, misogynist, and homophobic remarks and images posted on Facebook by fourth year male dentistry students at Dalhousie University, noted the pressing need for anonymous reporting mechanisms so that victims can protest such conduct without putting themselves at risk. This proposal was raised as a result of many who spoke to the Task Force about the need to be able to make anonymous complaints, especially in cases of sexual harassment and sexual assault. The Task Force notes "The biggest concern about anonymous complaints is that there is no way to effectively assess the merits of a particular complaint. However, a group of anonymous complaints all reflecting the same concern provides a signal that there may be a problem that requires some attention. Soliciting anonymous complaints for this purpose could be very useful."<sup>72</sup>

<sup>71</sup> "Final Report: Aboriginal Bar Consultation", online: The Law Society of Upper Canada

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118>

<sup>72</sup> Constance Backhouse, Donald McRae and Nitya Iyer, "Report of the Task force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry", June 26, 2015 at 76 available at

<http://www.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf>

Princeton University allows for anonymous complaints of discrimination, harassment and other violations of policies and regulations through an independent provider of hotline services. All Ontario universities have developed such procedures in the last two years, with the encouragement of the Ontario government and Premier. Complainants can submit a report online or by calling a free hotline to speak with a trained specialist.<sup>73</sup> Similarly, the City of Copenhagen in Denmark has developed an anonymous app for people to report incidents of discrimination. The purpose of the app is “to understand how widespread discrimination is and where and which groups are most likely to be targeted.”<sup>74</sup>

In 2010, the Nova Scotia Barristers' Society (“NSBS”) launched a successful postcard campaign. The purpose of this campaign was “to raise awareness and generate feedback about gender harassment and discrimination in the legal profession.” Licensees were encouraged to share their experiences of gender harassment and discrimination by submitting accounts of their experiences via anonymous postcards.<sup>75</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>76</sup>

The Working Group envisions a system through which anonymous discrimination complaints can be made to the DHC. If a certain threshold of complaints about a legal workplace is reached, the DHC can speak with the management of the legal workplace regarding the culture of the workplace and systemic issues. The purpose of these discussions would be remedial, rather than punitive. Proposed solutions could include implementing or adjusting policies and procedures or delivery of educational programs.

A review of the functions, process and structure of the DHC should take into consideration the concerns raised through the engagement and consultation processes and the anonymous complaint models outlined above.

In addition to feedback about the DHC Program, the Working Group heard concerns from consultation participants that systemic discrimination and reprisal for filing complaints are not explicitly cited as conduct violations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*. Although the Law Society may investigate complaints of systemic discrimination and reprisal, the Working Group believes that it is important to state this plainly in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* so that all licensees and members of the public are aware.

The Working Group has also heard that a certain level of expertise is essential in dealing with complaints to the Law Society of racial discrimination, particularly systemic discrimination. A trained team of Professional Regulation staff, equipped to deal with racial discrimination complaints, would assist in understanding and addressing the subtleties that often exist in racial discrimination cases.

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<sup>73</sup> Please see <https://secure.ethicspoint.com/domain/media/en/gui/27291/index.html>

<sup>74</sup> “Fight against discrimination: Copenhagen is for everybody”, online: The City of Copenhagen <https://international.kk.dk/artikel/fight-against-discrimination>

<sup>75</sup> “It will be our little secret”, online: Nova Scotia Barristers' Society <http://nsbs.org/sites/default/files/cms/menu-pdf/gecpostcardbooklet.pdf>

<sup>76</sup> *Ibid.*

In addition, racial discrimination often has systemic roots. It is suggested that the Law Society review its processes and consider ways to make them more effective in addressing systemic discrimination.

The Working Group believes that in order to create a safe space in which licensees can feel comfortable in making complaints of racial discrimination, including complaints related to systemic discrimination, the Law Society should engage in the abovementioned initiatives.

#### The operations of the Law Society of Upper Canada

### **Recommendation 13 – Leading by Example**

- 1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:**
  - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;**
  - b) measuring quantitative progress through a census of the workforce or other method;**
  - c) measuring qualitative progress by conducting inclusion surveys;**
  - d) conducting regular equality, diversity and inclusion self-assessments;**
  - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;**
  - f) publishing relevant findings from b), c), d) and e); and**
  - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.**
- 2) The Law Society will:**
  - a) conduct an internal diversity assessment of the bench composition and publicize the results;**
  - b) provide equality and inclusion education programs for Convocation on a regular basis.**

The rationale for the adoption of human rights/diversity policies to address fair recruitment, retention and advancement; for measuring quantitatively and qualitatively progress; and for conducting self-assessments is well articulated in this report. The strength of having diversity at the board level is also well documented. The Maytree Foundation, for example, notes that,

Governance is the top tier of leadership, where ultimate oversight, strategic direction and policy are determined. But equally important is the representational role that boards uphold. A lack of diversity at this level has sweeping implications for how underrepresented groups see themselves, their relevance and their place at the decision-making table.<sup>77</sup>

During the engagement and consultation processes, participants indicated support for an internal equality audit of the Law Society workforce and the development of a more diverse public face/image

<sup>77</sup> Please see DiverseCity on Board at <http://diversecityonboard.ca/about/>

for the Law Society, including at the governance level. The Working Group is of the view that the Law Society must take a leadership role and model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

The Law Society has committed to a number of initiatives to increase diversity and inclusion in the organization:

- **Operational Equity Audit:** In 2015, with the assistance of Canadian Centre for Diversity and Inclusion (CCDI), the Law Society undertook an Operational Equity and Diversity Audit to assess the services provided to licensees and the public and to determine whether there are barriers that are contributing to inequality or perceived inequality in the provision of those services – in particular, involving members of racialized and Aboriginal communities. The Law Society is currently working through the results of this audit to determine where improvements can be made in its operations.
- **Employee Diversity Census and Inclusion Survey:** Earlier this year, the Law Society, also with the assistance of CCDI, launched an employee diversity census and inclusion survey. The purpose was to collect data to help the Law Society better understand the make-up of its organization and how to best serve Law Society staff's needs. There was a 72% response rate, which was excellent, and the results will assist with the Law Society's efforts to promote a diverse and inclusive culture that is supportive to all employees.
- **Employee Engagement and Enablement Survey:** This year the Law Society has also conducted an Employee Engagement and Enablement Survey, assisted by the Hay Group, in order to improve the effectiveness of its organization and enhance communications between management and employees at all levels.
- **Bencher Diversity Survey:** Convocation has identified conducting a diversity survey of the bencher composition as a priority for this term. We are currently working on finalizing this survey.

As mentioned above, both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* provide that licensees have special responsibility to uphold human rights principles, protect the dignity of individuals and recognize diversity and inclusion. The Law Society is committed to identifying barriers and gaps in its workforce and governance and implementing comprehensive equality, diversity and inclusion initiatives to improve equality, diversity and inclusion.

## Appendix A

### Results

#### Summary of Community and Consultant Engagement Process Results

*“You work harder to prove yourself. You cannot necessarily do things that your white colleagues can do as there is a different connotation. Generally I have always been told that I have to work harder than my white counterparts. Which in some respects is sadly still true at this day and age.”*

— Community Liaison Meeting

The qualitative and quantitative data obtained from the engagement processes identified widespread barriers experienced by racialized licensees within the professions at all stages of their careers.

Key informants, focus group participants and survey respondents identified racialization as a significant factor that shapes the experiences and career outcomes of racialized licensees. The consultant engagement results indicated that racialized licensees have a lower success rate in securing job placements, finding first jobs and securing suitable practice environments. Moreover, racialized licensees felt that they were disadvantaged in law school and that they had not advanced in their careers at the same rate as their non-racialized colleagues.

Racial and ethnic barriers were ranked highly among the barriers to entry and advancement. Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry to practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees frequently identified physical appearance, socioeconomic status, place of birth and upbringing, age, manner of speaking English/French and gender identity as barriers — more so than non-racialized licensees. Racialized licensees were also more likely to have struggled to find an articling position or training placement.

Similarly, 43% of racialized licensees identified ethnic/racial identity as a barrier/challenge to advancement, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees were more likely than non-racialized licensees to believe they had not advanced as rapidly as colleagues with similar qualifications.

Racialized participants identified a number of specific challenges faced in the professions. Community liaison process participants, key informants and focus group participants provided numerous examples of discrimination and stereotyping faced in the everyday professional experiences of racialized licensees. Some experiences were overt, while others were more subtle. Participants spoke of assumptions by members of the professions and clients that racialized lawyers are unskilled employees, interpreters, social workers, students or clients. Participants also identified situations where racialized licensees were excluded from files and client meetings based on personal characteristics. Some participants stated that in some cases, licensees from certain parts of the world were associated with terrorism. The Working Group heard a number of participants say, “you can’t just be good, you have to be better.”

Racialized participants spoke about challenges linked to cultural differences and fit. Many racialized licensees stated that they felt alienated from the dominant culture of firms. They provided examples of

firm-related social events, which involved playing hockey, playing golf and drinking alcohol. Some racialized licensees indicated that they did not participate in these activities and therefore they did not “fit”, noting that “fit” was important for entry and advancement. Some participants also stated that they were not offered career opportunities because of their “foreign sounding” names.

Participants spoke in detail about the lack of access for racialized licensees to mentors, networks and role models. Racialized participants indicated that they were not aware of programs or resources available to them. They also noted that they did not have the same professional connections and networks as their non-racialized colleagues and lacked role models in their field within their ethnic communities.

Participants noted that race-based barriers are often complicated by the additional experiences of discrimination based on sex, gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions.

Generally, participants noted that the challenges faced by racialized licensees impact the reputation of the legal system in Ontario, affect access to justice for Ontarians and affect the quality of legal services for the public.

### Summary of Consultation Process

The Working Group received thoughtful oral and written submissions from the professions regarding strategies to address the challenges faced by racialized licensees.

#### A. Enhancing the internal capacity of organizations

The Working Group posed the following questions related to this theme in the consultation paper:

- How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?
- What is the preferred model for the collection of firm demographic data and why?
- How could the Law Society work with in-house legal departments to develop model contract compliance programs for in-house legal departments that retain firms?

### Diversity Programs

*“We need to encourage firms to be champions of diversity.”*  
— Participant

Consultation participants showed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces. Participants reminded the Working Group that a “one size fits all” approach should be avoided — firm size, industry and geographical location should be considered if the Law Society is to develop diversity programs.

A number of participants supported the idea of creating a diversity project modelled on the Law Society of Upper Canada's *Justicia Project*. Such a project would include the development and adoption of

resources for the fair recruitment, retention and advancement of racialized licensees.<sup>78</sup> Participants were divided, however, on whether diversity programs should be mandatory or voluntary. Some participants noted that voluntary programs create buy-in and a willingness to create change. A number of participants stated that it is important to have “diversity champions” who will lead change from the top-down. Participants outside of the Greater Toronto Area (GTA) that work in small firms saw the value of voluntary programs as small firms may lack the resources to implement mandatory programs. Some participants noted that mandatory programs could create backlash.

Participants in favour of mandatory programs argued that mandatory programs create stronger awareness of equality and diversity issues. One participant, who had experience with employment equality programs, said that it is necessary to have an enforcement mechanism in place. Other participants believed that, at the very least, the Law Society should require legal workplaces to have equality and diversity policies in place. Some participants suggested that the Law Society ask licensees to answer questions related to their firm’s policies in the annual report in order to prompt change. Although it was suggested by some that requirements could include mandatory targets for the number of racialized licensees that must be interviewed or hired by legal workplaces; the majority of participants were strongly opposed to the creation of mandatory hiring targets and timelines.

Some participants supported the proposal that firms complete a self-assessment about their diversity performance, which would include more than an analysis of demographic data. One participant stated:

Beyond numbers, look at the ways in which interactions are made, the ways in which people are hired, anti-nepotism policies, mentoring programs. All of these things are bigger pieces of the diversity pie.

The majority of participants interested in this idea indicated that the self-assessment should be voluntary; however, the Law Society could provide incentives for firms to engage in this process. There were some participants who were in support of mandatory self-assessments that would be conducted by employees instead of firm management to garner more valuable results. Additionally, participants stated that the Law Society should provide legal workplaces with self-assessment templates and tools.

### *Collecting Demographic Data*

*“Data collection is a humble but important first step.”*  
— Participant

The Working Group heard a broad range of views on the issue of demographic data collection; however, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”. Some participants believed that mandatory data collection is crucial to advancing diversity and inclusion, while others believed that mandatory collection could halt the progress that is already being made by legal workplaces in the area of equality and diversity.

Participants on the side of mandatory collection had a number of suggestions related to the methods of collection and reporting. The majority of participants, including those in small firms and outside of

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<sup>78</sup> The Justicia Project was launched in 2008 to create a collaboration between medium and large sized firms and the Law Society. The participants signed agreements and committed to develop policies, resources, practices and programs that would address barriers women face in the legal profession in relation to retention and career advancement. The Justicia Project prompted law firms to review policies and practices and to participate in the creation of resources on subjects such as leadership, business development, career advancement, parental leave and flexible work engagements, in order to increase the retention and advancement of women lawyers.

Toronto, were in favour of the Law Society collecting demographic data. Some participants suggested that the Law Society could use the data collected in the annual report to provide legal workplaces with their individual legal workplace demographic data and aggregate demographic data of legal workplaces of similar size and location to provide a benchmark. Participants also noted that it would be useful to capture information about inclusion and advancement in addition to numbers. Some participants in favour of mandatory reporting stated that, in order to encourage change, the demographic information for each firm should be publicly available.

Participants in favour of voluntary data collection noted that a number of large firms are already engaging in demographic data collection and inclusion surveys, and are committed to this work. Should the Law Society mandate data collection, it could have a negative effect on the work already being done. Participants from small firms indicated that they are unsure how mandatory data collection would be enforced. Some participants believed that demographic data should be reported, but on a voluntary basis. A number of participants suggested setting data collection as a criterion of a voluntary diversity program. The Law Society could then incentivize data collection by providing ratings or awards for meeting certain levels of diversity and inclusion.

### *Contract Compliance*

*“The case for diversity and inclusion has a business foundation”*

— Participant

The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity. A number of participants highlighted the Bank of Montreal's contract compliance program and the work of the Legal Leaders for Diversity (“LLD”) as best practices in this area. Some participants suggested that the Law Society work with LLD, other in-house counsel associations and firms to develop model diversity-related procurement and contract compliance policies.

Some participants noted that they would discourage mandatory contract compliance as often people respond better to incentives rather than punitive consequences. Some participants from small firms pointed out that strict mandatory contract compliance related to diversity could be difficult for small firms and lead to them being unable to compete for work.

## *B. Mentoring, advisory services and networking*

The Working Group posed the following questions related to this theme in the consultation paper:

- What are the preferred mentoring and/or advisory services models for racialized licensees?
- What are the preferred networking models for racialized licensees?

### *Mentoring and Advisory Services*

*“Mentoring is not one size fits all.”*

— Participant

The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees; however, ne group of participants noted that, some cases, mentoring “...serves to reproduce institutional inequality and assist white licensees in securing inclusion within social institutions and the professions”.

In November 2013, Convocation created the Mentoring and Advisory Services Proposal Task Force (“Mentoring Task Force”) to consider mentoring, advisor and other support services for lawyers and paralegals. The Working Group worked with the Task Force and shared with the Task Force members the information obtained on mentoring and advisory services from the consultation process. In January 2016, Convocation approved a new law practice coaching and advisory initiative, which “...will assist in the development of competent legal professionals by supporting the growing need in the professions for short-term advisor supports addressing file-specific and substantive/procedural matters, and longer term coaching supports to foster best practices.”<sup>79</sup>

### Types of Mentoring and Advisory Services

Generally, the Working Group heard that there is no “one-size-fits-all” model for mentoring. Different types of mentoring may be required at different stages of a person’s career for different purposes. For example, mentoring could be offered to provide assistance on specific cases or it could be related to how to navigate the professions as a racialized licensee.

A number of participants highlighted the importance of providing mentoring for sole practitioners and internationally trained lawyers. Paralegal participants told the Working Group that there is a shortage of mentoring programs in the paralegal community and thus a significant need. Other participants noted that racialized licensees in large firms do not have role models within their firms so would benefit from some assistance to find mentors from outside their firms.

A significant number of participants emphasized that sponsorship<sup>80</sup> is also essential to the career advancement of racialized licensees, noting that it would be helpful to have sponsors or champions advocating for individual licensees at decision-making tables.

### Structure of Mentoring and Advisory Services

Some participants stated that it would be useful to have a panel of mentors who could address different facets of a licensee’s career, including providing advice on navigating barriers, substantive legal issues or career advancement. Participants also noted that mentoring should be provided to students before law school, to address pipeline issues, and in law school.

A number of legal workplaces described their mentoring programs and expressed interest in working collaboratively with the Law Society to help licensees in need of mentoring. One way in which this could take place is using enhanced website services and creating a highly functional and welcoming online mentoring community with links to partner legal workplaces. As many legal workplaces have their own websites, the Law Society could function as a connector to these kinds of services. Participants also suggested that the Law Society develop, in collaboration with legal workplaces, best practices toolkits and/or guidelines on mentoring.

<sup>79</sup>For further information, please see <https://www.lsuc.on.ca/with.aspx?id=2147502150>

<sup>80</sup> Sponsorship is distinct from mentoring. While a mentor can offer advice and insights to help the protégé achieve her career goals, a sponsor uses his or her clout to give the protégé access to opportunities for advancement. See *Justicia Guide to Women Leadership in Law Firms* (Toronto: The Law Society of Upper Canada, 2013) at 25.

Participants proposed various mentoring models including one-on-one mentoring with various mentors for different purposes, study groups with licensees who have similar challenges and group mentoring to assist with practice management and career advancement. Some participants suggested that junior licensees could also mentor other junior licensees from the same racialized community. In a similar vein, some participants stated that junior racialized licensees could act as effective mentors to senior non-racialized licensees.

Participants noted that it is often difficult to find willing and experienced mentors. One participant for example noted difficulties finding racialized mentors because, “we are not grooming racialized lawyers to become leaders.” Some participants suggested that the Law Society could ask licensees to indicate in the annual report or using another methodology such as the Law Society Portal, their willingness to act as mentors. The Law Society could then create a mentor roster. Similarly, other participants suggested having a web-based registry for mentors, which could include the mentors’ area of law and their time availability. Incentives for mentors could include the receipt of professionalism hours for mentoring services or discounted CPD programming. Some participants believed that the Law Society should compensate mentors, while others believed this would negatively impact the mentor-mentee relationship. Participants suggested that mentors should be culturally competent.

Participants outside of the GTA highlighted specific issues related to mentoring in their regions. A number of participants noted that the majority of professional associations that represent equality-seeking groups do not operate outside of the GTA, which limits access to association-based mentoring programs. One participant stated that if mentoring was to be offered in-person, it should be geographically accessible for licensees in areas across the province.

### *Networking*

*“Have more inclusive events.”*

— Participant

Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging. Some participants suggested that it would be useful for the Law Society to facilitate collaboration between the various associations and/or to promote already-existing networking opportunities provided by the associations.

Some participants told the Working Group that legal associations are often too costly to join. One group of participants suggested that the Law Society provide subsidies to racialized licensees to assist them to join associations.

Some of the associations also described concern with the cost of holding events for their sectors of the bar at the Law Society and expressed interest in having “in-kind” support and partnership from the Law Society to make those events accessible to diverse communities of lawyers.

Some participants proposed that the Law Society hold regional networking events for licensees. Others noted that CPD programs can be good networking opportunities. However, some participants stated that the cost of CPD programs can be prohibitive and suggested that the Law Society provide low-cost or sliding scale CPD programs. One participant suggested that the Law Society “host planned and structured networking events that are, in location and content, culturally relevant to different groups of racialized licensees.” Some participants noted that hosting alcohol-free events would increase inclusivity.

Participants highlighted the fact that internationally trained lawyers and sole practitioners feel particularly isolated, so networking opportunities should also be targeted to these groups.

### C. Enhancing cultural competence in the professions

The Working Group posed the following question related to this theme in the consultation paper:

- How could the Law Society enhance the professions' cultural competence through its CPD programs?

#### CPD Programs

*"We need to be educated about diversity."*

— Participant

A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory CPD training on cultural competency, unconscious bias, and anti-racism. Some participants suggested that refresher sessions should be mandated "at intervals over the course of licensees' careers."

Others suggested that this CPD training be provided on a voluntary basis. There was concern expressed that requiring this form of training to be taken by all could be counter-productive. In either case however, participants agreed that professionalism credits should be provided CPD training on these topics.

In terms of content, participants suggested that cultural competency training should go "beyond learning about cultural practices of 'other' cultures and towards an examination of bias, inequality and discrimination". Similarly, one participant noted that the Law Society should "utilize an anti-discrimination, anti-racism and anti-oppression framework focused on deconstructing power structures and privilege — not on cultural competency." Participants also suggested that the Law Society work with associations of racialized licensees and/or with knowledgeable experts to develop content for the training sessions.

Some participants highlighted the importance of requiring licensees involved in recruitment, hiring and promotion decisions to participate in CPDs related to cultural competency and unconscious bias, specifically addressing topics such as bias-free interviews. One participant stated, "If attitudes don't change, the numbers are not going to change." Participants suggested that this CPD programming could be offered via webcast during summer student and articling interview periods. It was also proposed that the Law Society deliver these programs and other cultural competence and anti-discrimination and harassment programs at firms.

A number of participants noted the need to ensure that education on cultural competency, unconscious bias, anti-racism and anti-oppression start at law school and in the Licensing Process. A participant suggested that the Law Society use its seat on the Federation of Law Societies to encourage the inclusion of cultural competency and diversity awareness as part of the core law school curriculum. One group of participants suggested adding a cultural competency course to the college curriculum for paralegal programs. Some participants proposed including cultural competency, diversity and inclusion in the Professional Responsibility and Practice Course that articling students must complete.

It was proposed that all benchers attend cultural competency training in order to enhance awareness at the governance level and ensure that equality, diversity and inclusion are taken into account throughout the policy development process.

Generally, participants stated that CPD programs should be widely available via webcast and recorded. Additionally, some participants suggested that the cost of CPD be reduced, perhaps by working with regional associations.

#### D. Discrimination and the role of the complaints process

The Working Group posed the following question related to this theme in the consultation paper:

- How should the Law Society best ensure that complaints of discrimination are brought to its attention and effectively addressed?

##### *Complaints of Discrimination*

*“People have to feel comfortable in accessing policies.”*

— Participant

The Working Group heard a range of suggestions on encouraging licensees to bring forward complaints of discrimination.

Participants suggested updating the *Rules of Professional Conduct*<sup>81</sup> and the *Paralegal Rules of Conduct*<sup>82</sup> to specifically address systemic discrimination and subtle forms of discrimination. Some participants recommended advertising that complaints of discrimination can be made through the complaints process and devoting more resources to promoting the Discrimination and Harassment Counsel Program.

Participants noted that licensees will often refrain from reporting experiences of discrimination because they fear the negative impact a complaint might have on their careers and reputations. One participant stated, “We don’t want to rock the boat or be considered a troublemaker”.

Some participants were in favour of the Law Society creating an anonymous system of receiving complaints. However, licensees in small firms said this would not be helpful for them as their firms are too small for them to remain anonymous. Some participants that supported an anonymous complaints process recommended that the Law Society investigate firms that have been the subject of a number of anonymous complaints. Participants also suggested amending the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to include a provision that states that reprisals for complaints of discrimination and harassment are prohibited.

Participants believed that bringing a complaint through an association may not alleviate the issues raised. Some participants suggested that the Law Society ask licensees, using the annual report, whether they have ever experienced discrimination. This information could then be compiled by legal

<sup>81</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>82</sup> *Paralegal Rules of Conduct* The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

workplace and provided to legal workplace management. Other participants proposed that the Law Society audit firms to ensure that they have policies related to equality, diversity, discrimination and harassment.

Regardless of the method taken to receive complaints, participants noted that it is important for the Law Society to advise complainants of what action was taken.

Some participants noted it would be helpful to have a group of diverse expert Professional Regulation staff who are trained in cultural competency and have an understanding of racial discrimination.

## E. The operations of the Law Society of Upper Canada

*“The best thing the Law Society can do is start to mirror the behaviour they want to see.”*

— Participant

The Law Society received support from participants for its proposals to enhance its current equality compliance program, conduct an internal equality audit, collect further data on the regulatory process and develop a more diverse public face/image for the Law Society. A number of participants have emphasized that the Law Society must model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

On a few occasions, participants at the meetings and open houses noted the lack of diversity of Working Group presenters. Working Group members attended and presented at open houses and meetings when their schedules permitted, and at some meetings, the group of presenters did not reflect the diversity of racialized licensees at those meetings. That became a point of discussion with participants expressing concern about the overall diversity of Convocation, but also expressing satisfaction that there are non-racialized benchers who are interested in being part of change and in hearing from licensees on these subjects. It is important to note that a bencher election was conducted during the consultation process and the composition of Convocation appears to be more racially diverse than ever and representative of the professions.

### *White Privilege*

Consultation participants spoke of “white privilege”<sup>83</sup>, and expressed the need for all to acknowledge its existence in order to address the challenges faced by racialized licensees. A number of participants noted that it is important for licensees to understand how power operates to produce advantages for some and deny advantages to others.

### *Daily Verbal, Behavioural and Environmental Indignities*

Consultation participants provided descriptions of their experiences of commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate

<sup>83</sup> The Ontario Human Rights Commission defines “privilege” generally as ‘unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. It can also refer to the relative privilege of one group compared to another. “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2475>

hostile, derogatory or negative racial slights.<sup>84</sup> Examples ranged from assumptions that they are not licensees but in fact interpreters or accused, to inappropriate questions regarding their perceived “otherness.” Participants noted that it is important for licensees to understand the impact of such behaviour and for the Law Society to find ways to address these subtle forms of discrimination.

*Indigenous Licensees and Racialized Licensees: Historical and Geographical Differences*

Open house learning and consultation programs in Northern Ontario yielded interesting information about the similarities and differences between the experiences of Indigenous licensees and licensees that self-identify as racialized. Participants in Thunder Bay noted that, in terms of race and racism, the population in northern areas of the province is often divided into Indigenous and non-Indigenous peoples. Participants identified several examples where they had witnessed racism directed at Indigenous people and where they had observed that racialized people were treated differently from non-racialized people. It was noted that because of constitutionally protected Indigenous and Treaty rights, Indigenous peoples are in a different position than racialized and non-racialized peoples in Canada. As a result of these distinctive histories, strategies to respond to racism faced by Indigenous peoples and to racism faced by racialized peoples should differ. The Law Society's policy work reflects this uniqueness, including the work of the EAIC and other initiatives that are outside the scope of this project. The Law Society is also vigorously pursuing an Indigenous strategy in consultation with the Indigenous Bar.

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<sup>84</sup> Such behaviour is sometimes referred to as microaggression. Sue et al. define microaggressions as “the brief and commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory or negative racial, gender, sexual orientation and religious slights to the target person or group.” Sue et al. note that “Perpetrators of microaggressions are often unaware that they engage in such communications when they interact with racial/ethnic minorities.” Please see [http://www.cpedv.org/sites/main/files/file-attachments/how\\_to\\_be\\_an\\_effective\\_ally-lessons\\_learned\\_microaggressions.pdf](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)

Tab 4



# **REPORT TO CONVOCATION**

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**SEPTEMBER 2016**



TO: The Treasurer and Benchers of The Law Society of Upper Canada

**RE: 2017 Insurance Program: Transmittal of Report to Convocation**

Planning for 2017, LAWPRO continues to make careful adjustments to address the evolving legal environment in Ontario. The company has established over 20 years of historical claims data that can be used when reviewing the Program of insurance each year. Our commitment is to refine the Program policy and terms to take into account developments in the profession we serve. These developments drive the changes in our offer to Convocation this year.

***Premium reduction in 2017***

Our offer of insurance for 2017 includes a base premium of \$2,950 per lawyer; a decrease of \$400 from the base premium charged from 2011 through 2016. This reduction has been determined after careful analysis of claims history, capital accumulation, and the need to continue to operate the company in a commercially reasonable manner.

Part of LAWPRO's mandate is to offer a base premium for the primary Program that reflects the greatest possible savings for the bar that the size of the premium pool and solvency requirements permit. The base premium of \$3,350 from 2011 to 2016 reflected rapid increases in the number and cost of claims, combined with severe volatility in the world investment markets in the late 2000s. If claim results continued as our models indicated, substantial reserves needed to be maintained to keep the Program properly funded.

Our recent data shows that, although claims are still high, they are not accelerating at the rate projected in the past. Claims expenses have in fact tended to grow at the same rate as the increase of the number of insured lawyers in the province.

In terms of capitalization, our result under the new Minimum Capital Test calculation (the main solvency test for Canadian insurance companies) is projected to satisfy the preferred range set by our Board. This indicates a strong financial position.

Taking into account these two factors (moderating claims growth and strong capitalization), it is appropriate to responsibly, and consciously, lower the base premium, to the benefit of all our Program insureds.

This change reflects our commitment to offer appropriately priced insurance, maintaining the stable and predictable service and solvency on which the Law Society, Ontario insured lawyers and the public depend.

***Strategies to promote access to justice***

To promote access to justice and to address the lower demonstrated risk of certain employed lawyers, a new premium adjustment is proposed for lawyers who are employed by specific

Designated Agencies, provided the lawyers only perform professional services for third parties pursuant to their employment and on a no-fee basis. Such lawyers typically assist those who would otherwise have challenges in accessing legal advice, and thus advance access to justice.

The amount of this discount is 75 per cent of the base rate. As well, the 2017 Program Policy will be amended to exempt these lawyers from civil litigation transaction levy payments as long as those services are provided in the course of the lawyer's employment with a Designated Agency.

### ***Adjustments in coverages for seconded lawyers***

There are occasions when lawyers in private practice go on temporary secondment to corporate clients of their firms. Seconded lawyers face different risks than either employed corporate counsel or lawyers in traditional private practice and the Program requires amendment to reflect this.

The seconded lawyers take instructions directly from their firm's client and may have only restricted access to the firm's resources during the period of secondment. The firm clients should be treated similarly to non-licensee employers where the client during the secondment meets the definition of "corporate employer" in the Program policy. This ensures, from an underwriting perspective, that the substance of the risk takes precedence over the form of the relationship with the lawyer.

For 2017, our offer of insurance is to amend the policy to exclude claims brought by corporations against seconded lawyers and to extend the \$250,000 defence-only coverage to the benefit of the seconded lawyer if the "employer exclusion" of the Policy applies.

### ***Protecting the profession and the public***

For many years LAWPRO has had the power to report insured conduct to the Law Society in certain circumstances set out in the Program policy. The reporting terms have not changed in approximately 20 years. In light of recent significant changes to Rule 7.1-3 of the *Rules of Professional Conduct*, our offer includes allowing LAWPRO to notify the Law Society in any circumstances in which a Law Society licensee would be required to report another licensee.

As well, to reduce the potential for practice disruptions and minimize administration, it is proposed that LAWPRO be empowered to reinstate most Program options elected by insureds in the previous year when a completed renewal application is not received by the required due date.

### ***Observed changes in proportion of claims by area of practice***

LAWPRO regularly conducts detailed analyses of the risks associated with the Program. As we have mentioned before, the practice of real estate and civil litigation represent a large portion of risk when compared to other areas of practice.

These two areas of practice represent 70 per cent of the claims reported and 64 per cent of the claims costs under the Program in 2015.

However, the exposure relating to the practice of civil litigation continues to grow substantially more than in the past, with civil litigation accounting for 44 per cent of the claims reported and

43 per cent of the claims costs under the Program. Missed limitation period claims (including administrative dismissals) accounted for almost 31 per cent of litigation claims, whereas general conduct or handling of the matter accounted for about 69 per cent of these claims. We will continue our efforts to educate the bar on risks around changes to Rule 48 and the January 1, 2017 deadline.

Transaction and claims history surcharge levies continue to be an important way to manage the costs of areas of practice with higher claims risk. By including the transaction and claims history surcharge levies in most recent years, a shortfall for real estate and civil litigation claims costs have typically been overcome. Therefore, it is proposed to maintain the levies at the same level for 2017.

### ***Conclusions***

LAWPRO Board members and management will use our history to inform our future. Change is constant and data is every insurance company's primary tool to manage change. We are able to offer an affordable and effective insurance program by staying sensitive to the needs of a changing bar which we believe is evident in this offer.

***Original signed by Susan McGrath***

Susan T. McGrath  
Chair

***Original signed by Kathleen Waters***

Kathleen A. Waters  
President & CEO

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## **LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")**

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### **REPORT TO CONVOCATION – SEPTEMBER 2016**

#### **BACKGROUND**

1. The Law Society of Upper Canada ("Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage for legal malpractice claims. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.
2. The coverage that the Law Society's mandatory insurance program ("Program") provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have a degree of financial protection for their professional liability that is well-suited to most lawyers' practice needs.
3. In recent years, we have seen an upward trend in the number of open claims files, with approximately 3,608 open files as at December 31, 2015, estimated to have a gross value of \$460.1 million. Overall, the Program manages about 84 per cent of the Law Society's over \$830 million in combined assets.
4. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation on changes to the Law Society's Program for the following calendar year. The timing of this report is necessitated by the logistics of renewing over 26,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.
5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy

direction where necessary. Financial information on LAWPRO and the Program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report ("Task Force Report"). The mandate and principles of operation derived from the Task Force Report are as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2017, we have conducted our annual review of the Program to re-validate the approach and rating structure in light of these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed Program for 2017 continues to fulfill these principles. This report deals solely with the Program for the Law Society. The LAWPRO optional insurance segment, composed of TitlePLUS® title insurance and the Excess professional liability insurance program, is planned to operate on an expected break-even or better basis.

## **2017 PROGRAM SUMMARY**

8. The following summarizes the 2017 Program, as provided for in this report.

### ***Premium Pricing for 2017:***

- (i) The base premium is \$2,950 per lawyer for 2017, a decrease of \$400 from the base premium charged in 2011 through 2016 (paragraph 104(a)).
- (ii) Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at \$25.1 million for the purposes of establishing the base premium for 2017 and other budgetary purposes (paragraph 104(b)).
- (iii) The premium for the Real Estate Practice Coverage Option will continue to be \$100 (paragraph 104(c)).
- (iv) 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2017, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus (paragraph 77).

### ***Seconded Lawyers:***

- (v) Many lawyers in private practice go on temporary secondment in order to carry out the tasks of in-house counsel for corporate clients of their firms. Seconded lawyers face different risks than either employed corporate counsel or lawyers in traditional private practice and the Program requires amendment to reflect this. For 2017, the Program Policy will be amended to exclude claims brought by corporations against seconded lawyers for professional services provided while under secondment with them, where notwithstanding the form of the relationship, the claimant meets the definition of a “corporate employer” under the Program Policy. The Policy will also be amended to extend the \$250,000

per claim and in the aggregate defence-only coverage under the endorsement for “Claims Brought by CORPORATE EMPLOYERS” to include coverage for seconded lawyers in those circumstances (paragraph 20).

***Lawyers Employed by Designated Government Agencies:***

(vi) To promote access to justice and to address the lower demonstrated risk, for 2017 the Program will be amended so that a new premium discount is available to lawyers employed by certain designated agencies (“Designated Agencies”), provided the lawyers only provide professional services to third parties pursuant to their employment and on a no-fee basis, and that the amount of this discount should be set at 75 per cent of the base rate. As well, the 2017 Program Policy will be amended to exempt such lawyers from payment of the civil litigation transaction levy provided the services that would normally give rise to the levy are provided in the course of the lawyer’s employment with a Designated Agency (paragraph 25).

***Coverage Options in the Absence of an Application:***

(vii) To reduce the potential for practice disruptions and minimize administration, for 2017 the Program renewal process will be amended so that LAWPRO is able to reinstate most Program options elected by insureds that would otherwise have been removed when no fully completed renewal application for Policy coverage was received when due. The options that may be reinstated in the absence of such an application and carried forward from the previous year’s Policy coverage will be the:

- a) Restricted Area of Practice Coverage option (i.e., including for sole practitioners and lawyers practising in association);
- b) Designated Agency employee option;
- c) Part-time Practice option;
- d) Real Estate Practice Coverage option;

- e) Deductible option;
- f) Payment option (paragraph 28).

***Reporting to the Law Society:***

(viii) Following recent amendments to the Rules of Professional Conduct (the “Rules”), Condition Q of the Policy (“Reporting to the Law Society”) will be amended for 2017 to ensure that LAWPRO is empowered to report activities to the Law Society in any circumstances in which a licensee would be required to report another licensee under the Rules (paragraph 33).

***LAWPRO Risk Management Credit:***

(ix) The LAWPRO Risk Management Credit will be continued for the 2017 Program, with a \$50 premium credit per approved CPD program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2015, and September 15, 2016, for which the lawyer has successfully completed the online Risk Management Credit Declaration Form (paragraph 52).

***Other Program Features (or Adjustments):***

(x) Subject to the changes identified earlier in the report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2016 will remain unchanged for the 2017 Program (paragraph 109).

***The Errors & Omissions Insurance Fund:***

(xi) The investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2017 (paragraph 12).

***Conclusion:***

The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of insurance for 2017 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2017 Program can be implemented by January 1, 2017 (paragraph 110).

## **PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND**

9. LAWPRO provides services to the Law Society with respect to the Errors & Omissions Fund of the Law Society, which is currently in run-off mode. (The Errors & Omissions Fund was responsible for the insurance Program prior to 1990, and for a group deductible of up to \$250,000 per claim prior to 1995.)

10. In recent years the Errors & Omissions Fund resources have been utilized to settle outstanding claims (for Program policies in place between July 1, 1989 and December 31, 1994), maintain its investment in LAWPRO share capital, and make available \$15 million of funds to backstop the potential of significant deterioration in the loss experience under recent years' Program policies. Where the investment income has been considered surplus to the Errors & Omissions Fund's commitments, it has typically been aggregated for use to the benefit of the Law Society for general purposes.

11. As of June 30, 2016, the Errors & Omissions Fund had outstanding claims liabilities of less than \$0.1 million. The number of open files for 1994 and prior years stood at one. Since there are sufficient assets in the Errors & Omissions Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Errors & Omissions Fund is surplus to the needs of the Errors & Omissions Fund and can be used by the Law Society for its general purposes.

**12. Accordingly, the investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2017.**

## **PART 2 – CHANGES TO THE PROGRAM FOR 2017**

13. In developing the details of the 2017 Program, LAWPRO has considered the changing environment in which lawyers practise and any comments received from the profession during the previous year. The general structure of the current Program appears in most ways to meet the needs and practice realities of the profession for 2017.

14. However, for the 2017 Program, four modifications in the structure of the Program or in the form and substance of the policy are contemplated.

### **Seconded Lawyers**

15. When corporate clients look to law firms to fill their need for in-house counsel on a temporary or contract basis, these “secondment” relationships can take many forms. The firm may be a traditional law firm that will send out its associates and partners for limited periods to embed themselves with clients in order to meet their client’s needs as well as enhance familiarity with the client, its operations and structure. Alternatively, the firm providing the service may be a dedicated supplier of contract lawyers who provide solutions to corporations needing assistance with specific projects or when they have a vacant position that needs to be temporarily filled in their in-house department.

16. Typically, the firm which has placed the lawyer in the seconded position will be paid by the corporate client, and will in turn continue to pay the seconded lawyer his or her salary during the period of secondment. But the seconded lawyer would be expected to take instructions directly from the firm’s client and may have only restricted access to the firm’s resources during the period of secondment.

17. Currently, lawyers in private practice, acting on behalf of a law firm’s clients, are considered “Practising Lawyers” and are required to maintain the Program insurance. Lawyers who are employed by a corporation (other than a law corporation) or by government, and who provide professional services only for and on behalf of their

employer, are eligible to claim exemption pursuant to By-law 6, s.9(1)(4) of the *Law Society Act*.

“9. (1) *The following are eligible to apply for exemption from payment of insurance premiums:*

...

4. *Any licensee who, during the course of the year for which a levy is payable,*
  - i. *will be employed by a single employer,*
  - ii. *will engage in the practice of law only for and on behalf of the employer as,*
    - A. *counsel or solicitor to the Government of Canada or the Government of Ontario,*
    - B. *a Crown Attorney,*
    - C. *counsel to a corporation other than a law corporation, or*
    - D. *a city solicitor, and*
  - iii. *will not engage in the practice of law in Ontario other than for and on behalf of the employer.”*

This exemption from maintaining the Program insurance has satisfied the needs of employed lawyers who do work only for and on behalf of the employer because of the degree to which employment law limits claims by employers against employees.

18. Seconded lawyers do not typically qualify for exemption as an employed lawyer under the terms of the By-law. At the same time, given the level of control that the client exerts over the work of the seconded lawyer, there are reasons why these clients should be treated as akin to employers for purposes of their eligibility (or not) for protection under the Program related to the work of the seconded lawyers. In other words, as the clients have effective control over the lawyers' provision of professional services during the period of secondment, to provide indemnity coverage, where notwithstanding the form of the relationship, the claimant meets the definition of a “corporate employer” under the Program Policy, would effectively mean that the clients are obtaining errors and omissions insurance protection under the Program that LAWPRO would not extend to any typical employer.

19. The clients availing themselves of seconded lawyers should be treated similarly to non-licensee employers. This ensures from an underwriting perspective that the substance of the risk takes precedence over the form of the relationship with the lawyer.

If the client who meets the definition of “corporate employer” sues the seconded lawyer for work done during the period of secondment, Part III exclusion (b) will exclude such claims. However, the seconded lawyer will be provided with \$250,000 per claim and in the aggregate defence-only coverage for claims brought by the client for services provided during the period of secondment in accordance with Endorsement No. 11 in those circumstances.

**20. Many lawyers in private practice go on temporary secondment in order to carry out the tasks of in-house counsel for corporate clients of their firms. Seconded lawyers face different risks than either employed corporate counsel or lawyers in traditional private practice and the Program requires amendment to reflect this. For 2017, the Program Policy will be amended to exclude claims brought by corporations against seconded lawyers for professional services provided while under secondment with them, where notwithstanding the form of the relationship, the claimant meets the definition of a “corporate employer” under the Program Policy. The Policy will also be amended to extend the \$250,000 per claim and in the aggregate defence-only coverage under the endorsement for “Claims Brought by CORPORATE EMPLOYERS” to include coverage for seconded lawyers in those circumstances.**

### **Lawyers Employed by Designated Government Agencies<sup>1</sup>**

21. There are lawyers employed by government in certain agencies or groups to provide services to members of the public, typically to enhance access to justice on a no-fee basis. These lawyers do not qualify for exemption under By-law 6, s. 9(1)(4) because their practice of law is not restricted “for and on behalf of the employer.”

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<sup>1</sup> This will not affect those employed or volunteering in a clinic within the meaning of the *Legal Aid Services Act, 1998*, a student legal aid services society, or an Aboriginal legal services corporation, as those licensees generally qualify for exemption from payment of insurance premium levies under Section 9(1)(6) of By-law 6.

22. Based on what is known of the claims history for lawyers practising in sample agencies with which the Law Society and LAWPRO have been in contact, they appear to represent a substantially lower risk than most other practice types, with relatively few claims being brought against these types of agency lawyers for services provided to the public. Nevertheless, it is important that such agency lawyers be included in the Program: it guarantees that their clients (who are members of the public) are entitled to the same consistency and equality of approach to any negligence-related disputes that arise; that LAWPRO has the ability to oversee and influence as appropriate the standard of care expected of all Ontario lawyers serving the public; and that LAWPRO's data on causes of claims and areas of loss remains comprehensive, so it can develop effective risk management initiatives.

23. After careful review of the risks posed by the services provided by sample agency lawyers, and the public interest in promoting access to these types of initiatives, LAWPRO is satisfied that a new premium discount option for lawyers employed by qualifying employers should be introduced, and that the amount of this discount should be set at 75 per cent of the base rate. This discount would apply to one or more designated government agencies or programs that in exercise of LAWPRO's underwriting discretion meet the risk-based assessment and conduct work that promotes access to justice and merits support within the broader community.

24. Lawyers employed by a Designated Agency who only provide professional services to third parties on behalf of the employer will not just receive a significant discount on the base premium, but will also be exempt from payment of the civil litigation transaction levy (described in Endorsement No. 3 of the Policy) if the services normally giving rise to the levy are carried out in the course of their employment with the Designated Agency.

**25. To promote access to justice and to address the lower demonstrated risk, for 2017 the Program will be amended so that a new premium discount is available to lawyers employed by Designated Agencies, provided the lawyers only provide professional services to third parties pursuant to their employment**

**and on a no-fee basis, and that the amount of this discount should be set at 75 per cent of the base rate. As well, the 2017 Program Policy will be amended to exempt such lawyers from payment of the civil litigation transaction levy provided the services that would normally give rise to the levy are provided in the course of the lawyer's employment with a Designated Agency.**

### **Coverage Options in the Absence of an Application**

26. Prior to the annual policy renewal, or when an insured who was exempt is required to again carry practise coverage, completed application forms must be submitted by a date set by LAWPRO. In the event a lawyer (or paralegal insured) fails to file the appropriate application form, LAWPRO will still issue the Program coverage to ensure that those in practice continue to be insured as required, but in the past this coverage has generally been void of non-standard coverage options. This approach was consistent with instructions given by Convocation in 1996.

27. Stripping non-standard coverage options from a lawyer's coverage can prove a hardship for the lawyer (who will usually contact LAWPRO to unwind the change), inconvenience the lawyer's clients (if, for example, the lawyer's real estate practice coverage is removed and a real estate transaction is pending) and create unnecessary administrative work for LAWPRO staff. For LAWPRO staff, considerable time after the renewal period has ended is spent restoring coverage options, with many requests being tendered on an urgent basis (e.g., because of real estate closings already in process).

**28. Accordingly, for 2017 the Program renewal process will be amended so that LAWPRO is able to reinstate most Program options previously elected by insureds that would otherwise have been removed when no fully completed renewal application for Policy coverage was received when due. The options that may be reinstated in the absence of such an application and carried forward from the previous year's Policy coverage will be the:**

- a) **Restricted Area of Practice Coverage option (i.e., including for sole practitioners and lawyers practising in association);**
- b) **Designated Agency employee option;**
- c) **Part-time Practice option;**
- d) **Real Estate Practice Coverage option;**
- e) **Deductible option;**
- f) **Payment option.**

### **Reporting to the Law Society**

29. Lawyers and paralegals must abide by the Law Society's Rules of Professional Conduct if they want to best serve their clients, avoid disciplinary processes and maintain their licenses. Under these Rules, if licensees are aware of certain conduct that may involve a breach they are required to report such conduct to the Law Society.

30. In May 2016 the Law Society amended Rule 7.1-3 of the Lawyer's Rules of Professional Conduct (**emphasis added** to indicate where changes were made to the Rules)<sup>2</sup>:

#### *Duty to Report Misconduct*

*7.1-3 Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer shall report to the Law Society,*

*(a) the misappropriation or misapplication of trust monies;*

*(b) the abandonment of a law or legal services practice;*

*(c) participation in serious criminal activity related to a licensee's practice;*

***(d) conduct that raises a substantial question as to another licensee's honesty, trustworthiness, or competency as a licensee;***

***(e) conduct that raises a substantial question about the licensee's capacity to provide professional services; and***

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<sup>2</sup> The equivalent provision in the Paralegal Rules of Conduct is found in Rule 9.01(2).

(f) any situation where a licensee's clients are likely to be severely prejudiced.

[Amended - June 2007, October 2014, May 2016]

31. Since January, 1998, LAWPRO has had the power to report insureds under the terms of the Policy. In recent years, it is typical for there to be four or fewer reports per year. The condition contained within the Policy that addresses LAWPRO's ability to report insureds to the Law Society is contained in Part IV, Condition Q, which currently provides as follows:

***"Q. Reporting to The Law Society:***

*"The INSURED agrees that, if the INSURER reasonably believes the INSURED to be or to have engaged in activities which the INSURER, in its sole and absolute discretion, considers may be dishonest or criminal or in activities which have had or may have the effect of causing someone to suffer serious damage as a consequence of an apparent breach of the rules of professional conduct, the INSURER may, in its sole and absolute discretion, report such activities to the NAMED INSURED and may, in its sole and absolute discretion, deliver to the NAMED INSURED such information and documents relating thereto that the INSURER, in its sole and absolute discretion, deems appropriate."*

32. Condition Q not only contributes to public protection, but also addresses the fact that LAWPRO's in-house licensees are not exempt from the reporting requirements under the Rules. The wording of Condition Q has remained unchanged since 1998. In essence, it was drafted to co-ordinate with an earlier version of the reporting requirement. Given the changes to Rule 7.1-3 and Rule 9.01(2) made earlier this year, it is appropriate that this condition of the Policy also be updated. The revision proposed means that the Policy condition will automatically track any future revisions of the Rules.

**33. Following recent amendments to the Rules, Condition Q of the Program Policy will be amended for 2017 to ensure that LAWPRO is empowered to report activities to the Law Society in any circumstances in which a licensee would be required to report another licensee under the Rules.**

## **PART 3 – THE PROFESSIONAL LIABILITY INSURANCE PROGRAM**

34. Rapid increases in the number and cost of claims during the mid to late 2000s, combined with severe volatility in the world investment markets in the late 2000s, placed significant pressure on the Program. While the Program is still subject to ongoing uncertainty regarding claims costs and investment income, the gentler growth rate of claims and solid experience in the investment markets over the last five or so years have been key contributors to the Program returning to firmer footing. The proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain LAWPRO's ability to meet the needs of the Program in the years to come.

35. To establish the recommended Program for 2017, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the Program;
- the expected future loss cost;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties in predicting the results of the Program each year.

36. To ensure the Program's long-term viability, LAWPRO and the Board took a prudent approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as emerging claims trends, general economic conditions and inflationary pressures on the claims portfolio.

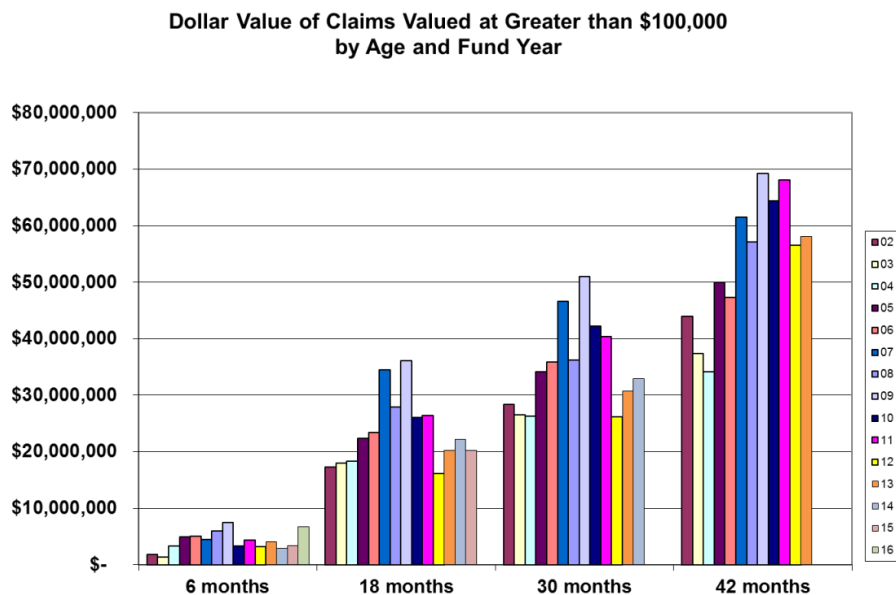
37. As part of its ongoing planning process, LAWPRO looked at a five-year time horizon. Any LAWPRO forecast is reviewed and revised periodically based on new information as it emerges. The subject forecast reflects the trends detailed in this report, and takes a conservative approach to projecting the frequency and cost of claims under the Program. This prudent approach is dictated by uncertainties associated with

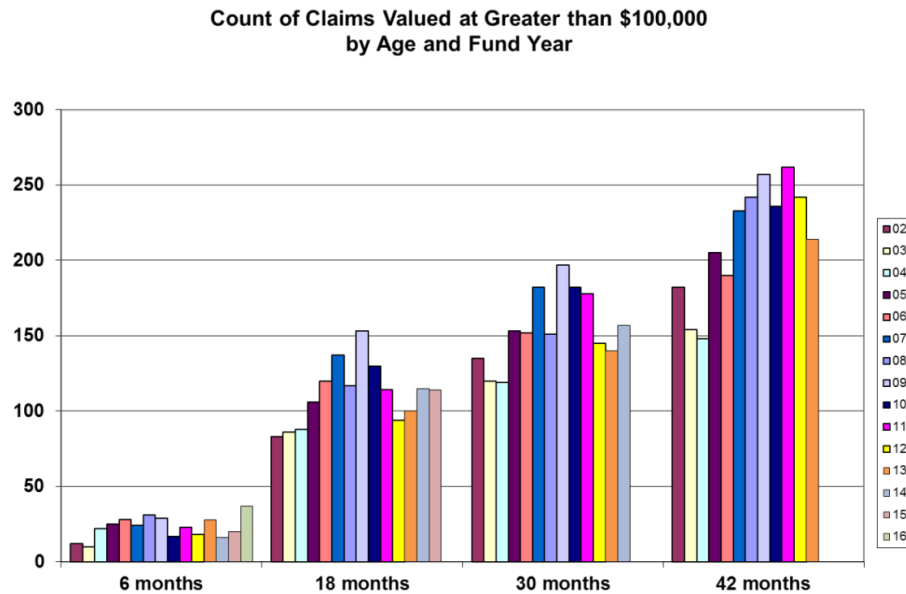
predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent Program changes, as applicable.

## Program Costs

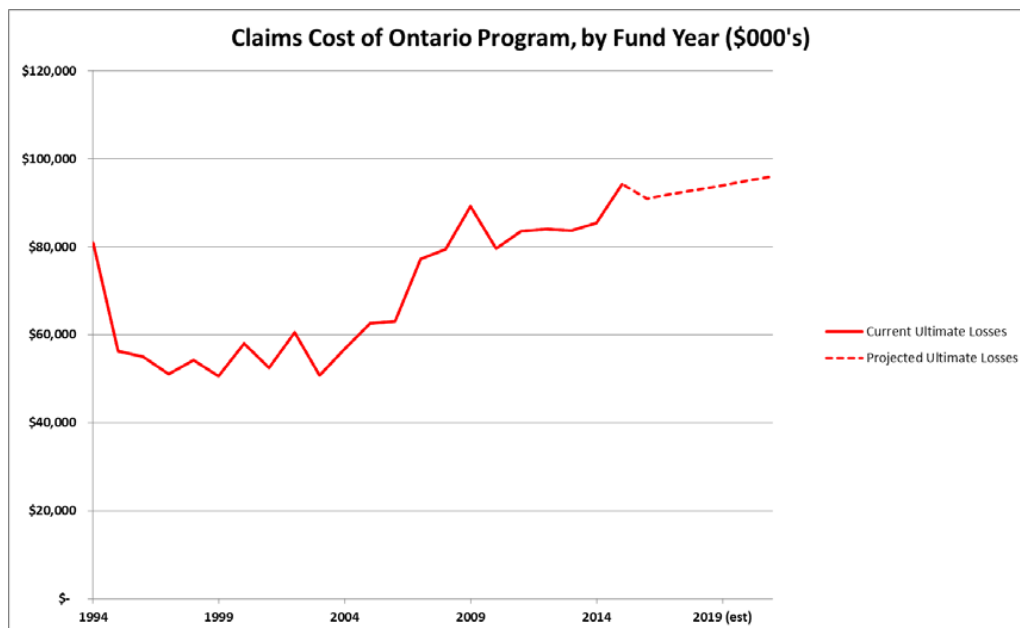
38. LAWPRO's revenue requirements for the 2017 Program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and Program administration.

39. Loss experience has trended up noticeably in terms of frequency since 2004, with more claims reported than in the earlier part of that decade. It is too early to form a final view on the development of the most recent fund years' claims, such as 2014 through 2016, however there is a noticeable recent stabilization in the number of claims involving \$100,000 or more (as seen in the following charts).





40. For 2017, LAWPRO expects direct claims costs alone to be \$93.0 million, a level which has also stabilized somewhat in recent years (see chart following). LAWPRO estimates total Program funds (that is, claims costs plus general expenses) required for 2017 to be \$120.0 million. This estimate is slightly above the current forecast of total Program funds needed for 2016, which is approximately \$119.2 million.



## **Risk Rating**

### **(a) Background**

41. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the Program should generally reflect the risks.

42. Specifically the Task Force Report indicated that "...as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>3</sup>

43. In keeping with this approach, LAWPRO regularly conducts detailed analyses of the risks associated with the Program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

44. The objective of risk rating was finally achieved in 1999 by applying various discounts and additional levies (such as the real estate and civil litigation transaction levies and claims history levy) to the Program.

45. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the Program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the Program are re-evaluated for degree of relevance. The

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<sup>3</sup> 1994 Task Force Report, page 17.

factors currently used to match risk to premium include area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

46. As in the past, LAWPRO's risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a combined basis to determine any correlation or dependencies.

47. In 2016, this review has reaffirmed the overall validity of the rating structure currently in place, subject to certain adjustments in magnitude. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 53 to 70.

**(b) Practice Trends**

48. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represent 70 per cent of the claims reported and 64 per cent of the claims costs under the Program in 2015.

49. In particular

- a) Real estate claims costs have trended upwards since 2001, with real estate accounting for nearly 30 per cent of costs in many of those years. Since 2004, claims costs in this area of practice have increased almost 67 per cent;
- b) In 2015, the exposure relating to the practice of civil litigation again was substantially more than that traditionally seen, with civil litigation accounting for 44 per cent of the claims reported and 43 per cent of the claims costs under the Program;
- c) In 2015, the nature of claims against civil litigators was also reaffirmed, with missed limitation period claims (including administrative dismissals)

accounting for almost 31 per cent of litigation claims, whereas general conduct or handling of the matter accounted for about 69 per cent of these claims; and

- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were about five times more likely to report a claim during the past year than those with no claims in the prior 10 years.

50. The result of this analysis is summarized in the graphs contained in **Appendix “B”** of this report.

**(c) Risk Management Initiatives**

51. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with information, tools and resources that help them manage risk and practice in a more risk-averse fashion. Among LAWPRO’s major risk management initiatives are:

- **TitlePLUS® Program:** TitlePLUS insurance is a competitive title insurance product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also educates lawyers on title insurance and real estate trends. The TitlePLUS program promotes real estate lawyers and recommends that consumers seek the advice of lawyers when closing their real estate transactions.

TitlePLUS staff have also given presentations at various CPD programs on title insurance and fraud prevention measures in real estate transactions. These are designed to provide the legal profession, including new lawyers entering practice, with the tools they need to manage risk and avoid claims under both the professional liability and TitlePLUS programs.

“TitlePLUS Today”, the department’s news bulletin, is sent regularly to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues. Also, in recognition of the role support staff play in real estate transactions, the department publishes “TitlePLUS Tips”, a bulletin written especially for support staff in the offices of subscribing lawyers. To increase lawyer and clerk understanding of the products and risk management techniques, links to how-to videos and risk management videos were distributed via these newsletters.

LAWPRO has continued with its consumer education program, involving a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. In 2015 the campaign included articles, videos and radio clips resulting in over 13.3 million impressions in over 550 publications, websites and radio stations across Canada. Topics such as wills, home buying and home ownership risks highlighted ways in which lawyers can be of service to the public.

- **practicePRO® Program:** Now in its 18<sup>th</sup> year, LAWPRO’s successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO staff helped lawyers avoid malpractice claims through articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, live presentations, and an exhibitor presence at CPD programs and other law-related events. The practicePRO program has significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal and mainstream press and others. To help lawyers improve their practices, the practicePRO lending library makes 150 of the best books on law practice, technology and risk management topics available on loan for free to all Ontario lawyers. In 2015, 111 books went out on loan to 71 lawyers.

- **LAWPRO Magazine:** With its strong risk management focus, LAWPRO's flagship publication continues to play an important role in helping lawyers avoid malpractice claims. Through an Annual Review issue of the magazine published each spring, LAWPRO provides lawyers with an overview of claims trends and an explanation of how these affected their premiums and LAWPRO's financial results. This Annual Review issue also provides information on LAWPRO's efforts to prevent claims and to advance lawyers' interests with the government and public opinion. The September 2015 issue of *LAWPRO Magazine*, titled *Finding Your Blue Sky* focused on the stresses and challenges of practicing law, and how lawyers can protect their physical and mental well-being. In January 2016, insights from Ontario Indigenous lawyers were the focus of the magazine. How to serve Indigenous clients effectively and respectfully, and the claims risks associated with getting it wrong, were outlined.
- **Fraud:** In terms of the potential risk they present to the Program, fraud-related claims are an ongoing and significant concern for LAWPRO. LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the legal profession, and by working as occasions arise with law enforcement, land registry, banking, insurance and other organizations and industries also affected by fraud. The Fraud Fact Sheet was updated in early 2015 with information on new trends and scams. This resource was downloaded 5,500 times from the practicePRO website and handed out at numerous CPD programs and events sponsored by the practicePRO and TitlePLUS programs in 2015. The AvoidAClaim blog, having reached the 1 million visitor milestone in 2016, continues to be an important tool for alerting lawyers to the latest email and online fraud scams as they happen. It averages almost 555 visitors a day and LAWPRO made 168 fraud-related posts in 2015. Lawyers from all over Ontario and elsewhere visit the blog after searching the names of fraudsters pretending to be prospective clients, often because the matters appear to be suspicious. The information provided by LAWPRO has helped many Ontario lawyers avoid being duped.

- **Rule 48 Admin Dismissals:** Effective January 1, 2015, a new Rule 48.14 brought significant changes to the administrative dismissal regime in Ontario. LAWPRO has strongly encouraged lawyers to take steps to familiarize themselves with the change requirements under the new Rule 48.14, and in particular the transition provisions. In 2015, this message was incorporated into 28 speaking engagements, *LAWPRO Magazine* and webzines, the AvoidAClaim blog and on social media. An eight-page Rule 48 Transition Toolkit is currently in distribution.
- **Consultations:** LAWPRO actively works with various entities to ensure that professional liability and risk management concerns are taken into account when policy issues were under discussion. LAWPRO has made submissions to the Law Society on a variety of formal and informal consultations, including the corporate and insurance issues that entity regulation and ABS implementation would raise, and on advertising and referral fees. LAWPRO made a submission to the Ministry of the Attorney General on the Family Legal Services Review, and another to the Business Law Advisory Council on proposed reforms to the *Arthur Wishart Act (Franchise Disclosure)*. LAWPRO presents risk management information to students at the Law Practice Programs at Ryerson.
- **The LAWPRO Risk Management Credit:** This premium credit offered under the Program is another significant LAWPRO risk management initiative. In 2001, a premium credit of \$50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, self-coaching tool that helps lawyers enhance their business and people skills. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer per year) for designated law-related CPD programs completed by the lawyer. For a credit on premiums for 2017, lawyers (and paralegal partners in combined licensee partnerships) must have participated in LAWPRO-approved CPD programs between September 16, 2015 and September 15, 2016. In addition to the Online Coaching Centre and

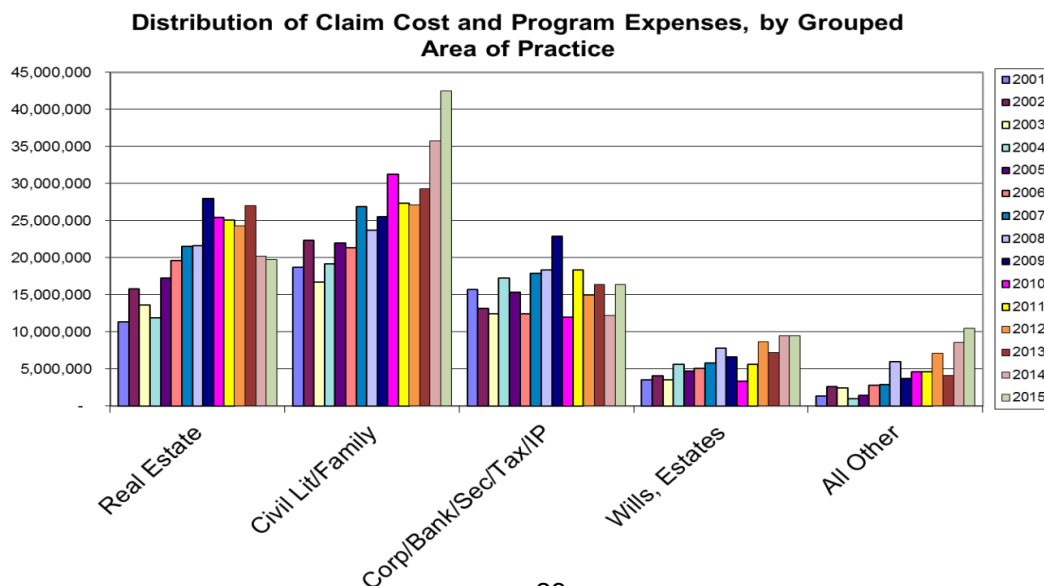
Homewood Health e-Courses, 260 programs qualified for the credit during this period. These programs together had approximately 50,000-55,000 attendees.

Prior to the implementation of the LAWPRO Risk Management Credit, most CPD programs focused solely on substantive law. Due to the Risk Management Credit and the Law Society's new focus on mandatory ethics and professionalism content, a significant number of Ontario CPD programs have been broadened to include risk management and claims prevention content.

**52. In addition to the other risk management initiatives described above, the LAWPRO Risk Management Credit will be continued for the 2017 Program, with a \$50 premium credit per approved CPD program, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2015, and September 15, 2016, for which the lawyer has successfully completed the online Risk Management Credit Declaration Form.**

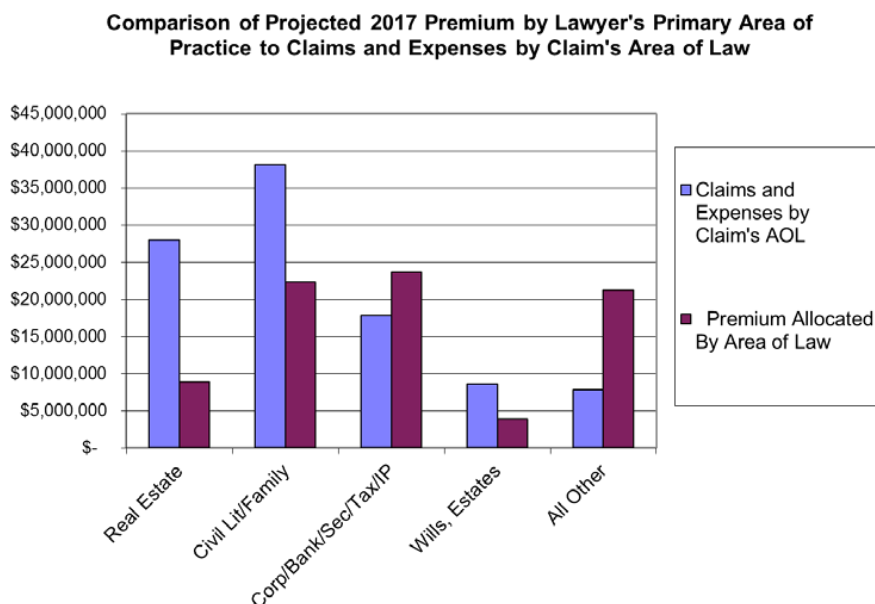
**(d) Revalidating Risk Rating**

53. It is important to periodically re-evaluate the Program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of ultimate expected claims costs by detailed area of practice.



54. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to be higher risk on a consistent basis over a multi-year period. At the same time, the fact that few lawyers practice exclusively in one area provides a compelling reason to group together common or related areas of practice.

55. To ensure that risk rating is being achieved, the Program's anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Program (including that seen under the Program up to December 31, 2015), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.



56. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation.

57. The latest Program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2017 base premium would be about \$9,000 for those whose primary area of practice is real estate.

58. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premiums, to avoid any substantial dislocation among the bar in the higher areas of practice which would otherwise occur with risk rating.<sup>4</sup>

59. By including the transaction and claims history surcharge levies in most recent years, a shortfall for real estate and civil litigation claims costs is typically overcome. Therefore, it is proposed to maintain the levies at the same level for 2017.

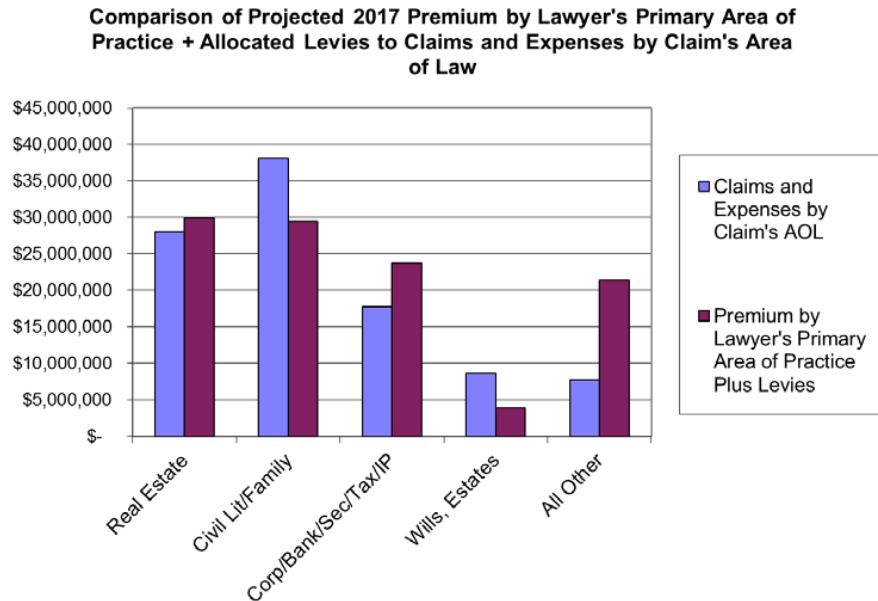
60. In April 2008, LAWPRO introduced a Real Estate Practice Coverage Option ("REPCO"). Since inception, one REPCO claim has arisen, representing a limit loss of \$250,000 which was paid out. LAWPRO is maintaining an actuarial loss reserve for potential incidents that have occurred but have not yet been reported to LAWPRO. (Since the essence of REPCO coverage is to compensate for an act of fraud by the insured lawyer involving access to the electronic land registration system, it is unlikely that there will be an immediate report by the lawyer involved; therefore, LAWPRO is making a conservative assumption that there will often be delays in reporting under this coverage.) Having said that, due to beneficial claims experience, the REPCO premium has been reduced over time from \$500 in 2008 to \$100 in 2016.

61. For 2017, the premium for REPCO will be held at \$100.

62. The following chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge, REPCO premium and transaction levies) to the anticipated claims costs and expenses for each area of law.

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<sup>4</sup> 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 37-37; and 1996 LAWPRO Report to Convocation, pp.32-36.



63. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a more acceptable correlation between revenues and claims for the major practice areas. Although some moderation in civil litigation claims costs can be expected over time with the recent change in Rule 48, the continued growth in civil litigation costs will need to be monitored to determine whether any action should be taken on this category.

64. The graph does indicate some subsidy by area of practice, especially by the practitioners in the "All Other" category. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas, if they were broken down in greater detail.

65. The area of wills and estates has experienced an increase in claim costs over the past decade. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

66. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the Program does substantially meet its objectives of risk rating,

and that the proposed Program will continue to do so in the coming year. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the Program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>5</sup>

67. Other aspects reviewed in the analysis included the exposure based on the size of the firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. The results of this analysis are reproduced in select graphs in **Appendix "B"**.

68. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice, as well as the higher risk associated with real estate conveyancing and civil litigation.

69. Accordingly, the LAWPRO Board is satisfied with the continued use of transaction and claims history levy revenues as premium, with the result that the cost of insurance under the Program continues to generally reflect the risk.

70. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in **Appendix "C"** of this report.

### **Reinsurance and Capital Preservation**

71. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

72. In its early years, LAWPRO purchased Program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled LAWPRO to

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<sup>5</sup> 1994 Insurance Committee Task Force Report, at page 17.

cease reinsuring the Program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO's own capital, the resources of the Errors & Omissions Fund up to a \$15 million cap were effectively relied on starting in 2003.

73. For 2017, it is proposed that there continue to be a \$15 million dollar cap on the Errors & Omissions Fund's exposure to provide additional premium to LAWPRO. As in 2010 through 2016, to the extent that the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent, the Errors & Omissions Fund would cover the losses. The 2010 through 2017 backstop provisions will be evaluated separately, with the \$15 million limit shared by the eight fund years. The lower likelihood of a payout by the Errors & Omissions Fund in this regime, as it commenced on January 1, 2010, makes the protection more akin to a catastrophic coverage, providing payout only in the unlikely scenario that an insurance fund year experienced significant deterioration from its initial expectations.

74. By relying on its own resources and the \$15 million backstop from the Errors & Omissions Fund as described above, LAWPRO will not need to pursue the expensive course of purchasing reinsurance on a Program-wide basis.

75. For 2017, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005 (the "Clash Excess of Loss Reinsurance"). This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims, such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in the title affecting an entire condominium project.

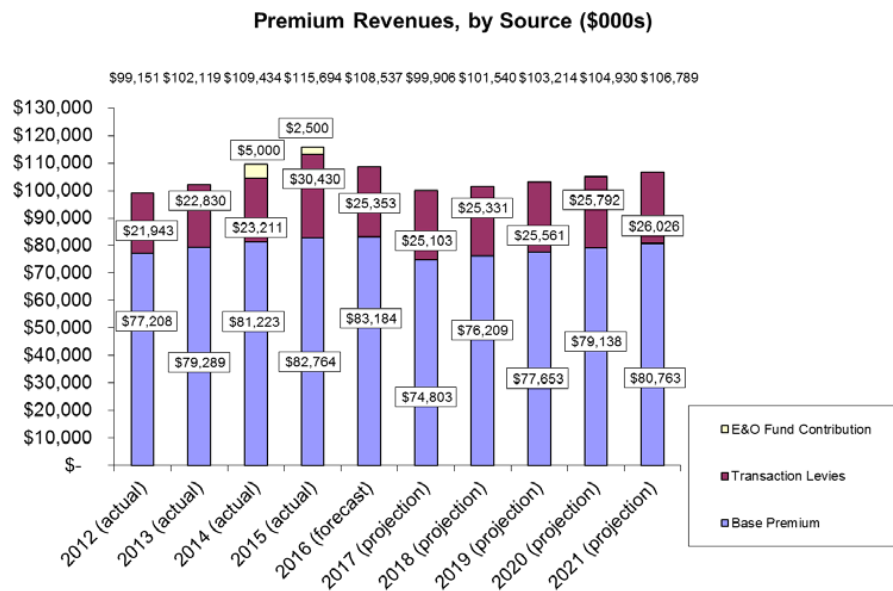
76. Since January 1, 2013, LAWPRO has purchased an additional \$20 million limit above what had been the existing \$10 million limit under the Clash Excess of Loss Reinsurance (for a possible total limit of \$30 million in coverage above LAWPRO's retained exposure). For 2017, LAWPRO will again look to purchase the higher layer of protection.

77. Accordingly, 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2017, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus.

## Revenues

78. To meet the total expected Program obligations for 2017, LAWPRO first evaluates its likely investment income, and then considers premium sources. By way of contrast with some recent years, there will be no contribution from the Errors & Omissions Fund to minimize the base premium; rather premium revenues to meet fiscal requirements for 2017 will come only from two principal resources: the base premium<sup>6</sup> and levy surcharges.

79. The projected premium revenues from these two sources are as follows:



<sup>6</sup> "Base premiums" includes base premiums with applied discount or charges, as well as innocent party and REPCO premiums.

**(a) Investment Income**

80. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claims expenses, thereby reducing the amount of funds that must come from premium sources.

81. LAWPRO provides further stability to the Program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claims costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to LAWPRO arranged to coincide with the expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

82. Since 2008, investment returns have weakened due to fallout from the worldwide credit crunch. In particular, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. A prolonged “low for long” environment would place continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices. As a result of these risks, LAWPRO has maintained a prudent investing philosophy to protect this portfolio, with its expected return set at a modest 3.25 per cent.

83. LAWPRO’s prudent investing philosophy includes a conservative, well-diversified equity portfolio. Of note, this portfolio’s annualized return from before the 2008 market crash up until June 30, 2016 was very respectable, at just over five percent. Overall, LAWPRO’s portfolio is well-positioned for both capital preservation and steady growth.

**(b) Levy Surcharge**

84. The Ontario real estate market has been quite resilient in the last few years, but there are indications that the market will be varied in the near term. The Second Quarter 2016 Housing Market Outlook (Canada Edition) published by Canada Mortgage and Housing Corporation<sup>7</sup> indicates that housing activity is expected to grow overall in 2016 before slowing in 2017. This outlook is subject to various risks, such as weaker than expected job growth and growing housing market imbalances. The number of resale transactions increased by 9.6 per cent in 2015, and is forecast to increase between 0.4 per cent and 4.2 per cent in 2016, but then decrease by up to 8.7 per cent in 2017. Regarding new housing starts, after a 18.6 per cent increase in 2015, results are forecast to increase between 1.6 per cent and 4.7 per cent in 2016 before dropping up to 14.0 per cent in 2017.

85. At present, the levy surcharges include a \$50 civil litigation transaction levy and a \$65 real estate transaction levy, as well as a claims history levy surcharge.<sup>8</sup> Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

86. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50 per cent between 1999 and 2009 (prior to the increase in levy for the 2010 Program).

87. The increased use of title insurance is considered to be largely responsible for a reduction in the count of real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the

<sup>7</sup> [https://www.cmhc-schl.gc.ca/odpub/esub/61500/61500\\_2016\\_Q02.pdf?fr=1469545442942](https://www.cmhc-schl.gc.ca/odpub/esub/61500/61500_2016_Q02.pdf?fr=1469545442942)

<sup>8</sup> The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers.

88. It is estimated that more than 90 per cent of residential real estate transactions in Ontario are title-insured.<sup>9</sup> In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

89. More recently, the number of transaction levies stabilized as a result of the solid Ontario real estate sales. As of June 2016, transaction levy revenues are above expectations, at \$1.6 million over budget.

90. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2017.

91. As described above in this report, the use of transaction levies ensures an element of risk rating in the Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995.

92. For 2017, LAWPRO estimates transaction levy revenues at \$25.1 million.

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<sup>9</sup> LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy fillings.

**(c) Errors & Omissions Fund**

93. The insurance related transactions between the Law Society, insured lawyers and LAWPRO flow through the Errors & Omissions Fund. Through the Fund, insurance premiums and levies are collected from lawyers (and related insureds) on behalf of the Law Society. From this Fund, LAWPRO, as the insurer, is paid. While in recent years the Errors & Omissions Fund had a balance held well over \$60 million, after payment of current year's premium and calculating the reserve needed for pre-1995 claims which remain the responsibility of the Errors & Omissions Fund, the vast majority of those funds have already been committed for specific purposes, such as the \$15 million Program backstop (see paragraphs 71 through 77) and the Errors & Omissions Fund's investment in LAWPRO shares.

94. The current LAWPRO five-year projection does not assume further contributions from the Errors & Omissions Fund to support the base rate premium, or any backstop for levy surcharges of any type.

**(d) Capital Requirements**

95. As LAWPRO has worked through some quite challenging times, its' prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO has maintained a solid capital base, as well as a robust asset-liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. each year since 2000, and in 2016 has retained its "stable" outlook based on its commanding market profile and recent improvement in operating and underwriting results. (An "outlook", which looks more to the future, is different from a "rating".)

96. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the Minimum Capital Test ("MCT") in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer's capital or net assets available to the "capital required". Through the capital required component of the test, regulators

prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

97. A significant margin requirement relates to the approximate 25 per cent additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a positive net income result can often lead to a decline in LAWPRO's MCT ratio. As a very general rule of thumb, LAWPRO requires approximately \$5 million of either net income or increased after-tax net unrealized gains on its surplus portfolio<sup>10</sup> to maintain a flat to slightly increasing MCT ratio.

98. The determination of a specific insurer's "ideal" MCT ratio is no easy task, as historic industry approaches were primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100 per cent minimum and 150 per cent supervisory levels. Earlier this year, the Company completed its first capital assessment pursuant to the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*, and the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment*, resulting in LAWPRO's internal target ratio being lowered from 180 per cent to 170 per cent.

99. In addition, as part of the above exercise, the Board set the Company's long term preferred operating range at 215 to 240 per cent based on LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from those of other commercial insurers in Canada. An MCT in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

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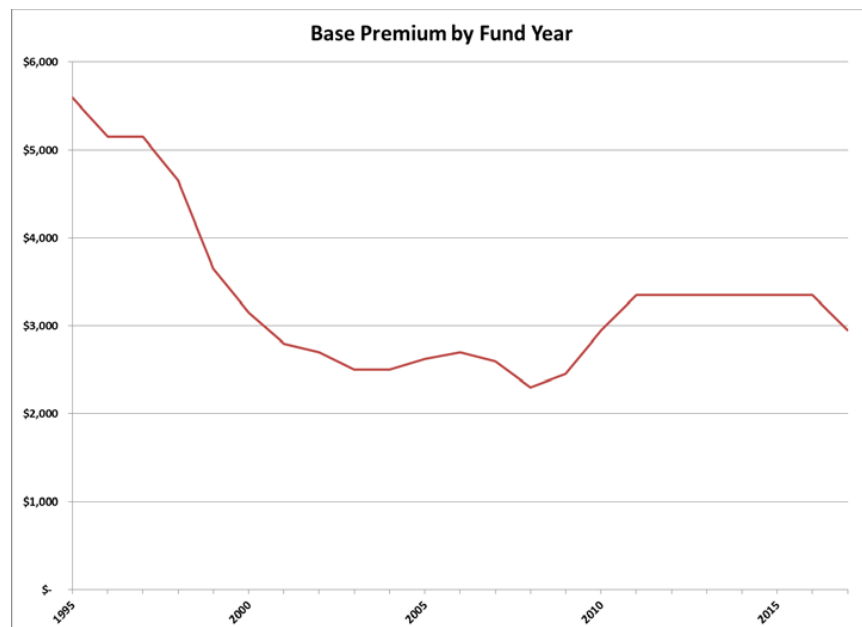
<sup>10</sup> Increases in net unrealized gains relating to the liability-matched portfolio, as well as realized gains, are included in net income.

100. LAWPRO's MCT at 251 per cent as of June 2016 is above the Board's preferred operating range, indicating that a continued phase of capital replenishment is not currently required.

**(e) Base Premiums**

101. Based on the previous discussion of Program costs, sources of revenue and capital needs, the base premium will be set at \$2,950 per member to account for LAWPRO's recent levelling of claims costs, as well as its overall solid fiscal performance during the last couple of years. In summary, the 2017 proposed base premium is based on the following key assumptions:

- 26,700 practising insured lawyers (full-time equivalents);
- \$120.0 million in anticipated total Program costs (paragraph 40);
- \$25.1 million in budgeted transaction levy revenues (paragraph 92); and
- 3.25 per cent return on investment (paragraph 82).



102. At this time, the Board is satisfied that this base premium rate appropriately recognizes the uncertainties in emerging claims experience and economic conditions, and allows the Program to continue to operate on a self-sustaining basis while protecting LAWPRO's overall financial position. The approach taken is consistent with information provided in the Report to Convocation in recent years. It should be noted that a base premium of \$2,950 per lawyer in 2017 is significantly lower than premiums charged at points in the past. In fact, if inflation were removed, this premium would be the equivalent to about \$1,950 in 1995 dollars.

103. In setting a base rate for 2017, LAWPRO tested its five-year planning horizon under various scenarios. Overall LAWPRO results are projected to exceed break-even, though allowing LAWPRO to gradually reposition its capital position to within the Company's preferred operating range. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and further base rate increases may be required in future years.

**104. Accordingly:**

- a) The base premium is \$2,950 per lawyer for 2017, a decrease of \$400 from the base premium charged in 2011 through 2016;**
- b) Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at \$25.1 million for the purposes of establishing the base premium for 2017 and other budgetary purposes; and**
- c) The premium for the Real Estate Practice Coverage Option will, for the second year, be set at \$100.**

**(f) Other Program Features (or Adjustments)**

105. With the exception of the changes specifically described in this report, all aspects of the Program for 2017 will remain unchanged from the Program now in place.

106. As detailed in **Appendix “A”**, subject to the noted changes, the current Program for lawyers in private practice encompasses the following:

- Standard practice coverage, including Mandatory Innocent Party Coverage; and
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice, and Real Estate Practice.

107. The current Program also provides for premium discount and surcharges. Discount and surcharges as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no completed application form is filed.

108. Discounts and surcharges as stated dollar amounts include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the Real Estate Practice Coverage premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Professional Development discount.

**109. Subject to the changes identified earlier in the report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2016 will remain unchanged for the 2017 Program.**

## CONCLUSION

110. The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of insurance for 2017 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2017 Program can be implemented by January 1, 2017.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2016

Susan T. McGrath

Chair of the Board

Lawyers' Professional Indemnity Company

Ian D. Croft

Vice-Chair of the Board

Lawyers' Professional Indemnity Company

## ***Appendix “A”***

### **The Standard Program Coverage for 2017<sup>11</sup>**

#### *Eligibility*

- Required of all lawyer sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyer(s), paralegals holding shares in professional corporations with lawyer(s) and lawyers practising in a LAW CORPORATION, who are providing services in private practices.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the Program exemption criteria.
- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

#### *Coverage Limit*

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims made in 2017), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together.

#### *Standard DEDUCTIBLE*

- \$5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

#### *Standard base premium*

- \$2,950 per insured lawyer.

#### *Transaction Premium Levy*

- \$65 per real estate transaction and \$50 per civil litigation transaction;

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<sup>11</sup> Terms entirely capitalized are as defined in the Program policy.

- No real estate transaction levy generally payable by transferee's lawyer if title-insured.

*Premium reductions for new lawyers*

- Premium for lawyers with less than 4 full years of practice (private and public):
  - ◇ less than 1 full year in practice: premium discount equal to 50 per cent of base premium;
  - ◇ less than 2 years in practice: premium discount equal to 40 per cent of base premium;
  - ◇ less than 3 years in practice: premium discount equal to 30 per cent of base premium;
  - ◇ less than 4 years in practice: premium discount equal to 20 per cent of base premium;

**Mandatory Innocent Party Coverage**

*Eligibility*

The minimum coverage of \$250,000 per CLAIM/in the aggregate must be purchased by paralegals in partnership with lawyer(s), paralegals who own shares in LAW CORPORATIONS with lawyer(s) and all lawyers practising in association or partnership (including general, CLP, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a LAW CORPORATION, where two or more lawyers practise in the LAW CORPORATION.

*Premium*

\$250 per insured lawyer.

## 2017 Program Options

### 1. Deductible option

*\$Nil deductible*

- Increase in premium equal to 15 per cent of base premium (\$442.50 increase).

*\$2,500 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

*\$2,500 deductible applicable to indemnity payments and/or costs of repairs only*

- Increase in premium equal to 12.5 per cent of base premium (\$368.75 increase).

*Standard Program: \$5,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Base premium of \$2,950 per insured lawyer.

*\$10,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Decrease in premium equal to 7.5 per cent of base premium (\$221.25 decrease).

*\$10,000 deductible applicable to indemnity payments and/or costs of repairs only*

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

*\$25,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Decrease in premium equal to 12.5 per cent of base premium (\$368.75 decrease).

## 2. Innocent Party Sublimit Coverage Options

### ***Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and LAW CORPORATIONS***

Lawyers practising in association or partnership (including general, CLP, MDP and LLP partnerships) or a LAW CORPORATION (with more than one practising lawyer), paralegals in partnership with lawyers, or paralegals holding shares in professional corporations with lawyers, can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:	Additional annual premium:
\$500,000 per claim/aggregate	\$150 per insured lawyer
\$1 million per claim/aggregate	\$249 per insured lawyer

### ***Optional Innocent Party Coverage Sublimit: For sole practitioners and lawyers practising alone in a LAW CORPORATION***

#### *Coverage sublimits*

- \$250,000 per claim/in the aggregate
- \$500,000 per claim/in the aggregate
- \$1 million per claim/in the aggregate

### 3. Practice Options

#### ***Restricted Area of Practice Option***

##### *Eligibility*

Available only to lawyers who agree to restrict their practice to criminal<sup>12</sup> and/or immigration law<sup>13</sup> throughout 2017.

##### *Premium*

Eligible for discount equal to 50 per cent of base premium, to a maximum of \$1,475.<sup>14</sup>

#### ***Part-Time Practice Option***

##### *Eligibility*

Available only to part-time practitioners who meet the part-time practice criteria.

##### *Premium*

Eligible for discount equal to 50 per cent of base premium, to a maximum of \$1,475.

#### ***Designated Agency Employee Option***

##### *Eligibility*

Available only to lawyers who are employed by and agree to restrict their practice to PROFESSIONAL SERVICES provided on behalf of their DESIGNATED AGENCY(IES) employers throughout 2017. Lawyers electing this option must not elect a deductible option of more than \$5,000 per claim. This discount cannot be combined with the Restricted Area of

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<sup>12</sup> Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

<sup>13</sup> Immigration law is considered to be practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this report, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

<sup>14</sup> The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Lawyers' discount combined cannot exceed 50 per cent of the base premium.

Practice, Part-Time Practice, New Lawyers' or early lump sum premium payment discounts. Lawyers claiming the Designated Agency Employee option are not required to maintain Innocent Party coverage and are eligible for the e-filing and LAWPRO Risk Management Credit discounts.

#### *Premium*

Eligible for discount equal to 75 per cent of base premium, to a maximum of \$2,212.50.

### ***Real Estate Practice Coverage Option***

#### *Eligibility*

All lawyers who intend to practice real estate law in Ontario in 2017 must be eligible for and apply for this coverage option.

"ELIGIBLE" means eligible to practice real estate law in Ontario, as permitted by the Law Society. Categories of lawyers who would not be eligible to practice real estate law in Ontario, include:

- those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practise real estate.

#### *Premium*

\$100 per insured lawyer.

## **4. Premium Payment Options**

### ***Instalment Options***

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for \$50 discount

- Lump sum payment by credit card
- Quarterly instalments
- Monthly instalments

#### **5. E-filing Discount**

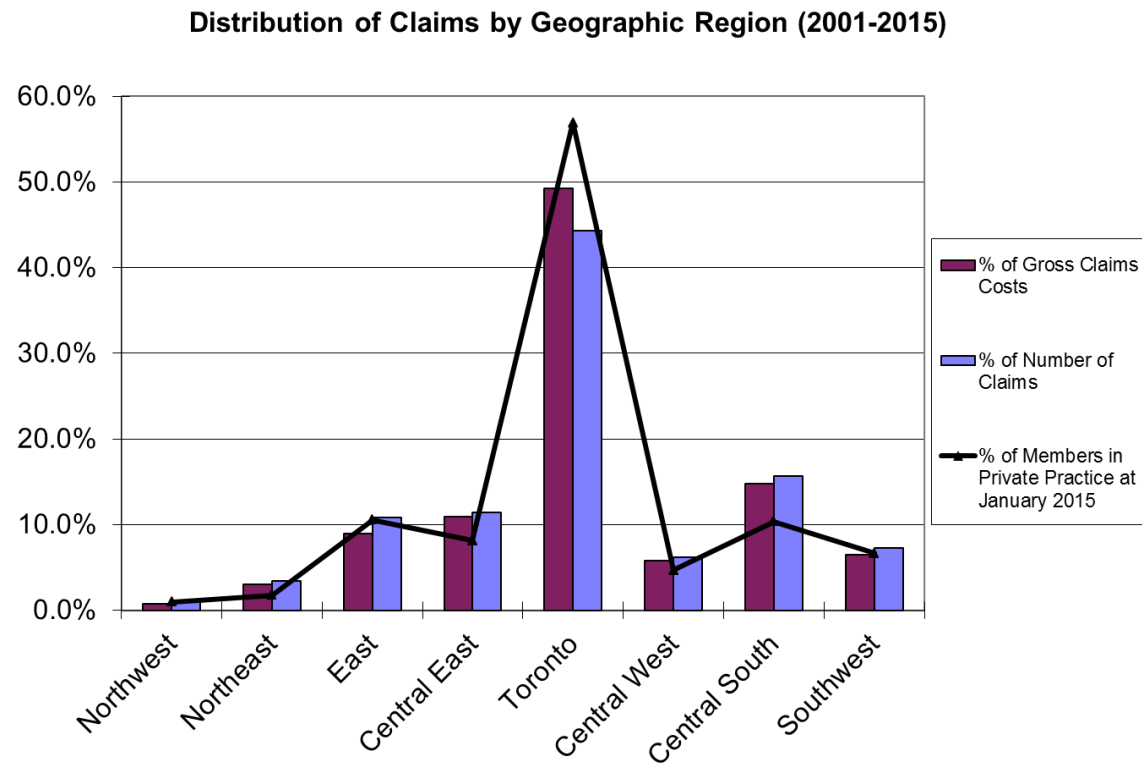
- \$25 per insured lawyer (for renewal applications filed online on or before November 3, 2016)

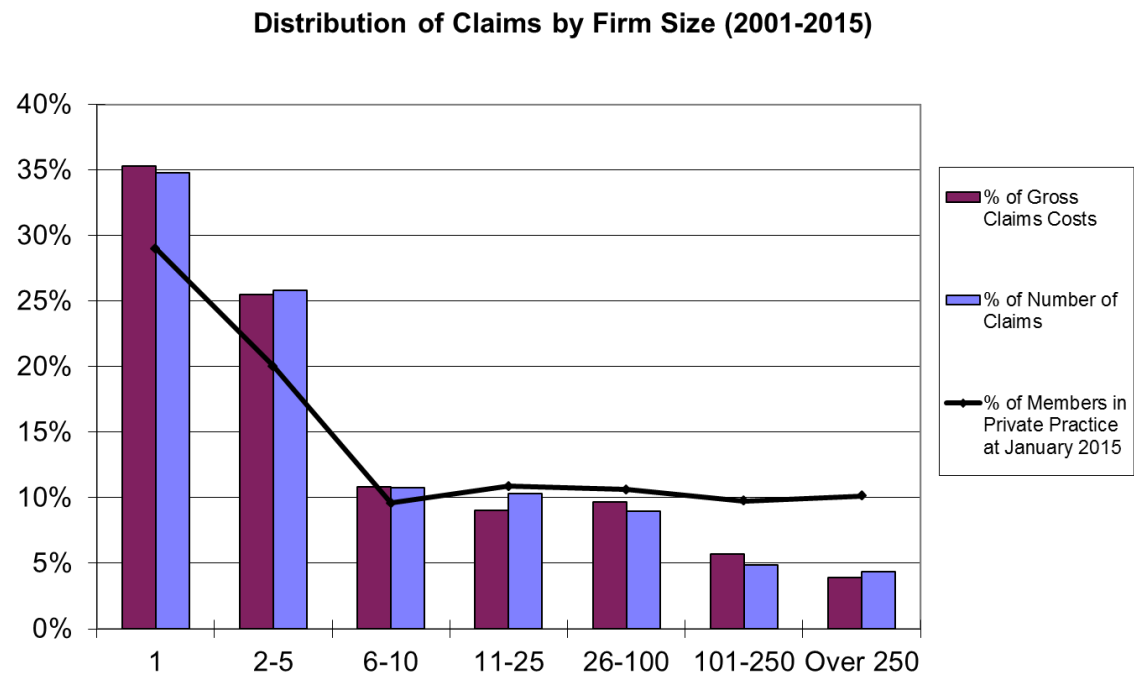
#### **6. LAWPRO Risk Management Credit**

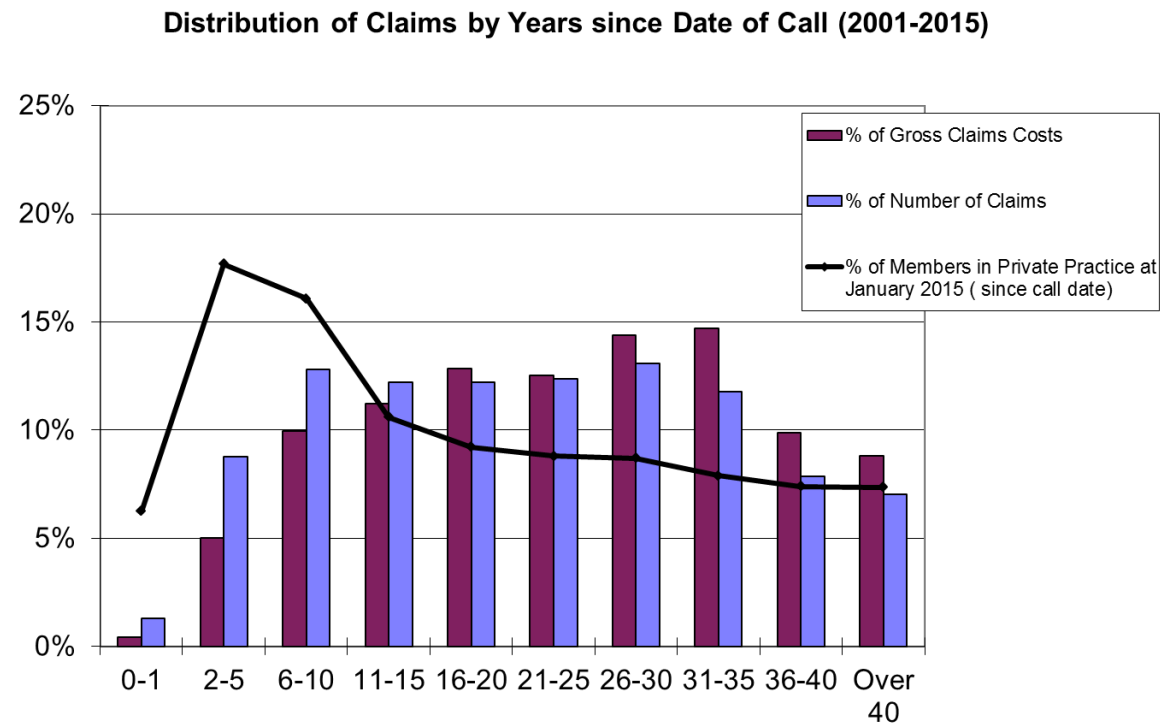
- \$50 per course, subject to a \$100 per insured lawyer maximum discount, will be applied under the 2017 insurance Program.
- Under the expectation that this will continue under the 2018 Program, LAWPRO will continue to collect data for pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2016, and September 15, 2017, where the lawyer completes and files the required LAWPRO Risk Management Credit online declarations by September 15, 2017.
- LAWPRO's Online Coaching Centre is included as a pre-approved course, where the insured lawyer or paralegal completes at least three modules between September 16, 2015, and September 15, 2016 towards the 2017 Program insurance.
- The premium credit includes credit for select programs offered by the Law Society's Member Assistance Program (MAP) (to a \$100 per insured maximum amount).
- The premium credit is also available to paralegal partners or shareholders in combined licensee firms insured under the Program.

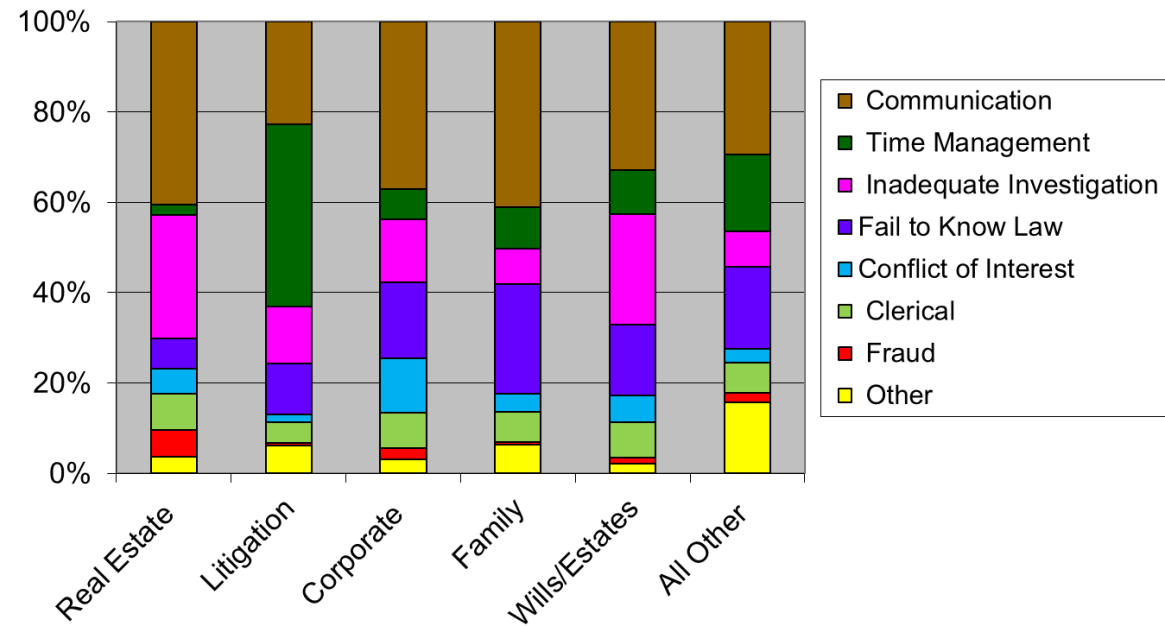
## Appendix "B"

### Distribution of Claims by Geographic Region



**Appendix “B”****Distribution of Claims by Firm Size**

**Appendix “B”****Distribution of Claims by Years since Date of Call**

**Appendix “B”****Distribution of Claims by Reported Claims Count and Area of Law****Claim Causes by Reported Claims Count  
and Area of Law (2001 to 2015)**

**Communications:** Communication-related errors (including poor communication, not keeping clients informed or failing to obtain client consent) are the biggest causes of claims in all areas of law (except litigation, where it is the #2 cause) and in firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions, and confirming in writing what work was done on a matter at each step along the way.

**Time management:** These kinds of claims including failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed or an action is administratively dismissed due to failing to move the litigation forward appropriately. There are also claims resulting from procrastination when a lawyer lets files that require work languish for extended periods of time. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. They are also high in the intellectual property area. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they are not adversely affected by unexpected delays.

**Inadequate investigation:** Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client's matter. LAWPRO has seen a big increase in these types of claims in real estate, litigation and will/estates areas of law. High-volume real estate practice often means lawyers do not have enough time to ask the clients about their plans for the property, and as a result don't do the necessary searches or obtain the proper title insurance.

**Failure to know/apply the law:** These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the second-most-common type of claim in family law. This category also includes failing to know or appreciate the consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not "dabbling" in other areas.

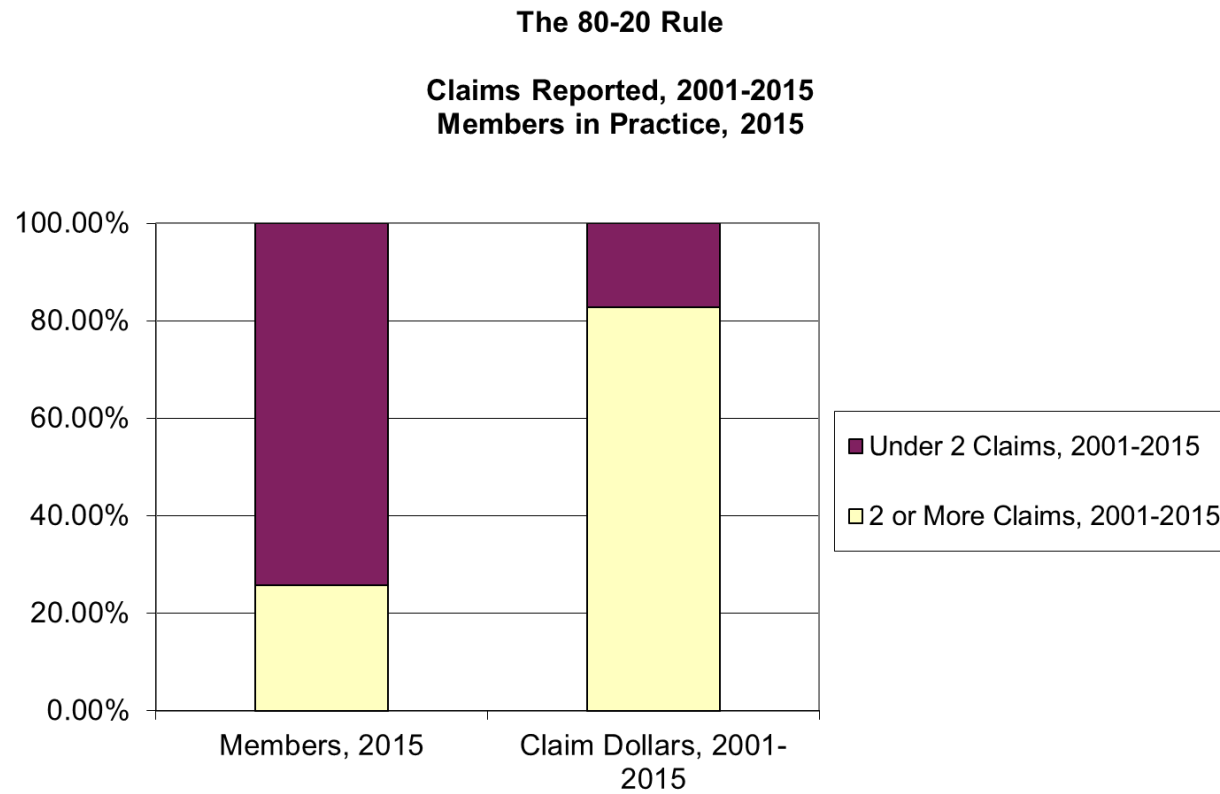
**Conflict of interest:** There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience proportionately more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

**Clerical errors:** These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that is not checked and failure to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

**Fraud:** Fraud continues to be a significant risk for LAWPRO, one which could cost the Program significant claims dollars if not prevented. Lawyers are reporting attempted frauds to LAWPRO on a daily basis. Fraudsters on occasion still successfully dupe lawyers and law clerks, and it is not just real estate lawyers who are targeted. Litigation, business and family law lawyers are regular targets of bad cheque scams involving debt collections, spousal support payments and business loans. Through our efforts, Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

***Appendix "B"***

**The 80-20 Rule**



**Appendix “C”****Premium Rating Examples****Premium Rating Examples (In Dollars)**

	<b>1995<sup>†</sup></b>	<b>2005<sup>††</sup></b>	<b>2015<sup>†††</sup></b>	<b>2017<sup>†††</sup></b>
<b>Base premium</b>	\$5,600	\$2,625	\$3,350	<b>\$2,950</b>
<b>Examples:</b>				
<b>1. Sole Practitioner Practising Real Estate Law</b>  - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	\$5,600*	\$2,228	\$3,274	<b>\$2,754</b>
<b>2. Firm Practitioner Practising Real Estate Law</b>  - \$25,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover - early e-filing of application	\$6,000*	\$2,497	\$3,406	<b>\$2,906</b>
<b>3. New Lawyer Practising in Association</b>  - first year in practice discount - \$250,000 Mandatory Innocent Party cover - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	\$3,900*	\$1,428	\$1,599	<b>\$1,429</b>
<b>4. Criminal Lawyer (sole practitioner)</b>  - Restricted Areas of Practice discount	\$5,600*	\$1,178	\$1,349	<b>\$1,179</b>

	1995 <sup>♦</sup>	2005 <sup>♦♦</sup>	2015 <sup>♦♦♦</sup>	2017 <sup>♦♦♦</sup>
- \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application				
<b>5. Part-time Lawyer (in association)</b>  - Part-time Practitioner discount  - \$1,000,000 Optional Innocent Party cover  - \$10,000 defence & indemnity deductible	\$6,000 <sup>▶</sup>	\$1,877	\$1,923	<b>\$1,753</b>
<b>6. Firm Practitioner with 1 Claim</b>  - claims history levy surcharge  - \$5,000 defence & indemnity deductible  - \$250,000 Mandatory Innocent Party cover	\$8,500 <sup>*</sup>	\$5,375	\$6,100	<b>\$5,700</b>
<b>7. Sole Practitioner with 2 Claims</b>  - claims history levy surcharge  - \$5,000 defence & indemnity deductible	\$10,600 <sup>*</sup>	\$7,625	\$8,350	<b>\$7,950</b>
<b>8. Designated Agency Lawyer</b>  - \$5,000 defence & indemnity deductible  - early e-filing application  - Risk Management Credit (x2)	\$5,600 <sup>*</sup>	\$2,500	\$3,225	<b>\$613</b>

\* Subject to a \$6,000 defence and indemnity deductible (adjusted to a \$7,500 in the case of an insured with one previous claim, or \$8,500 in the case of two previous claims).

▶ Subject to \$250,000 Innocent Party cover only, additional limits not available.

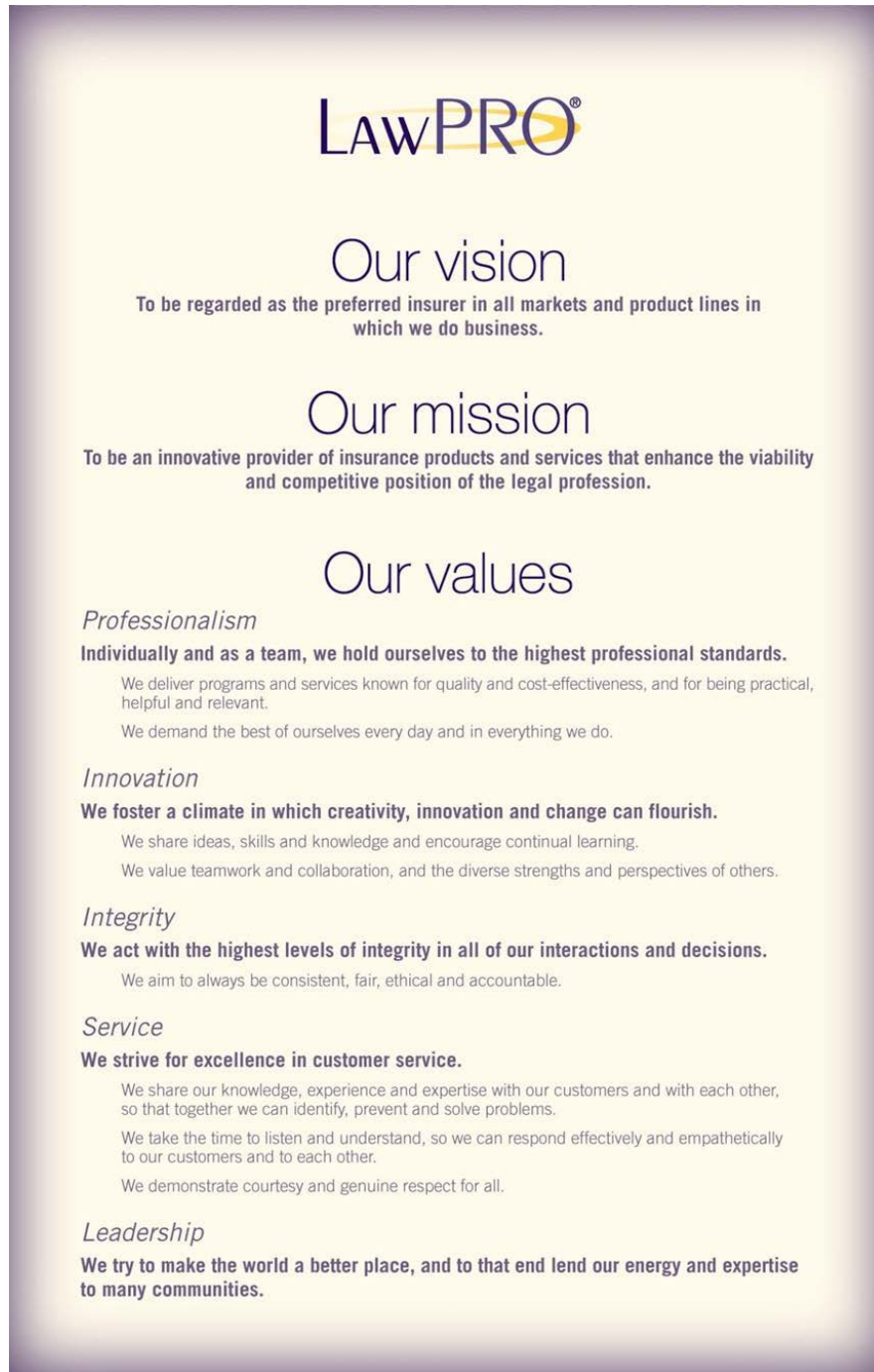
♦ Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦ Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦♦ \$65 per real estate transaction and \$50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied and is included in the calculated premium amounts for these years.

## Appendix “D”

### LAWPRO Vision, Mission & Values

A vertical rectangular graphic with a light yellow background and a purple border. It contains the LawPRO logo at the top, followed by sections for 'Our vision', 'Our mission', and 'Our values'. Each value section includes a bold statement and a list of bullet points.

**LAWPRO®**

**Our vision**  
To be regarded as the preferred insurer in all markets and product lines in which we do business.

**Our mission**  
To be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession.

**Our values**

*Professionalism*  
**Individually and as a team, we hold ourselves to the highest professional standards.**  
We deliver programs and services known for quality and cost-effectiveness, and for being practical, helpful and relevant.  
We demand the best of ourselves every day and in everything we do.

*Innovation*  
**We foster a climate in which creativity, innovation and change can flourish.**  
We share ideas, skills and knowledge and encourage continual learning.  
We value teamwork and collaboration, and the diverse strengths and perspectives of others.

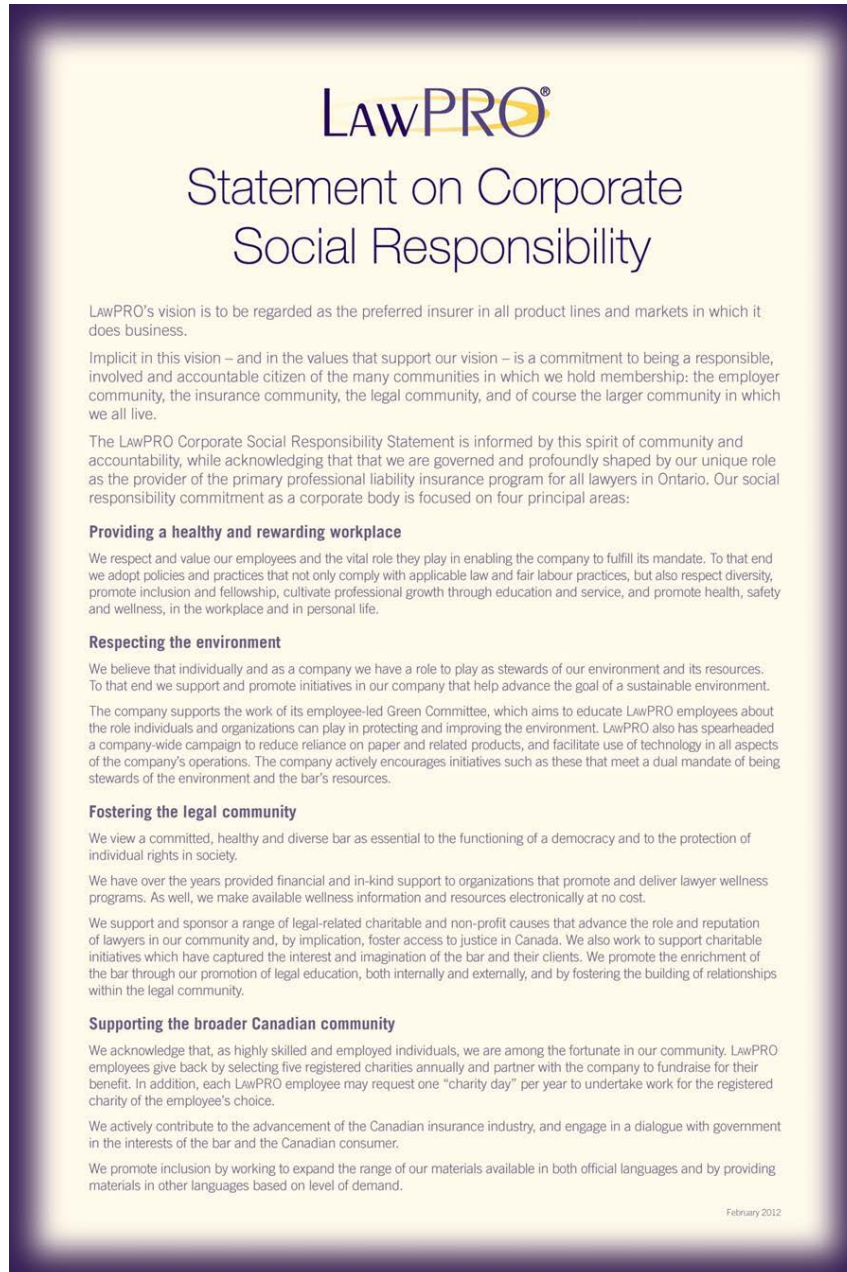
*Integrity*  
**We act with the highest levels of integrity in all of our interactions and decisions.**  
We aim to always be consistent, fair, ethical and accountable.

*Service*  
**We strive for excellence in customer service.**  
We share our knowledge, experience and expertise with our customers and with each other, so that together we can identify, prevent and solve problems.  
We take the time to listen and understand, so we can respond effectively and empathetically to our customers and to each other.  
We demonstrate courtesy and genuine respect for all.

*Leadership*  
**We try to make the world a better place, and to that end lend our energy and expertise to many communities.**

## Appendix “E”

### LAWPRO Statement on Corporate Social Responsibility

The graphic is a rectangular document with a light cream background and a dark purple border. At the top center is the LawPRO logo, which consists of the word "LAWPRO" in a serif font, with a stylized yellow and orange sun-like symbol to the right of the "O". Below the logo, the title "Statement on Corporate Social Responsibility" is written in a large, dark purple serif font. The main body of the text is in a smaller, dark purple serif font. It begins with a paragraph about LawPRO's vision, followed by a paragraph about its commitment to being a responsible citizen. Then, it states that the statement is informed by a spirit of community and accountability. The text then lists four principal areas of focus: "Providing a healthy and rewarding workplace", "Respecting the environment", "Fostering the legal community", and "Supporting the broader Canadian community". Each area has a sub-header in bold and a paragraph of text below it. The text is justified on the left side. At the bottom right, there is a small date: "February 2012".

**LAWPRO®**

## Statement on Corporate Social Responsibility

LawPRO's vision is to be regarded as the preferred insurer in all product lines and markets in which it does business.

Implicit in this vision – and in the values that support our vision – is a commitment to being a responsible, involved and accountable citizen of the many communities in which we hold membership: the employer community, the insurance community, the legal community, and of course the larger community in which we all live.

The LawPRO Corporate Social Responsibility Statement is informed by this spirit of community and accountability, while acknowledging that that we are governed and profoundly shaped by our unique role as the provider of the primary professional liability insurance program for all lawyers in Ontario. Our social responsibility commitment as a corporate body is focused on four principal areas:

**Providing a healthy and rewarding workplace**

We respect and value our employees and the vital role they play in enabling the company to fulfill its mandate. To that end we adopt policies and practices that not only comply with applicable law and fair labour practices, but also respect diversity, promote inclusion and fellowship, cultivate professional growth through education and service, and promote health, safety and wellness, in the workplace and in personal life.

**Respecting the environment**

We believe that individually and as a company we have a role to play as stewards of our environment and its resources. To that end we support and promote initiatives in our company that help advance the goal of a sustainable environment.

The company supports the work of its employee-led Green Committee, which aims to educate LawPRO employees about the role individuals and organizations can play in protecting and improving the environment. LawPRO also has spearheaded a company-wide campaign to reduce reliance on paper and related products, and facilitate use of technology in all aspects of the company's operations. The company actively encourages initiatives such as these that meet a dual mandate of being stewards of the environment and the bar's resources.

**Fostering the legal community**

We view a committed, healthy and diverse bar as essential to the functioning of a democracy and to the protection of individual rights in society.

We have over the years provided financial and in-kind support to organizations that promote and deliver lawyer wellness programs. As well, we make available wellness information and resources electronically at no cost.

We support and sponsor a range of legal-related charitable and non-profit causes that advance the role and reputation of lawyers in our community and, by implication, foster access to justice in Canada. We also work to support charitable initiatives which have captured the interest and imagination of the bar and their clients. We promote the enrichment of the bar through our promotion of legal education, both internally and externally, and by fostering the building of relationships within the legal community.

**Supporting the broader Canadian community**

We acknowledge that, as highly skilled and employed individuals, we are among the fortunate in our community. LawPRO employees give back by selecting five registered charities annually and partner with the company to fundraise for their benefit. In addition, each LawPRO employee may request one "charity day" per year to undertake work for the registered charity of the employee's choice.

We actively contribute to the advancement of the Canadian insurance industry, and engage in a dialogue with government in the interests of the bar and the Canadian consumer.

We promote inclusion by working to expand the range of our materials available in both official languages and by providing materials in other languages based on level of demand.

February 2012




**LAWPRO®**  
Lawyers' Professional Indemnity Company  
Assurance LawPRO®

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F (416) 599-8341 / 1-800-286-7639  
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[WWW.LAWPRO.CA](http://WWW.LAWPRO.CA)

 [AvoidAclaim.com](http://AvoidAclaim.com)

 [LawPRO](https://www.linkedin.com/company/lawpro)

 [@LawPRO](https://twitter.com/LawPRO)  
[@practicePRO](https://twitter.com/practicePRO)  
[@TitlePLUSCanada](https://twitter.com/TitlePLUSCanada)

 [LawPRO insurance](https://www.facebook.com/LawPROinsurance)  
[TitlePLUS Home Buying  
Guide – Canada](https://www.facebook.com/TitlePLUSHomeBuyingGuideCanada)



**Tab 5**

**Report to Convocation  
September 22, 2016**

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**Treasurer's Report**

**Purpose of Report: Decision and Information**

**Prepared by Jim Varro  
Director, Office of the CEO/Corporate Secretary**

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**FOR DECISION**

**PART 1**

**PROPOSED MENTAL HEALTH STRATEGY IMPLEMENTATION TASK  
FORCE**

**Motion**

1. **That Convocation create the Mental Health Strategy Implementation Task Force, with membership and terms of reference for the Task Force as set out in this Report.**

**Issue for Consideration**

2. On April 28, 2016, Convocation approved a Law Society Strategy to address mental health, wellness and addictions issues.<sup>1</sup>
3. Included as part of the Strategy was the creation of a Task Force of no more than five benchers to provide guidance on implementation-related issues.
4. This report proposes the creation of this Task Force and sets out its membership and terms of reference for Convocation's approval.

**Task Force Membership**

5. The components of the Strategy involve the functions of virtually all divisions at the Law Society. While implementation of the Strategy will fall to the operational departments, it is contemplated that some issues associated with the Strategy will require treatment at a policy level and will thus involve certain committees.
6. As such, the membership of this small Task Force should include a cross-section of representatives from key committees to assist and provide guidance on these implementation-related issues, and to provide the breadth of advice that may be required as the implementation unfolds. There should also be some continuity with the work of the original Task Force that created the Strategy approved by Convocation.

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<sup>1</sup> The Strategy appears at **Tab 5.1**.

7. Taking these matters into account, the Treasurer will provide the names of proposed task force members prior to Convocation.
8. The individuals to be appointed will ensure representation from the Access to Justice, Equity and Aboriginal Issues, Government and Public Affairs, Paralegal Standing, Professional Regulation, Professional Development and Competence and Tribunal Committees.

### **Terms of Reference**

9. The following are the proposed terms of reference of the Task Force:

The Mental Health Strategy Implementation Task Force will:

- a. monitor implementation of the Strategy, and receive status reports from time to time from key operational staff tasked with implementing the various components of the Strategy;
- b. determine which components of the Strategy presently require policy review, and refer these matters on to the appropriate policy committee;
- c. review other policy issues that may arise during the Strategy's implementation and refer them to the appropriate committee for consideration;
- d. consider any budget implications that arise during implementation that require review, and refer them to the Audit & Finance Committee as appropriate; and
- e. provide reports to Convocation from time to time on the status of implementation and issues associated with implementation; and
- f. provide a comprehensive report on the status of implementation no later than June 2018.

## MENTAL HEALTH STRATEGY

### VISION AND COMMITMENT

To further address licensee mental health and addictions issues to improve professional outcomes, in the public interest.

### STRATEGIC DIRECTIONS

#### (a) Preventive and Management Strategies

- Increase awareness of *wellness strategies* among the Ontario legal professions and those with whom they work (employers, partners, associates and staff).
- Increase awareness of *mental illness and addictions* issues among the Ontario legal professions and those with whom they work (employers, partners, associates and staff).
- Address the existence and impact of stigma on those licensees experiencing mental illness and addictions issues and reduce stigma.
- Enhance knowledge of and improve access to available assistance for those licensees with mental illness and addictions issues and those with whom they work.

#### (b) Regulatory Strategies

- Examine how mental illness and addictions issues are most appropriately addressed in the regulatory context to meet the Law Society's Vision and Commitment.
- Consider how to support early identification and treatment while continuing to protect the public.
- Consider the role that diversion from regulatory proceedings and/or capacity proceedings held in the absence of the public, could play in appropriate circumstances.

### KEY ELEMENTS AND INITIATIVES UNDER EACH STRATEGIC DIRECTION

#### (a) Preventive and Management Strategies

- Continue to build on the current Law Society preventive and management strategies described in the "Inventory of Law Society Initiatives Addressing Wellness, Mental Illness and Addictions." (included with this Report)
- Develop a comprehensive and proactive Communication Strategy for increasing mental health awareness, generally, and awareness of mental illness and addictions issues, specifically.
  - Provide information on accessing assistance, addressing issues of stigma related to mental illness and addictions and possible systemic causes within the legal professions' cultures that engender or exacerbate these issues.
  - Focus on early, repeated and pervasive communication, education and attitudinal change.

- Develop ongoing consultation with stakeholders in a wide range of communities (e.g. racialized, Aboriginal, sole practitioners, large, medium and small firms, aging licensees, government, legal organizations, legal clinics, Legal Aid Ontario), to refine the Communication Strategy.
  - Coordinate the plan across relevant Divisions of the Law Society.
- Further enhance awareness and understanding of the Members Assistance Program (“MAP”) among licensees and legal organizations, law schools and paralegal colleges, in a variety of venues and media, promoting its confidentiality and range of services.
- Consider and report on whether and how the range of confidential MAP services might be expanded to further assist licensees.
- Consider the most effective ways to regularly inform about MAP and other mental health services at Continuing Professional Development (“CPD”) and other events.
- Investigate the merits of and, where appropriate, develop or update a model policy or policies to educate the legal professions, law firms, employers and organizations on,
  - tools for advancing mental health;
  - possible systemic causes within the legal professions’ culture and employment practices that engender or exacerbate these issues;
  - risks/signs of problems related to mental illness, including dementia, and addictions;
  - appropriate licensee accommodation practices;
  - differences between illness and impairment and whether the illness is situational, episodic or chronic;
  - addressing and avoiding stigma; and
  - strategies to assist licensees and enable them to assist themselves or others.
- Using the activities already in place in the Professional Development & Competence Division, the Equity Public Education Rule of Law Series and other educational programming,
  - consider and enhance the ongoing role that Continuing Professional Development and practice management supports can play in a number of areas including,
    - i. increasing awareness of wellness and of mental illness; and
    - ii. addictions issues and in addressing stigma.
- Provide organization-wide *general* training for staff on mental illness and addictions.
- Provide *specialized* training for staff who interact with licensees on mental illness and addictions.

- Provide awareness sessions for Convocation, as part of Directors' education, on wellness, mental illness and addictions issues and on accommodation requirements.
- Provide training for Law Society Tribunal adjudicators on mental illness and addictions issues and on accommodation requirements.
- As part of the recently approved Coach and Advisor Initiative's incremental implementation, develop a mental illness and addictions training component for coaches and advisors and consider the role of mental health issues in the development of coaching curricula.
- As a participant in The Action Group (TAG) Mental Health Cluster, encourage the exploration and development of a Mental Health Conference to discuss the continuum of mental health issues and initiatives from law school to retirement, with participation of a range of stakeholders.
  - Consider possible systemic causes within the legal professions' cultures and employment practices that engender or exacerbate these issues.
  - Consider the possible role of the Law Society to facilitate ongoing dialogue and discussion on a yearly or other basis.
- Consider whether and how the Discrimination and Harassment Counsel's mandate could be more effectively used or expanded to address mental illness and addictions issues.

**(b) Regulatory Strategies**

- Continue to build on the current Law Society preventive and management strategies described in the "Inventory of Law Society Initiatives Addressing Wellness, Mental Illness and Addictions." (included with this Report)
- Consider a policy and operational continuum that provides guidelines for addressing mental illness and addictions issues from intake, including early diversion from regulatory processes in appropriate circumstances.
  - Analyze current early processes in place to identify and address possible mental illness, including dementia, or addictions issues in licensees.
  - Consider best practises to support early diversion and treatment, in keeping with the public interest.
  - Consider whether there are aspects of the Nova Scotia Barristers' Society's Fitness to Practice Program and the Ontario Medical Association's Physician Health Program that might be adaptable to Law Society approaches.
  - Ensure regulatory focus is on impairment, not mere presence of a diagnosis or seeking of care.

- Consider appropriate handling of licensee information respecting mental illness and addictions issues, whether within the Law Society or in the public domain, balancing considerations of privacy and regulatory accountability.
  - Consider proactive steps to address repeated licensee failure to respond to Law Society correspondence, where mental illness or addictions issues are suspected.
- Analyze the 2007 Convocation policy that approved all capacity proceedings be held in public, with a view to determining,
  - whether there are reasons to reverse the policy, while continuing to address the public interest;
  - if not, whether greater discretion might be provided to hearing panels to consider hearings in the absence of the public in appropriate cases; and
  - the impact of any proposed change to the policy on Rule 18 of the Law Society Tribunal Hearing Division Rules of Practice and Procedure.
- Ensure that regulatory staff have specialized mental illness and addictions training, appropriate for the functions they perform, such that necessary skills are applied to the assessment and handling of cases from first contact with licensees.
- Review the Rules of Professional Conduct and Paralegal Rules of Conduct to ensure that they do not stigmatize those with mental illness and addictions.
- Ensure that all Law Society application forms, including for licensing and good character, do not stigmatize those with mental health illness and addictions.
- Continue to develop the role of the Capacity Program Manager in the Professional Regulation Division to facilitate the Strategic Directions on mental illness and addictions.
- Consider an enhanced role for duty counsel for licensees at an early stage of the regulatory process where mental illness and addictions may be issues.
  - Consider the development of specialized duty counsel training.
- For the Tribunal process,
  - review all Law Society Tribunal Rules and processes to ensure that they are responsive to the needs of those with mental illness and addictions;
  - provide clear authority for a hearing panel to convert a conduct application to a capacity application where appropriate; and
  - ensure that the release and publication of reasons and orders and the release of file materials respecting licensees do not reinforce stigma and/or interfere with

treatment. This could include consideration of the possible role that anonymization of identifying information might play, in appropriate circumstances.

## **RESOURCES FOR AND IMPLEMENTATION OF KEY ELEMENTS AND INITIATIVES**

- Provide appropriate human and other resources for the implementation of the Strategy, including but not limited to,
  - when necessary from time to time, contracting for dedicated or specialized assistance or resources to assist Law Society Divisions in the implementation of the Strategy; and
  - adequate financial resources over the balance of the 2015-2019 benchers term and beyond to implement recommendations, including those that address training, model policies, a regulatory policy and operational continuum for addressing mental illness and addictions, access to duty counsel at an early stage, a TAG Mental Health Conference, the Communications Strategy and any MAP enhancements.
- Establish a Mental Health Strategy Implementation Task Force of no more than five benchers to provide guidance on implementation-related issues.
- Include reporting on the Strategy's Implementation as part of the CEO's Reports to Convocation to ensure regular monitoring.

## PART 2

### PROPOSED GOVERNANCE TASK FORCE 2016

#### Motion

10. That Convocation establish a task force to undertake a review of and make recommendations respecting the Law Society's governance structure, with terms of reference and membership of the task force as set out in this report.

#### Issue for Consideration

11. The Law Society's Strategic Plan 2015-19 includes some specific priorities under Strategic Initiative #13 - improving governance at the Law Society, as follows:

##### Part 1

*Work with Benchers to identify their non-adjudicative education needs in relation to their role in the Law Society and then develop an education plan to address those needs.*

*(13.1)*

##### Part 2

*Conduct an internal diversity assessment of the bench composition and publicize the results.* (13.2)

##### Part 3

*Review the Law Society's governance structure including achieving the goals of transparency, inclusiveness, effectiveness, efficiency, and costs and, where appropriate, obtain the opinions of experts.* (13.3)

12. As reported to Convocation by the Priority Planning Committee in June 2016, work on Parts 1 and 2 has begun. The Treasurer has determined that for the governance review under Part 3, a task force should be created to undertake this work.
13. This report proposes the creation of this task force and sets out its membership and terms of reference for Convocation's approval.

#### Scope of the Work of the Task Force

14. The Part 3 priority is broadly stated. The identified goals of the review - transparency, inclusiveness, effectiveness, efficiency, and costs – set against the current governance structure provide an opportunity for Convocation to engage in wide-ranging discussion of governance issues. With this in mind, it is proposed that work of the task force be organized in stages.

15. A first stage would consider practical process issues, which may include a review of how Convocation and committees work, agenda planning, the types, size and number of committees and the frequency of meetings. Recommendations would be reported to Convocation as the work progresses.
16. Concurrently with the work described above, the task force would undertake research on and review of governance models here and abroad, including other professions. The research would set the stage for an examination of fundamental governance structure issues, which may include how Convocation is constituted, the current composition of Convocation and the size of Convocation.
17. Following the research phase, the task force would report to Convocation on what it proposes as the broad areas of focus for the next stage of its study. It would then begin that work, which would involve detailed review and assessment of the governance issues identified. The task force would then prepare a report to Convocation with recommendations.
18. The task force would also be charged with considering various governance-related issues that have arisen in the context of bench elections and through the work of some committees. A number of these issues were referred to the Governance Issues Working Group of the Priority Planning Committee for review. The task force would integrate these issues with its work within the umbrella of its broader view.
19. While the task force will create and manage its own process for its work, it is envisaged that members of Convocation would collectively and individually be requested for input in both stages of the task force's work. The engagement in this work of those who serve as benchers is central to its effectiveness. It is also envisaged that the input of the Law Society's stakeholder groups would be sought at various points to ensure that their valuable input and ideas are captured.
20. Expenditures for this initiative will be driven largely by external expertise the task force believes is necessary to support its work, as reflected in the priority outlined in Part 3 above. Funding is available in the proposed consulting budget of \$200,000 in 2017 for the implementation of strategic plan initiatives. Any additional funding, as may be appropriate, will be determined for 2018 as work progresses.

### **Composition of the Task Force**

21. The Treasurer is recommending the following as members of the task force:

Janet Leiper (Chair)  
Christopher Bredt  
Gisèle Chrétien  
Dianne Corbiere  
Michelle Haigh  
Jacqueline Horvat  
Gina Papageorgiou  
Sidney Troister  
Peter Wardle

### **Terms of Reference**

22. The following are the proposed terms of reference for the task force:

- a. The Governance Task Force 2016 will:
  - i. review the Law Society's corporate governance, including practical process issues and governance structure issues;
  - ii. engage in research and consultation; and
  - iii. make recommendations to Convocation to improve the Law Society's corporate governance through greater transparency, inclusiveness, effectiveness, efficiency and cost-effectiveness.
- b. The Task Force will consider as part of its work a number of governance issues referred to the Governance Issues Working Group of the Priority Planning Committee.
- c. The Task Force may provide interim reports to Convocation on the status of its work.
- d. The Task Force will report to Convocation from time to time with specific recommendations in 2017 and 2018.

**Tab 5.3**

**FOR INFORMATION**

**TREASURER'S MEMORANDA TO COMMITTEES RESPECTING  
MANDATE AND STRATEGIC PRIORITIES**

23. The Treasurer has provided to the Chair and Vice-Chairs of various committees individual memoranda setting out the mandate of the committee and the Treasurer's expectations for work to be undertaken by the committee during his term. As indicated in the memoranda at [Tab 5.3.1](#), the work includes the priorities under the Strategic Plan 2015-2019 and ongoing issues related to the committees' mandates.

**Tab 5.3.1**

**TREASURER'S MEMORANDA TO COMMITTEES RESPECTING MANDATE AND  
STRATEGIC PRIORITIES (ENGLISH)**



## OFFICE OF THE TREASURER MEMORANDUM

**TO:**           **HOWARD GOLDBLATT, CHAIR**  
                  **JANET LEIPER VICE-CHAIR**  
                  **GINA PAPAGEORGIOU, VICE-CHAIR**

**FROM:**       **PAUL SCHABAS, TREASURER**

**DATE:**       **SEPTEMBER 23, 2016**

**RE:**           **ACCESS TO JUSTICE COMMITTEE 2016 - 2018**

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On August 9, 2016, on my recommendation, Convocation appointed you the chair and vice-chairs of the Access to Justice Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

The Chair is responsible for setting the agenda of each committee meeting, chairing the meeting and approving reports for presentation to Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-chairs.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the Committee.

Your committee's mandate is to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario.

This mandate, together with the priorities in the Law Society's Strategic Plan 2015-2019 relevant to your committee's mandate, will guide your work over the next two years.

The Access to Justice Committee should continue its focus on Strategic Priorities for 2015-2019 related to “enhancing access to justice across Ontario”. This builds on the access to justice framework adopted in 2014 and in which your Committee’s work should unfold as a function of achieving the mandate. Its work will involve review and identification of activities that can be undertaken to address access to justice issues, with particular priority to family law. Initiatives should include:

- Exploring, in consultation with the Paralegal Standing Committee, and recommending as appropriate possible new methods of legal assistance in the area of family law including the concepts of legal information vs. legal advice, categories of licensing, and/or expanded paralegal practices;
- Framing a response for Convocation’s consideration to recommendations arising out of the Family Law Review being led by the Honourable Justice Bonkalo, with a report to be provided in the early spring of 2017;
- Supporting family law–focused government initiatives that may include further development of the Unified Family Court, mandatory mediation programs or collaborative models for family law disputes;
- Reviewing the current regulatory and licensing structure and recommending changes for consideration by the appropriate policy committee that would facilitate greater access to justice;
- Determining and promoting methods to facilitate greater and easier access to legal information and/or legal advice, including through existing external networks or infrastructure;
- Utilizing the work of ongoing initiatives (e.g. Compliance-Based Entity Regulation Task Force, Alternative Business Structures Working Group) and the work of The Action Group on Access to Justice (“TAG”) as it relates to any of the above initiatives as appropriate;
- Liaising with the Equity and Aboriginal Issues Committee on access-related initiatives of the Indigenous Strategy, including the new Indigenous Advisory Group and the work commenced on responses to the Law Society-focused recommendations of the Truth and Reconciliation Commission;
- Commencing work on an initiative I am starting on legal aid issues, through a joint working group of your committee and the Government and Public Affairs Committee, and assisting with drafting terms of reference for this work;
- Evaluating and reporting to Convocation in the spring of 2017 on the achievements, challenges and improvements pertaining to the development and implementation of the Law Society’s access to justice framework;
- Continuing the engagement with the work of The Action Group on Access to Justice (“TAG”), and providing input into TAG initiatives as appropriate;
- Assisting in national initiatives on access to justice as the opportunities may present themselves, through participation, promotion and support;
- Provide assistance where appropriate to the Strategic Plan priority to “Engage stakeholders and the public with responsive communications” where these

engagements efforts relate to access to justice initiatives, and reporting to Convocation prior to June 2017 on the progress on this initiative.

As the Committee builds on the work it has done in the past year, I look forward to receiving the “report card” on your progress, by June 2017, in particular as it relates to family law issues, public engagement and work on legal aid issues.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO:** CHRIS BREDT, CHAIR  
TERESA DONNELLY, VICE-CHAIR  
SUZANNE CLEMENT, VICE-CHAIR

**FROM:** PAUL SCHABAS, TREASURER

**DATE:** SEPTEMBER 23, 2016

**RE:** AUDIT & FINANCE COMMITTEE

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On August 9, 2016, on my recommendation, Convocation appointed you Chair and Vice-Chairs of the Audit & Finance Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

The Chair is responsible for setting the agenda of each Committee meeting, chairing the meeting and approving reports for presentation by Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-Chair(s).

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the committee.

The mandate of your committee, summarized below, together with the priorities in the Law Society's Strategic Plan 2015-2019 relevant to your committee's mandate, will guide your work over the next two years.

The mandate of the Committee, as set out in By-Law 3, can be summarized as:

1. receiving the interim and annual financial statements of the Society and its subsidiaries and engaging with our auditor;
2. reviewing the integrity and effectiveness of the financial operations including periodic program review;
3. drafting the annual budget of the Society, including incorporating the operations of its subsidiaries and any special budgets outside of the annual cycle;
4. providing guidance on the allocation of resources and financial policy options;

5. ensuring the Society's programs have clearly articulated objectives and identifiable performance standards;
6. reviewing periodically the Law Society's programs to determine compliance with program objectives and whether there is cost-effective use of funds;
7. administering the pension plan for the employees of the Society.

The Committee has a central role in achieving at least two of the strategic objectives in the Strategic Plan for 2015-19:

Leading as a professional regulator.

Improvements to the efficiency of the Law Society, with a focus on improved measurements and more robust assessment of current and proposed activities.

Bearing in mind the underlying mandate of the Committee and its ongoing work, some additional specific objectives of the Committee over the next two years are as follows:

<b>COMMITTEE OBJECTIVE</b>	<b>RELEVANT STRATEGIC OBJECTIVE FOR THE CURRENT BENCHER TERM</b>	<b>TIMING</b>
In consultation with the Compensation Fund Committee, reviewing the role and terms of the Compensation Fund and its fund balance to better reflect the current claims experience and funding philosophy	Lead as a professional regulator Increase organizational effectiveness	Review by Convocation by the end of 2016
Establish a funding model for LibraryCo Inc. when it completes its transition	Increase organizational effectiveness	Incorporate into 2018 budget
Participate in the review of the Law Practice Program with the objective of obtaining an appropriate funding model for candidates and lawyers	Evaluation and enhancement of the current licensing standards	In line with the work of the PD&C Committee on their review of the LPP
Review the financial efficacy of new initiatives developed under the strategic objectives	Increase organizational effectiveness	Throughout the period
Assess the funding model of the Lawyers Feed the Hungry program in Toronto with a view to achieving sustainability	Increase organizational effectiveness	Review by Convocation prior to approval of 2018 budget
Review the Law Society's risk profile in assessing the equity component within the investment portfolio asset mix	Increase organizational effectiveness	Review by Convocation by the end of 2016

Assess upgrading the Law Society's Business Conduct Policy by expanding the whistleblowing process	Increase organizational effectiveness	Review by Convocation by the end of 2016
Enhancing transparency of payments for remuneration and expense reimbursement for the Treasurer, benchers and staff	Lead as a professional regulator Increase organizational effectiveness	Throughout the period
Monitoring the progress of litigation likely to have a material impact on the Law Society's finances and status, including potential cost awards against the Law Society to ensure the optimal use of financial resources	Increase organizational Effectiveness Lead as a professional regulator	Dependent on progress of litigation
Conduct periodic reviews of select divisions (for example PD&C, PRD, CS, PEPA) to ensure optimal use of resources, and report to Convocation as appropriate.	Increase organizational Effectiveness Lead as a professional regulator	Throughout the period

I look forward to working with you to advance the Law Society's work, in the public interest.



## OFFICE OF THE TREASURER MEMORANDUM

**TO: DIANNE CORBIERE, CO-CHAIR  
JULIAN FALCONER, CO-CHAIR  
SANDRA NISHIKAWA, VICE-CHAIR  
GINA PAPAGEORGIOU, VICE-CHAIR**

**FROM: PAUL SCHABAS, TREASURER**

**DATE: SEPTEMBER 22, 2016**

**RE: EQUITY AND ABORIGINAL ISSUES COMMITTEE 2016 - 2018**

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On August 9, 2016, on my recommendation, Convocation appointed you as Co-Chairs and Vice-Chairs of the Equity and Aboriginal Issues Committee (EAIC). I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memo, following my discussions with you, I am setting out my expectations for the work of your committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

First, I would like to remind you of a few things about the Law Society's committees and their work.

The chairs are responsible for setting the agenda of each committee meeting, chairing the meeting and approving reports for presentation to Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The chairs are supported by the vice-chairs.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and, through them, the knowledge and expertise of other staff members, all of which can greatly assist the work of the committee.

Your committee's mandate is to develop, for Convocation's approval, policy options as they relate to your authority as set out in By-Law 3 as follows:

The mandate of the Equity and Aboriginal Issues Committee is,

- (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and
- (b) to consult with Aboriginal, Francophone and other equality-seeking communities in the development of such policy options.

This mandate, together with the priorities in the Law Society's Strategic Plan 2015-2019 relevant to your committee's mandate, will guide your work over the next two years. This includes completing a number of initiatives already underway at the time the Strategic Plan was adopted and recognized as priorities. The mandate will also include initiatives within the Plan related to regulation and the Law Society's effectiveness as a regulatory body. An equity lens must be applied to these initiatives to ensure that the equity principles to which the Law Society ascribes are recognized and adhered to.

The following activities and initiatives have been identified as priorities for your Committee:

### **Indigenous Issues**

As Canada in 2017 will celebrate 150 years since Confederation, the promotion of equity and diversity must prioritize reconciliation with Indigenous peoples. The Truth and Reconciliation Commission of Canada's Final Report reminded us of the reality that Indigenous peoples have a "deep and abiding distrust of Canada's...legal systems". The Law Society can play a part in working towards reconciliation. Initiatives should include the following:

- In partnership with the newly formed Indigenous Advisory Group, developing and implementing the Law Society's Indigenous Strategy to work towards fulfilment of the Law Society's mandate, and the equity and other principles by which it regulates, in relation to Indigenous issues;
- Developing programs that will enhance cultural competence on the part of the Law Society and the profession in dealings with Indigenous peoples;
- Improving access to our complaints processes for Indigenous communities;
- Supporting and implementing the work of reconciliation, internally and externally with partners, including the newly established Indigenous Advisory Group, by implementing Calls to Action of the Truth and Reconciliation Commission of Canada's Final Report; and
- Developing policies that will ensure an Indigenous lens to all we do at the Law Society.

I look forward to seeing the results of the work on the Indigenous Strategy by January 2017.

### **Implementation of the Report on Challenges Faced by Racialized Licensees**

As you are aware, I have committed that the Challenges Faced by Racialized Licensees Working Group will complete its work and report its recommendations to EAIC and to Convocation this fall. As part of the Law Society's role in maintaining and advancing the cause of justice, protecting the public interest, and facilitating access to justice for the people of Ontario, we need to address the findings of persistent and widespread barriers faced by racialized licensees. As part of its work, the Committee will be expected to:

- support the Working Group as it finalizes its recommendations;
- oversee and facilitate the implementation of the Working Group's recommendations as approved by Convocation;
- monitor our progress and effectiveness; and
- maintain strong relationships with partners, including the Equity Advisory Group and other equity organizations who advocate for racialized licensees across the province.

### **Equity Review – Leading by Example**

The Law Society's operations should meet the highest standards of equity, fairness and inclusion as well as foster respect for the diversity of the professions and the diverse communities we serve. As such, your Committee will be responsible for providing policy oversight and guidance on the following activities:

- An equity assessment, which will encompass the diversity assessment of the Benchers, as set out in the Strategic Plan and the diversity assessment of Law Society staff, which will be reported to the profession;
- A review and assessment of the Office of Discrimination and Harassment Counsel with specific reference to its effectiveness in addressing various forms of discrimination;
- A staff review of Law Society By-Laws and Rules applying the equity lens; and
- Formulating policies around cultural competence for the Law Society.

Convocation has also agreed to embark on a review of the Law Society's governance structure and policies and procedures, part of which will examine ways to achieve the goals of transparency and inclusion. Your Committee's expertise in this respect will be essential to this initiative.

In April 2016, as you know, Convocation adopted a mental health strategy, which provides an

important blueprint for progress in this very difficult area. EAIC, along with supporting staff, will need to play a large role supporting and providing expertise in the implementation of the strategy over my term as Treasurer.

### **External Appointments Policy**

I have communicated to the profession, including a number of legal organizations, my commitment to developing a robust and transparent policy for the Law Society's recruitment process and selection criteria for candidates for Law Society external appointments. The Committee will be responsible for:

- Including within the broader policy a specific policy statement that promotes equity and diversity in Law Society internal and external appointments to ensure appropriate representation based on gender identity, sexual identity, Indigenous identity, linguistic identity, racial and cultural diversity, disability and sexual orientation; and
- Establishing a method for evaluating the effectiveness of this equity policy.

I expect to receive the Committee's report on this issue by December 2016.

### **Retention of Women in Private Practice**

In May 2008, Convocation approved nine recommendations to enhance the retention of women in private practice, which in turn led to the creation of a number of programs and initiatives, including the Justicia project, the Career Coaching Program, the Parental Leave Assistance Program, the Contract Registry and the Women's On-line Resource Centre.

Almost ten years later, gender inequality continues to be a significant issue within the profession. At this time the Committee should begin:

- establishing a methodology for considering the impact of the retention of women in private practice initiatives in promoting gender equality;
- considering whether any additional measures could or should be taken to promote gender equality in the profession.

### **French Language Services**

In 2015, the Law Society adopted the "Politique sur les services en français" and continues to make ongoing efforts to enhance access to justice in French in Ontario and provide resources to licensees in French. Your committee is tasked with:

- monitoring the implementation of recommendations pertaining to the Law Society outlined in the 2012 Bench and Bar Committee *Access to Justice in French* report;

- in partnership with AJEFO, working to strengthen French language services within the professions.

### **Additional Issues within the Mandate**

As the mandate of your Committee includes the development of policy options for the promotion of equity and diversity in connection with lawyer and paralegal practice, I expect that this will involve the continued examination of a number of issues that have already been the subject of your work over the years, for example, issues of disability/accessibility, sexual orientation and creed. I also encourage your committee to view all issues it examines through an intersectional lens – keeping in mind the interconnected nature of social categorizations, including, but not limited to, race, disability, gender identity, gender expression, sexual orientation, creed, and the ways in which they overlap to create related systems of discrimination or disadvantage.

In conclusion, as the Committee builds on the work it has done in the past year, I look forward to receiving the “report card” on your progress, by June 2017, in particular as it relates to the areas I have outlined above.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO:** JOHN CALLAGHAN, CHAIR  
MARION BOYD, VICE-CHAIR  
WILL McDOWELL, VICE-CHAIR

**FROM:** PAUL SCHABAS, TREASURER

**DATE:** SEPTEMBER 23, 2016

**RE:** GOVERNMENT AND PUBLIC AFFAIRS COMMITTEE 2016 - 2018

---

On August 9, 2016, on my recommendation, Convocation appointed you the chair and vice-chairs of the Government and Public Affairs Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer.

The Chair is responsible for setting the agenda of each committee meeting, chairing the meeting and approving reports for presentation to Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-chairs.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the Committee.

The mandate of the Government and Public Affairs Committee is,

- (a) to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General of Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and the profession are understood before decisions affecting those matters are

made;

- (b) to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;
- (c) to develop and maintain an effective working relationship with the Government of Canada and the Attorney General of Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;
- (d) to develop for Convocation's approval a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and
- (e) to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.

The Committee monitors the impact of provincial and federal legislative initiatives that affect self-regulation and the independence of the bar. It also acts as a resource to other committees when there is a government relations aspect to an issue they are considering.

I recognize that given the sensitive nature of some of the issues that the Government and Public Affairs Committee must consider pursuant to its mandate that certain matters reported to Convocation will be in an in camera session.

The Government and Public Affairs Committee mandate, together with the priorities in the Law Society's Strategic Plan 2015-2019 relevant to your committee's mandate, will guide your work over the next two years. The Government and Public Affairs Committee will work to support all of the Strategic Priorities for 2015-2019 to the extent that these priorities relate to the Committee's mandate. I will also be turning to the Government and Public Affairs Committee for strategic advice regarding the Law Society's initiatives and priorities as they intersect with the federal and provincial government.

In addition, I would expect that the Government and Public Affairs Committee will contribute to the Law Society's efforts to facilitate access to justice initiatives. This should involve developing strategies for the Law Society to work collaboratively with the federal and provincial governments with respect to government priority areas which, if implemented, would facilitate access to justice and be in the public interest for Ontarians. This will include:

- Facilitating the creation of new Unified Family Courts in Ontario, which is a federal government priority featured in the [Prime Minister's mandate letter to the Minister of Justice and Attorney General of Canada](#).
- Facilitating the effectiveness of Legal Aid, Court reforms to develop more efficient, innovative Court systems, and reforms to the Family Law System,

particularly early triage processes, and greater harmonization of Ontario's family court systems. These initiatives are provincial government priorities featured in the [Premier's 2014 mandate letter to the Attorney General](#).

- Facilitating efforts to support renewed relationships with Indigenous peoples in Ontario and Canada, which is a priority shared by the Law Society, the Government of Canada and the Government of Ontario.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO: MICHELLE HAIGH, CHAIR  
JANIS CRIGER, VICE-CHAIR**

**FROM: PAUL SCHABAS, TREASURER**

**DATE: SEPTEMBER 23, 2016**

**RE: PARALEGAL STANDING COMMITTEE 2016 - 2018**

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Further to your election as Chair of the Paralegal Standing Committee (PSC) in April 2016 and the appointment of Ms. Criger as Vice-Chair on August 9, 2016 on my recommendation, Convocation has appointed you Chair and Vice-Chair of the PSC. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this letter, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

The Chair is responsible for setting the agenda of each Committee meeting, chairing the meeting and approving reports for presentation by Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-Chair.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your Committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with policy staff assigned to your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the Committee.

### **Mandate**

The mandate of the Paralegal Standing Committee is to develop for Convocation's approval policy options on all matters relating to:

- (a) The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence;

- (b) The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
- (c) The regulation of persons licensed to provide legal services in Ontario in respect of,
  - i. The handling of money and other property, and
  - ii. The keeping of financial records.
- (d) The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
- (e) The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability;
- (f) The professional competence of persons licensed to provide legal services in Ontario, including
  - (i) The requirements to be met by such persons with respect to continuing legal education, and
  - (ii) The review of the professional business of such persons.
- (g) Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
- (h) The provision of legal services through professional corporations.
- (i) The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.
- (j) The appointment of the chair of the Committee.

The Committee also receives Quarterly Reports from the Professional Regulation Division, the Annual Reports of the Complaints Resolution Commissioner, and other reports provided by the Division for the Committee's consideration. These include annual analyses of complaints and investigations and updates Law Society compliance with the National Discipline Standards of the Federation of Law Societies of Canada.

The Committee should be focussing on Strategic Priorities for 2015-2019. These priorities include adjusting and improving the regulatory process, including the development of mental health and equity initiatives, and the evaluation and enhancement of current admission standards and licensing requirements for paralegal licensees. Initiatives relating to these priorities are described in more detail below.

## **Adjusting and Improving the Regulatory Process**

Initiatives should include

- approval of a disclosure policy framework to describe what information the Law Society should or should not be permitted to disclose about complaints and investigations, and to continue to examine whether further transparency is required with respect to the complaints and investigation process;
- consideration of an expansion of the criteria for a regulatory meeting;
- consideration of more effective ways to respond to non-participation by licensees in the regulatory process;
- simplifying the process for authorization of conduct applications in certain circumstances;
- the exploration of administrative options to respond to governance issues with licensees that are currently addressed through the discipline process;
- continuing work on the development of a regulatory approach to licensees who are suspended indefinitely through the summary hearing process, or other hearing process, for more than two years;
- new tools for assessing regulatory risk;
- exploring a possible pilot project involving duty counsel assistance to licensees in the regulatory process.

## **Development of Mental Health and Equity Initiatives in the Regulatory Process**

The Committee should consider

- taking into account the Mental Health Strategy Task Force report adopted by Convocation in April 2016, examine how mental health and addictions issues can most appropriately be addressed in the regulatory context; and
- the development of clear authority for a hearing panel to convert a conduct application to a capacity application.

## **Evaluating and Enhancing Current Admissions Standards and Licensing Requirements**

The Committee should be considering the need for additional education and training pre-licensing of paralegal licensing candidates. I expect it will also explore initiatives to enhance post-licensing competence.

## **Ongoing Projects**

The Committee should continue to review proposed amendments to the Paralegal Rules of Conduct, in particular arising from the Model Code of Professional Conduct of the Federation of Law Societies of Canada (FLSC).

The Committee should continue to consider the issues identified in the Report to the Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act (the Morris Report), as they relate to regulation of paralegals by the Law Society.

The Committee will also need to review proposals that may arise as a result of recommendations of the Professional Regulation Committee's the Advertising and Referral Fee Issues Working Group. It may also review proposals that may arise from the Alternative Business Structures Working Group and a Working Group to be formalized to examine issues relating to confidentiality and solicitor-client privilege. It should also monitor any recommendations of the Task Force on Compliance-Based Entity Regulation. The Committee will recommend amendments to Convocation as appropriate based on its review.

The Committee should also assist in the Society's strategic initiative regarding enhanced collaboration among stakeholders to promote better access to justice. As appropriate, it will collaborate with the Access to Justice Committee which is reviewing the current regulatory and licensing structure to determine whether certain changes would facilitate greater access to justice, including any recommendations with regulatory implications arising out of the Bonkalo review (Expanding Legal Services Options for Ontario Families). Subject to the approval of Convocation, the Committee should monitor and respond to the recommendations of the Challenges Faced by the Racialized Licensees Working Group.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO:** Peter Wardle, Chair  
Jacqueline Horvat, Vice-Chair  
Joanne St. Lewis, Vice-Chair

**FROM:** Paul Schabas, Treasurer

**DATE:** September 22, 2016

**RE:** PD&C Committee 2016 – 2018

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On August 9, 2016, on my recommendation, Convocation appointed you Chair and Vice-Chairs of the PD&C Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

The Chair is responsible for setting the agenda of each Committee meeting, chairing the meeting and approving reports for presentation by Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-Chairs.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the Committee.

Your Committee's mandate is to develop, for Convocation's approval, policy options on the following matters:

- (i) the classes of licence for the practise of law in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence,
- (ii) the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing,

- (iii) the professional competence of persons licensed to practise law in Ontario as barristers and solicitors including, (A) the requirements to be met by such persons with respect to continuing legal education, and (B) the review of the professional business of such persons;
- (iv) guidelines for professional competence applicable to persons licensed to practise law in Ontario as barristers and solicitors.

This mandate, together with the priorities in the Law Society's Strategic Plan 2015-2019 relevant to your Committee's mandate, will guide your work over my term. The PD&C Committee should continue its focus on Strategic Priorities for 2015-2019 related to "enhancing licensing standards and requirements and their assessment and ways to improve and increase practice supports for lawyers and paralegals and provide better mentoring."

This builds on the competence mandate on which the Committee and the PD&C Department have been concentrating over a number of years, in both the pre-licensing and post-licensing context and with respect to both quality improvement and quality assurance.

The Committee's work will involve review and identification of activities that can be undertaken to address lawyer licensing, transitional training and assessment, entry level competence profiles, post-call learning and competence, coach and advisor services, and post-call credentialing (limited licensing). Initiatives should include,

- completion this fall of the evaluation of the Pathways Pilot Project;
- completion this fall of consideration of the lawyer licensing process enhancement recommendations relating to examinations, articling and licensing process rules, contained in the Committee's April 2016 report;
- revision of by-laws related to L1 licensee supervision of law student experiential learning;
- consideration of the possible role that restricted licensing or practice restrictions at entry could play in supporting the evolution of standards;
- consideration of post-licensing competence assurance activities and whether they should be increased, reduced or refocused, particularly in the context of any decisions related to entry level standards enhancements and practice restrictions;
- ongoing consideration of issues related to transitional training;
- supporting the PD&C department's implementation of the Coach and Advisor Initiative and evaluating the initiative in accordance with the provisions and timeline set out in the Report Convocation approved in January 2016;
- supporting the ongoing development of curricula training in CPD, particularly as it may be relevant in the context of any decisions related to entry level standards enhancements and practice restrictions; and
- consideration of the relationship between compliance-based entity regulation policy development and the PD&C committee's mandate and, where appropriate, facilitating the ongoing consideration of that initiative.

As the Committee builds on the work it has done in the past year, I look forward to receiving the "report card" on your progress, by June 2017.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO:** WILLIAM C. MCDOWELL, CHAIR  
MALCOLM MERCER, VICE-CHAIR  
JONATHAN ROSENTHAL VICE-CHAIR

**FROM:** PAUL SCHABAS, TREASURER

**DATE:** SEPTEMBER 23, 2016

**RE:** PROFESSIONAL REGULATION COMMITTEE 2016 - 2018

---

On August 9, 2016, on my recommendation, Convocation appointed you Chair and Vice-Chairs of the Professional Regulation Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation as appropriate.

The Chair is responsible for setting the agenda of each Committee meeting, chairing the meeting and approving reports for presentation by Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-Chair.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the committee.

### **Mandate**

The mandate of the Professional Regulation Committee is to develop for Convocation's approval policy options on all matters relating to:

- (a) the regulation of licensees in respect of their conduct and capacity;
- (b) policies and guidelines relating to sections 26.1 to 26.3 of the Act; and
- (c) Rules of Professional Conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors.

The Committee also receives Quarterly Reports from the Professional Regulation Division, the Annual Reports of the Complaints Resolution Commissioner and other reports provided by the Division for the Committee's consideration. These include updates on the Law Society compliance with the Federation of Law Societies of Canada's National Discipline Standards.

The Committee will be focusing on Strategic Priorities for 2015-19. These priorities include adjusting and improving the regulatory process and the development of mental health and equity initiatives in the regulatory process. Initiatives relating to these priorities are described in more detail below.

### **Adjusting and Improving the Regulatory Process**

Initiatives should include

- approval of a disclosure policy framework to describe what information the Law Society should or should not be permitted to disclose about complaints and investigations, and to continue to examine whether further transparency is required with respect to the complaints and investigation process;
- consideration of an expansion of the criteria for the regulatory meeting;
- consideration of more efficient ways to respond to non-participation by licensees in the regulatory process;
- simplifying the process for authorization of conduct applications in certain circumstances;
- the exploration of administrative options to respond to governance issues with licensees that are currently addressed through the discipline process;
- continuing work on the development of a regulatory approach to licensees who are suspended indefinitely through the summary hearing process, or other hearing process, for more than two years;
- new tools for assessing regulatory risk; and
- exploring a possible pilot project involving duty counsel assistance to licensees in the regulatory process.

### **Development of Mental Health and Equity Initiatives in the Regulatory Process**

- taking into account the Mental Health Strategy Task Force Report adopted by Convocation in April 2016, examine how mental health and addictions issues can most appropriately be addressed in the regulatory context; and
- the development of clear authority for a hearing panel to convert a conduct application into a capacity application.

### **Other Initiatives**

The Committee should continue to review proposed amendments to the Rules of Professional Conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors, in particular arising from the Model Code of Professional Conduct of the Federation of Law Societies of Canada.

It will also need to review proposals that may arise as a result of recommendations of the Advertising and Referral Fee Issues Working Group, the Alternative Business Structures Working Group and a working group to be formalized to examine issues relating to confidentiality and solicitor-client privilege. It will also monitor any recommendations of the Task Force on Compliance-Based Entity Regulation. The Committee will make recommendations to Convocation as appropriate based on its review.

The Committee should also assist in the Society's strategic initiative regarding enhanced collaboration with stakeholders to promote better access to justice. It will monitor the activities of the Access to Justice Committee which is reviewing the current regulatory and licensing structure to determine whether certain changes would facilitate greater access to justice, including any recommendations with regulatory implications arising out of the Bonkalo review (*Expanding Legal Services Options for Ontario Families*). Subject to the approval of Convocation, the Committee should monitor and respond to the recommendations of the Challenges Raced by Racialized Licensees Working Group.

I look forward to working with you in the coming year.



## OFFICE OF THE TREASURER MEMORANDUM

**TO: BARBARA MURCHIE, CHAIR  
ISFAHAN MERALI, VICE-CHAIR**

**FROM: PAUL SCHABAS, TREASURER**

**COPY: DAVID WRIGHT, TRIBUNAL CHAIR**

**DATE: SEPTEMBER 22, 2016**

**RE: TRIBUNAL COMMITTEE 2016 – 2018**

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On August 9, 2016, on my recommendation, Convocation appointed you Chair and Vice-Chair of the Tribunal Committee. I am pleased that you have agreed to support the important policy work of the Law Society in these roles. In this memorandum, following my discussions with you, I am setting out my expectations for the work of your Committee over the course of my term as Treasurer. I am also including targets for completion of work and decision-making by Convocation, as appropriate.

The Chair is responsible for setting the agenda of each Committee meeting, chairing the meeting and approving reports for presentation by Convocation. This is an important leadership role. I am confident that it will be executed with diligence. The Chair is supported by the Vice-Chair(s). In the case of the Tribunal Committee, the existence of the independent Tribunal Chair means that you and your committee work in conjunction with the Tribunal Chair to develop policy options for Convocation.

As you know, we also have an excellent resource in the Law Society staff. While it is always understood that ultimately the members of your committee will decide on the appropriate recommendations for Convocation's consideration, I would urge you to work closely with staff and seek their advice and input. In particular, I expect that you will regularly consult and meet with the policy staff assigned to support your Committee and the senior staff in the relevant operational areas to have access to their knowledge and through them the knowledge and expertise of other staff members, all of which can greatly assist the work of the Committee.

Your Committee's mandate is to,

develop, in conjunction with the Chair of the Law Society Tribunal, for Convocation's approval policy options on all matters relating to the Law Society Tribunal, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development. Subject to the approval of Convocation, in

conjunction with the Chair of the Law Society Tribunal, the Tribunal Committee may prepare rules of practice and procedure.

This mandate, together with the overall priorities in the Law Society's Strategic Plan 2015-2019 relevant to your committee, the implementation of the June 2012 Report to Convocation on tribunal reform and the Three Year Review will guide your work over the next two years.

Developed in conjunction with the Tribunal Chair, initiatives should include,

- revamping the Rules of Practice and Procedure and making more immediate changes to the Rules, to make them simpler and more flexible with a focus on plain language;
- formulating additional practice directions on various aspects of the Tribunal process, including human rights accommodation and those occasions when a panel may depart from the presumption of public proceedings, by holding a hearing in the absence of the public or removing materials from the public record;
- revising statistical information and data to provide better, more relevant reports to Convocation and the public;
- continuing the process of adjudicator education, in conjunction with the leadership of the Tribunal Chair;
- addressing Tribunal-related recommendations arising from the Mental Health Strategy; and
- addressing any remaining issues arising from the three-year Tribunal review.

As the Committee builds on the work it has done in the past year, I look forward to receiving the "report card" on your progress, by June 2017.

I look forward to working with you in the coming year.

**MATERIALS TO FOLLOW WHEN AVAILABLE**

















































**Tab 5.4**

## **TREASURER'S APPOINTMENTS ADVISORY GROUP**

24. The Treasurer has established a group of benchers to co-ordinate the process for the various external appointments made by the Law Society and to provide advice to the Treasurer on these appointments. The Treasurer's Appointments Advisory Group is Raj Anand, Suzanne Clément, Cathy Corsetti, William McDowell and Gina Papageorgiou. The Group's first task will be to create for Convocation's review a recruitment process policy, which will include a policy statement and appropriate criteria, that will guide the appointment of well-qualified persons to the various boards, councils and committees of external bodies.



**TAB 6**

**Report to Convocation  
September 22, 2016**

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**Audit & Finance Committee**

**Committee Members**

**Chris Bredt (Chair)**  
**Suzanne Clément (Vice Chair)**  
**Teresa Donnelly (Vice-Chair)**  
Peter Beach  
Paul Cooper  
Janis Criger  
Seymour Epstein  
Rocco Galati  
Michelle Haigh  
Vern Krishna  
Gina Papageorgiou  
Jan Richardson  
Andrew Spurgeon  
Cathy Strosberg  
Tanya Walker

**Purpose of Report: Decision  
Information**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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## **COMMITTEE PROCESS**

1. The Audit & Finance Committee (“the Committee”) met on September 7, 2016. Committee members in attendance were Chris Bredt (Chair), Suzanne Clément (Vice Chair), Teresa Donnelly (Vice-Chair), Peter Beach, Paul Cooper, Janis Criger, Michelle Haigh, Vern Krishna, Gina Papageorgiou, Jan Richardson (phone), Andrew Spurgeon, Cathy Strosberg and Tanya Walker.
2. Also in attendance: LAWPRO’s Kathleen Waters, President & CEO and Steve Jorgensen, Chief Financial Officer.
3. Law Society staff in attendance: Robert Lapper (phone), Wendy Tysall, Terry Knott, Elliot Spears, Grant Wedge, Jennifer Khor and Andrew Cawse.

TAB 6.1

**FOR DECISION**

**LAWYERS COMPENSATION FUND  
FUND BALANCE MANAGEMENT POLICY  
AMENDMENT**

**Motion:**

4. **That Convocation amend the Lawyers Compensation Fund, Fund Balance Management Policy as attached by reducing the minimum balance from three one-in-one hundred year events to one one-in-two hundred year event.**
5. The fund balance management policy for the Lawyers Compensation Fund was approved by Convocation in May 2013. Prior to that time, the Fund had no formal fund balance management policy to determine what the minimum or maximum balance in the Fund should be, nor a mechanism to utilize the fund balance to reduce the annual levy if the balance was deemed to be too large, or to increase the Fund if the balance was deemed to be too low.
6. With the current policy in place for three years, it was considered appropriate to review the policy, its effectiveness and consider modifications.
7. Eckler Consultants and Actuaries (Eckler) has provided ongoing assistance on fund balance management. Eckler has noted that the simulated results for grants at current limits "is expected to withstand an adverse outcome beyond an estimated one-in-two hundred-year event (i.e., the 99.5th percentile)"
8. Eckler goes on to note that if the claims limit was increased to \$500,000 from the current \$150,000, the fund balance would still be sufficient to withstand an adverse outcome beyond a one-in-two hundred year event. At their meeting on September 7, 2016, the Compensation Fund Committee recommended that the claims limit be increased to \$500,000.
9. Eckler concludes the analysis by stating "there is no single "correct" answer to the question of how much capital is enough. It can also be said that there is no level of capital that is sufficient to guarantee protection against possible insolvency. It is the Committee's job to define its appetite for risk considering the risk profile of the Fund and establish a target capital level to provide enough protection against insolvency within this context."
10. It is this issue Convocation is requested to consider, the issue of the amount of the fund balance or how much protection is enough.

## Summary of Background, Previous Discussion and Follow-Up

11. Over the fifteen year period 1998 to 2012, the fund balance grew from approximately \$8 million to over \$25 million. The dramatic increase in the fund balance occurred largely as a result of a sustained period of below normal grant payment experience, resulting in annual surpluses in the Fund and a three-fold increase in the fund balance over the fifteen year span.
12. In 2013, in support of the annual levy setting process for the Fund, the Society engaged the services of Eckler to assist in modeling future grant outcomes using historical data. The analysis was used to support a levy sufficient to fund annual grants payable at the 50th percentile, or median value of expected grant payments.
13. That analysis was also used to quantify what was considered the appropriate fund balance to be maintained in the Fund. The policy adopted was a fund balance sufficient to provide for a minimum of three and a maximum of four one-in-one hundred year events. Based on the analysis presented by Eckler, the policy approved required a balance between \$16.5 million and \$22 million. The actual fund balance at the end of 2013 was \$25.8 million.
14. While this balance exceeded the policy maximum, the situation did not last. 2014 saw the Fund experience its worst year in the last twenty and the fund balance declined to \$15.6 million, slightly below the policy minimum, at the end of 2014. Due to the timing difference of budgetary levy setting and year end grants valuation, no action was taken to restore the fund balance to its policy minimum with the setting of the 2015 Compensation Fund levy.
15. When establishing the 2016 Compensation Fund levy, a provision of \$700,000 to restore the fund balance to its policy minimum over three years was included. However, subsequent analysis by Eckler of more current data combined with enhanced modeling techniques produced markedly different results in 2016 from the results of 2013. The impact on the fund balance necessary to provide for three one-in-one hundred year events was dramatic. The minimum fund balance requirement increased to \$29 million from \$16.5 million and the median value for expected grants increased to \$3 million from \$2.3 million.
16. The total impact on the annual fee of \$143 would be driven by two factors. First, to restore the fund balance to its policy minimum over a three year time horizon would require \$5 million annually for the years 2017-2019 or approximately \$125 per lawyer. Second, the provision for grants, traditionally maintained at the 50th percentile, would increase by \$700,000 from \$2.3 million to \$3 million per year, or \$18 per lawyer.

### Key Issues and Considerations

17. The following are the key issues that require review and consideration:
- a. Convocations's level of risk tolerance;
  - b. The discretionary nature of grants paid by the Fund;
  - c. The appetite for a significant increase in the lawyer levy for the purpose of maintaining a policy approved fund balance;
  - d. The Society's ability to raise funds subsequent to a major defalcation;
  - e. The policy as it applies to the paralegal Fund.

### Risk Tolerance

18. Convocation is being asked to consider its tolerance for risk in light of the Fund's 2014 grants experience and the most recent analysis of projected grant payments. Is it reasonable to build a fund balance sufficient to provide for the occurrence of events, the odds of which are statistically infinitesimal? Additionally, investment rates of return are at historical lows and therefore the benefit derived from investment income generated from a large fund balance is greatly diminished.
19. A fund balance sufficient to absorb a one-in-two hundred year event should provide Convocation with a measure of assurance that in the event of this occurring the Fund has the resources to provide for it. Given the lag time between the event occurrence and ultimate grant payment, the Fund is also able to adjust the annual levy to restore the fund balance in a measured way over a reasonable period of time.
20. The projected Fund Balance at December 31, 2016 is \$14 million. This amount is sufficient to provide for a one-in-two hundred year event based on Eckler's analysis under a \$150,000 or \$500,000 per claim limit.
21. Part of the analysis conducted by Eckler included stress testing the model for increases in grant severity and frequency. Eckler notes that the simulated results are more sensitive to a doubling of frequency than a doubling of severity. The simulated results further indicate that the current fund balance would be sufficient to provide for a one-in-forty year event if either the severity or frequency of claims were to double.

### Discretionary Nature of Grants

22. Section 50.5 of The Law Society Act, states that "Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person ...". The act is permissive in allowing Convocation the discretion to award a grant and also the value of the grant. The grant may relieve the loss in its entirety or merely mitigate the loss. The Act's permissiveness has allowed Convocation to establish grant maximums and to establish guidelines around what losses are eligible for compensation

and which are not. For example, the Fund does not compensate financial institutions for a loss as a result of lawyer dishonesty.

#### Maintaining a policy approved fund balance

23. Best practices would dictate that a policy be in place to maintain a fund balance at an appropriate level. In the case of the Fund, the determination of what balance is appropriate is linked to risk tolerance, tempered by the financial impact if the policy establishes a minimum fund balance at an excessive level.
24. It is important therefore, that the existing policy be examined so that Convocation is satisfied the policy minimum balance is not excessive under the current circumstances. It is important to remember that the modeling done in 2013, using data available at that time, produced results that allowed for the current fund balance parameters without the necessity of increasing the compensation fund levy.
25. The Committee recommends that a fund balance of that magnitude is in fact excessive and therefore a more appropriate level of risk needs to be embedded in the policy and the current policy should be amended.

#### The ability to raise funds subsequent to an extraordinary event

26. The Society has unfettered ability to levy an annual fee necessary to support its operations, including those of the Fund. That does not mean the Society need not be mindful of the financial burden placed on lawyers when establishing the annual fee. The imposition and collection of a large annual levy for the Fund, solely for the purpose of growing a fund balance based on a policy cannot be justified if the outcome results in an excessive fund balance.
27. The Society's "taxing" authority provides it the tools to fund grants subsequent to a major defalcation if necessary. The funding of the expected annual grant provision at the median level along with the existence of a reasonable fund balance allows for a relatively stable Fund levy over the long term and the ability to absorb an immediate extraordinary shock.
28. In the event of a major defalcation, the fund balance can still be restored over a three year period with an increase to the annual levy.
29. The fund balance policy is not a tool to mitigate risk but rather a tool to manage risk. The policy will have no impact on the number and value of defalcations. What the policy does impact is the timing of the funding of major defalcations.
30. Amending the current policy would utilize the existing fund balance should defalcations occur above the 50th percentile, up to and including the 99th percentile. Defalcations in a single year beyond that level would be funded by an increase in the Fund levy in a

subsequent year and the fund balance would be restored over a three period by a further increase in the annual Fund levy.

#### Applying the policy to the Paralegal Compensation Fund

31. The discussion in this report has dealt solely with the Lawyers Compensation Fund. At the present time no policy exists for the management of the Paralegal Compensation Fund balance. It would be worthwhile to engage Eckler to model the historical data of the Paralegal Fund to determine if similar data based policy can be developed and implemented for this fund. If Eckler believes the data available is sufficient for such an exercise, they will be engaged at a later date to model the paralegal data and a draft policy similar to that approved for lawyers will be developed by the Finance Department for the consideration of the Committee and Convocation.

#### Conclusion

32. In conclusion, the changes proposed in this report will do nothing to mitigate the underlying risk of claims against the Compensation Fund from being incurred. The change proposed in this report will continue to provide the Compensation Fund a significant degree of assurance in its ability to withstand a future major defalcation without the need to significantly increase the annual fee for lawyers in 2017.

#### **Financial Impact and Analysis**

Impact on 2017 Lawyers Annual Fee		
	Maintain Current Policy	Amend Policy Minimum to 1-in-200 year event
Restore Fund Balance to Policy Minimum at \$150,000 claim limit	\$125	Nil
Restore Fund Balance to Policy Minimum at \$500,000 claim limit	\$190	Nil

33. The above chart provides a summary of the impact on the annual fee for lawyers if the current policy is maintained or modified to provide for a minimum one-in-one hundred year and one-in-two hundred year event at both the current claim limit of \$150,000 and at a claim limit of \$500,000.
34. The Compensation Fund Committee is recommending an increase in the per-claim limit for lawyers from \$150,000 to \$500,000. This recommendation is before Convocation and the final implications of the increase has not yet been factored into the 2017 budget considered by the Committee.

35. The Society's historic practice of budgeting the annual provision for claims has been to set the provision at the 50th percentile of projected outcomes based on analysis provided by Eckler.
36. The analysis shows the expected claims outcomes based on the current claim limit of \$150,000 and a \$500,000 per claim limit. The results are presented based on data from 2000-2013 and 2000-2014. The average of the results at the 50th percentile at the \$150,000 level is \$3.1 million. The current draft budget for 2017 has a provision of \$3 million, unchanged from 2016 due to the relatively insignificant variance from the estimates provided by Eckler. This provision, along with other current estimates included in the draft budget generates a levy of \$272.
37. Employing the traditional methodology of determining the annual provision for grants based on results at the 50th percentile would establish a provision of \$3.7 million if the per claim limit was raised to \$500,000. The difference between this and the current budget estimate of \$3 million is significant and should be provided for in the 2017 budget. Based on an estimated 40,200 Full Fee Equivalent lawyers for 2017, the levy would need to be increased by \$18 to \$290 to be consistent with past budgetary practice, if the per claim limit is increased to \$500,000.

**Lawyer Compensation Fund Balance Management Policy**

**Amended Policy For Convocation's Review, September 22, 2016**

- a) The Law Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of one 99.5th percentile aggregate claim scenarios (one-in-two-hundred-year event)<sup>1</sup> and a maximum of four 99<sup>th</sup> percentile aggregate claim scenarios (one-in-one-hundred year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.
- b) If the Lawyer Compensation Fund balance exceeds four one-in-one-hundred-year events, Convocation shall utilize some or all of the excess for the following:
  - Mitigation of the Lawyer Compensation Fund levy for the next fiscal year;
  - Annual mitigation of the Lawyer Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.
- c) If the Lawyer Compensation Fund balance is less than one one-in-two-hundred-year events, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.
- d) If the Lawyer Compensation Fund balance is more than one one-in-two-hundred-year events and less than four one-in-one-hundred-year events Convocation may:
  - Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
  - Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
  - Leave the fund balance at its current balance for the upcoming fiscal year.

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<sup>1</sup> Prior policy from May 2013 was "three successive 99th percentile aggregate claim scenarios (one-in-one-hundred-year event)"

TAB 6.2

**FOR DECISION**

**CHEQUE SIGNING AUTHORITY**

**Motion:**

38. **That Convocation approve a revised banking resolution that updates the old title of Director, Policy with the new title of Director, Office of CEO and Corporate Secretary and updates the names of office holders.**

**Rationale**

39. As set out on the attached schedules, the cheque signing officers of the Law Society are administered by title. The current authorized signing officers of the Law Society are:
- the Treasurer
  - the Chair of the Audit & Finance Committee
  - the Vice-Chairs of the Audit & Finance Committee
  - designated Bencher(s)
  - the Chief Executive Officer ("CEO")
  - the Chief Financial Officer ("CFO")
  - the Director, Policy
  - Senior Manager, Finance
  - Officers of Trustee Services and the Compensation Fund for accounts specific to their department
40. Due to changes in the Law Society structure, the previous Director, Policy has changed role to Director, Office of CEO and Corporate Secretary. The intention is for this new position to be a cheque signatory and the title requires updating.
41. Some of the people occupying certain of the signing officer positions have changed: Paul Schabas and John Callaghan have been the designated bencher signing officers due to their proximity to Osgoode Hall. Paul Schabas has recently been elected Treasurer and the intention is to replace him as designated bencher signing officer with Peter Wardle, due to his proximity to Osgoode Hall.
- Teresa Donnelly and Suzanne Clement are new Vice-Chairs of the Audit & Finance Committee
  - Karen Manarin is the new Executive Director, Professional Regulation
  - Sharada Narain is the new Forensic Auditor, Trustee Services
42. The signing instructions on cheques drawn on any of the Law Society's Bank accounts, other than those administered by LAWPRO under the administrative services agreement, include:
- Cheques for \$200,000 or less require the signatures of any two signing officers

- Cheques in excess of \$200,000 require two signatures with the first signature being that of either, the Treasurer, Chair or Vice-Chairs of the Audit & Finance Committee or a designated bencher with the second signature being that of Chief Executive Officer, the Chief Financial Officer, the Director, Office of CEO and Corporate Secretary or the Senior Manager, Finance.

## **SCHEDULE A TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)**

Effective Date: September 22, 2016

Schedule Dated: February 27, 2014

The names of the signing officers associated with the titles identified in this Schedule are set out in *Attachment to Schedule A Law Society of Upper Canada Banking Resolution Signing Officers*.

### **Account Numbers:**

xxxx (General Fund - General Bank Account)  
xxxx (Compensation Fund - Compensation Bank Account)  
xxxx (General Fund - Payroll Bank Account)  
xxxx (General Fund - Accounts Payable Bank Account)  
xxxx (General Fund - Unclaimed Trust Fund Bank Account)  
xxxx (General Fund - Online Payments Bank Account)  
xxxx (Osgoode Society in Trust - McMurtry Fellowship Bank Account)  
xxxx (General Fund - Business Premium Rate Savings Account)  
xxxx (Compensation Fund – Business Premium Rate Savings Account)  
xxxx (Unclaimed Trust Fund – Business Premium Rate Savings Account)  
xxxx (Osgoode Society in Trust – Business Premium Rate Savings Account)

Please Refer to Certificate and Agreement (LF327) dated: **February 27, 2014**

### Title

Treasurer	Chief Executive Officer
Chair, Audit & Finance Committee	Vice Chair, Audit & Finance Committee
Designated Bencher(s)	Chief Financial Officer
Senior Manager, Finance	
Director, Office of the CEO & Corporate Secretary	

### Signing Instructions:

All Law Society cheques, for the bank accounts identified above, require two signatures from the above noted list of positions. Cheques in excess of \$200,000 require that the first signature be that of the Treasurer, the Chair of the Audit & Finance Committee, the Vice Chair of the Audit & Finance Committee or a designated bencher with the second signature being that of the Chief Executive Officer, Chief Financial Officer, the Senior Manager, Finance or the Director, Office of CEO and Corporate Secretary.

**SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT  
(LF 327)**

**Account Numbers:**

xxxx (General Fund – Trustee Services)  
xxxx (General Fund - Trustee Services USD)

Title

Chief Executive Officer	Trustee Services & Compensation Fund Manager
Chief Financial Officer	Senior Counsel & Assistant Manager, Trustee Services
Senior Manager, Finance	Counsel, Trustee Services
Executive Director, Professional Regulation	

Signing Instructions

All Law Society cheques for account XXX-116 and XXX-873 require two signatures from the above noted list of positions.

**Account Number:**

xxxx (General Fund – Trustee Services Petty Cash)

Title

Chief Executive Officer	Trustee Services & Compensation Fund Manager
Chief Financial Officer	Senior Counsel & Assistant Manager, Trustee Services
Senior Manager, Finance	Counsel, Trustee Services
Executive Director, Professional Regulation	Forensic Auditor, Trustee Services

Signing Instructions

All Law Society cheques for the account number XXX-124 require one signature from the above noted list of positions.

Corporation Name: The Law Society of Upper Canada

Per: \_\_\_\_\_  
Name: Wendy Tysall  
Title: Chief Financial Officer  
Date: September 22, 2016

Per: \_\_\_\_\_  
Name: Fred Grady  
Title: Senior Manager, Finance  
Date: September 22, 2016

**ATTACHMENT TO SCHEDULE A  
THE LAW SOCIETY OF UPPER CANADA  
BANKING RESOLUTION  
UPDATE OF SIGNING OFFICERS**

The schedule below provides the names of the individuals associated with Schedule A to the Incorporated Company Certificate and Authorization (LF327) form signed on September 22, 2016 and supported by the signatures on file with the Bank of Montreal.

**Signing Officer**

**Title**

Paul Schabas	Treasurer
Robert Lapper	Chief Executive Officer
Chris Bredt	Co-Chair, Audit & Finance Committee
Teresa Donnelly	Vice-Chair, Audit & Finance Committee
Suzanne Clement	Vice Chair, Audit & Finance Committee
Peter Wardle	Designated Benchers
John Callaghan	Designated Benchers
Wendy Tysall	Chief Financial Officer
Fred Grady	Senior Manager, Finance
James Varro	Director, Office of the CEO & Corporate Secretary
Karen Manarin	Executive Director, Professional Regulation
Dan Abrahams	Trustee Services & Compensation Fund Manager
Catherine Phillips	Senior Counsel & Assistant Manager, Trustee Services
Joanne MacMillan	Counsel, Trustee Services
Sharada Narain	Forensic Auditor, Trustee Services

Corporation Name: The Law Society of Upper Canada

Per: \_\_\_\_\_  
Name: Wendy Tysall  
Title: Chief Financial Officer  
Date: September 22, 2016

Per: \_\_\_\_\_  
Name: Fred Grady  
Title: Senior Manager, Finance  
Date: September 22, 2016

**REPORTS FOR INFORMATION**

**TAB 6.3**

**TAB 6.3.1**

**FOR INFORMATION**

**LAW SOCIETY OF UPPER CANADA FINANCIAL STATEMENTS FOR THE SIX  
MONTHS ENDED JUNE 30, 2016**

43. **The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for the Law Society for information.**

**Rationale**

44. This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.

## **Law Society of Upper Canada Financial Statements**

**For the six months ended June 30, 2016**

### **Financial Statement Highlights**

45. The Lawyer General Fund incurred a surplus of \$3.4 million at the end of the second quarter of 2016, compared to \$2.1 million in 2015.
46. The Paralegal General Fund generated a surplus of \$991,000 at the end of the second quarter of 2016 compared to \$794,000 at the end of the second quarter of 2015 and a budgeted deficit for the period of \$342,000 with the budget using the General Fund accumulated surplus as a source of funding to mitigate a fee increase for paralegals.
47. In comparing revenues to budget, there are some large positive variances, specifically in the licensing process and other revenues such as late fees. In comparing expenses to budget, variances in the income statement categories are virtually all positive, particularly in professional regulation and Convocation, policy & outreach. While some variances from budget are attributable to timing differences, it is still too early to say whether this will be representative of the remainder of the year.
48. The Law Society's restricted funds report a deficit of \$2.1 million (2015: \$3.8 million) primarily because of a \$1.3 million deficit in the Lawyer Compensation Fund and amortization of \$1.4 million in the Invested in Capital and Intangible Assets Fund. The 2016 budget included a provision of \$700,000 to replenish the lawyer Compensation Fund balance. The E&O Fund had a surplus of \$540,000 in the period.
49. Overall, the first half of the year has resulted in greater than projected revenues and less than projected expenses. The Law Society is on track to exceed its 2016 budget expectations, its financial position remains strong although claims against the Compensation Fund continue to reduce the fund balance.

### **Potential Negative Variances**

50. At the end of June, the Ontario Court of Appeal dismissed Trinity Western University's (TWU) appeal of the Divisional Court's decision, upholding the Law Society's denial of accreditation of TWU's proposed law school. If TWU proceeds with an appeal to the Supreme Court of Canada, an estimate of further costs would be completed in the second half of the year.
51. There is at least a reasonable possibility that one or more cost awards from the Law Society's regulatory proceedings may be awarded against the Law Society but the amount of any losses cannot be reliably estimated at this time. The Society has determined that the ultimate settlement for these costs awards could range from nil to approximately \$5 million, of which only \$500,000 has been included in accrued liabilities.

## Background

52. The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting.
53. The Financial Statements for the six months ended June 30, 2016 comprise the following statements:
  - Balance Sheet
  - Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
  - Schedule of Restricted Funds
  - Supplemental schedules include Schedules of Revenues and Expenses for the Combined General Fund, Lawyer and Paralegal General Funds, the Compensation Fund and the Errors and Omissions Insurance Fund

## Statement of Revenues and Expenses and Change in Fund Balances

54. The Lawyer General Fund incurred a surplus of \$3.4 million at the end of the second quarter of 2016 (2015: \$2.1 million). The 2016 budget incorporates \$1.2 million in funding from surplus investment income in the E&O Fund. Actual use of the E&O Fund transfer is contingent on a deficit occurring.
55. The Paralegal General Fund had a surplus of \$991,000 (2015: \$793,000). The 2016 budget incorporates the use of \$340,000 in funding from the paralegal Fund Balance to provide for a budgeted operating deficit. Actual use of the Fund Balance is contingent on a deficit occurring.
56. The Law Society's restricted funds report a deficit of \$2.1 million for the period (2015: \$3.8 million). The material components are:
  - a \$1.3 million deficit in the Lawyer Compensation Fund due to an increase in grants anticipated to be closed with payment
  - a \$540,000 surplus in the E&O Fund brought about by investment income being higher than projected. As set out in the Insurance Report submitted to Convocation by LAWPRO in September last year, there is no premium contribution from the E&O Fund to mitigate the 2016 insurance premium
  - the \$1.4 million amortization expense in the Invested in Capital Assets Fund
57. Annual fee revenue is recognized on a monthly basis. One of the goals of having a three-year rolling budget is to stabilize fees and the 2016 budget maintained the annual fee for lawyers (\$1,866) and paralegals (\$996) at 2014 and 2015 levels although there were fluctuations in the individual fee components. Total annual fees recognized in the first half of the year of \$38.2 million have increased slightly compared to 2015 because

the number of lawyers and paralegals billed increased. Based on the number of lawyers and paralegals called to date in 2016, the increase in the number of licensees will exceed projections.

58. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base annual premium of \$3,350 has not changed in recent years, with the increase in number of insureds leading to a slight increase in premium and levy revenue to \$52.6 million.
59. Professional development and competence revenue comprises licensing process and continuing professional development revenue:
  - At \$6.5 million, lawyer licensing process revenue is effectively the same as last year. The Law Society is in the third year of a three year pilot project that will allow lawyer licensing candidates to either article or complete a Law Practice Program (LPP). The total Licensing Process fee, including the fees for the initial application, the Barrister and Solicitor Licensing Examinations and the Call to the Bar, is \$4,710, the same as last year. Registrations are higher than budgeted
  - At \$1.1 million, paralegal licensing process revenue is effectively the same as last year and exceeds budget for the period
  - Lawyer continuing professional development revenue of \$3.9 million is the same as budget and last year. Paralegal CPD revenues of \$536,000 are slightly more than last year and budget. CPD revenues were budgeted at the same level as 2015. Traditionally, fall has been CPD's busiest period and registrations will continue to be closely monitored for trends and budgeting for 2017 will be adjusted.
60. At \$986,000, total investment income continues the decreasing trend from previous years reflecting market conditions of low fixed income returns.
61. Other income of \$5.4 million includes Ontario Report royalties (\$826,000), late fees (\$903,000), other fees such as professional corporation and payment plan fees (\$1.1 million), catering (\$485,000) and ordered costs (\$419,000).
62. Total regulatory expenses of \$13.5 million are nominally less than last year with spending constrained throughout the division, in particular some unfilled staff positions. The projection for complaints received in the division during this year follows the trend of slight decreases over recent years although the 2016 budget noted other factors such as increasing case complexity. Outside counsel fees are a significant variable expense and are at lower levels than the same time in 2015.
63. Total professional development and competence expenses have increased from \$13.1 million to \$13.8 million. As approved in the 2016 budget, CPD staffing increased with more resources devoted to program development and webcast services. Since the CPD requirement was introduced in 2011, there has been a continual shift away from live

attendance in favour of online viewing. The programs are both offering and selling fewer copies of printed materials as members grow more comfortable with electronic program materials. These developments provide savings in program expenses, including catering costs, course materials and venue rentals. In the licensing process, staffing increased for the expanded paralegal exams and for the significant increase in special needs and accommodation requirements. In the last five years, requests for accommodations have doubled for lawyers and tripled for paralegals. This has meant the lawyer licensing process expenses are exceeding budget, although the licensing process revenues are also exceeding budget.

64. Corporate services expenses of \$11.4 million, primarily comprise Information Technology, Finance, Office of General Counsel ("OGC"), Human Resources, Facilities and other administrative expenses and are less than budget and less than last year due to a reduction in severances paid to date.
65. Convocation, policy and outreach expenses of \$4.2 million are effectively the same as last year at this time. These expenses are under budget with benchers expenses being \$400,000 under budget and this category also includes the prorated, unused contingency for the period. The timing of benchers remuneration and expenses is not regular and depends on submissions from benchers.
66. The Society has received a \$400,000 grant from the Law Foundation of Ontario funding the development and delivery of Access to Justice initiatives.
67. The 2016 budget includes a contingency of \$1 million. The table below summarizes allocations from the contingency / the General Fund balance in the year to date.

DESCRIPTION	AMOUNT
Fundraising and stakeholder management coordinator for the Lawyers Feed the Hungry Programs	100,000
Mentoring and Advisory Services counsel lead, counsel, coordinator and expenses	250,000
Mental Health Taskforce recommendations	100,000
Implementation of the role of Director, Office of the CEO/Corporate Secretary	150,000
<b>FUNDING FROM CONTINGENCY</b>	<b>600,000</b>
Additional resources in Professional Regulation Division for investigations and disclosure funded from the General Fund balance	500,000
<b>GRAND TOTAL</b>	<b>\$950,000</b>

**Balance Sheet**

68. Cash and short-term investment balances have increased by \$6 million over the last twelve months to \$76 million after capital transfers from portfolio investments.
69. Most of the prepaid expense balance of \$56 million relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.
70. The Investment in LAWPRO totalling \$35.6 million is made up of two parts. The investment represents the share capital of \$4,997,000 purchased in 1991 when LAWPRO was established plus contributed capital of \$30,645,000 accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.
71. Portfolio investments are shown at fair value of \$65.8 million, a decrease from \$71.8 million in 2015. Investment returns have been modest and the Compensation Fund has withdrawn capital of \$5 million to fund grant payments. Approximately 20% of the portfolio is held in equity investments. Investments (after the reclassification of cash and near cash) are held in the following funds:

<b>Fund (\$ 000's)</b>	<b>June 30, 2015</b>	<b>June 30, 2016</b>
Errors & Omissions Insurance	\$21,812	<b>\$20,269</b>
Compensation	\$34,716	<b>\$30,101</b>
General	\$15,318	<b>\$15,415</b>
<b>Total</b>	<b>\$71,846</b>	<b>\$65,785</b>

72. Deferred revenue (\$87.5 million) is made up of annual fees, licensing process revenues and insurance premiums which are recognized over the full year with the increased balance at the end of June reflecting the increased underlying revenues in 2016.
73. Due to LAWPRO (\$42.9 million) will decline by year-end as insurance premiums and levies collected are paid to LAWPRO.
74. The provision for unpaid grants of \$20.5 million (2015 - \$22.8 million) represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The Fund continues to process some large alleged defalcations on the part of certain licensees. The Compensation Fund describes a major defalcation as being over 35 claims arising from the conduct of one licensee in a single year and the Fund currently has two of these major defalcations. The paralegal Compensation Fund provision for unpaid grants comprises \$128,000 of the total Compensation Fund provision for unpaid grants.

75. The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Law Society. Money paid to the Law Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of June, unclaimed money held in trust amounts to \$4.6 million, compared to \$4 million in the prior year.
76. The operating surpluses in the lawyer and paralegal General Funds have increased the fund balances to \$24.8 million and \$4.8 million respectively, still within the parameters established by Convocation's fund balance administration policy. The lawyer Compensation Fund's deficit in the period of \$1.3 million continues to erode the lawyer Compensation Fund balance to \$13.6 million. The increase in the Compensation Fund levy in 2016 to replenish the fund balance has only slowed the decrease. The Compensation Fund balance policy is being addressed at the current Audit & Finance Committee meeting.

### **Restricted Funds**

77. The E&O Fund accounts for the mandatory professional liability insurance program of the Law Society which is administered by LAWPRO. The insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The Law Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies. The fund is reporting a surplus of \$540,000 (2015 – deficit of \$1.1 million) in the absence of premium contributions to mitigate the base insurance levy for lawyers. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base premium of \$3,350 has not changed for a number of years, with the increase in number of insured's leading to a slight increase in premium and levy revenue to \$52.6 million. Expenses in the Errors and Omissions Insurance Fund are relatively static at \$52.5 million.
78. Total Compensation Fund annual fee revenues have increased from \$4.5 million in June 2015 to \$5.3 million after increases in the lawyer and paralegal levies including \$700,000 to increase the lawyer fund balance. Investment returns continue to be modest at \$411,000. The Compensation Fund continues to experience a high claims experience with provision for unpaid grant expenses increasing from \$2.1 million in 2015 to \$3.4 million in 2016. The declining Compensation Fund balance and the associated fund balance management policy is being addressed at the current Audit & Finance Committee meeting.
79. County Libraries Fund revenues and expenses are relatively static at \$3.8 million.

80. Use of the Parental Leave Assistance Plan, included in Other Restricted Funds, continues to decline with expenses of \$61,000 in the first half of 2016 compared to \$105,000 in 2015.

**Other Schedules**

81. Supplementary budget to actual income and expense schedules for the Lawyer General Fund and the Paralegal General Fund are provided. Significant variances have been analyzed above.
82. A supplementary income and expense schedule for the Compensation Fund is provided with variances analyzed above.
83. A supplementary income and expense schedule for the Errors and Omissions Insurance (E&O) Fund is also provided with variances analyzed above.

## THE LAW SOCIETY OF UPPER CANADA

### Balance Sheet

Unaudited

Stated in thousands of dollars

As at June 30

	2016	2015
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	34,811	19,855
2 Short-term investments	41,356	50,123
3 Accounts receivable	40,068	32,795
4 Prepaid expenses	56,045	57,507
6 <b>Total current assets</b>	<b>172,280</b>	<b>160,280</b>
7 <b>Investment in subsidiaries</b>	<b>35,642</b>	<b>35,642</b>
8 <b>Portfolio investments</b>	<b>65,785</b>	<b>71,846</b>
9 <b>Capital assets</b>	<b>9,028</b>	<b>9,717</b>
10 <b>Intangible assets</b>	<b>705</b>	<b>1,069</b>
11 <b>Total Assets</b>	<b>283,440</b>	<b>278,554</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
12 Accounts payable and accrued liabilities	11,844	10,687
13 Deferred revenue	87,556	85,318
14 Due to LAWPRO	42,887	39,034
15 <b>Total current liabilities</b>	<b>142,287</b>	<b>135,039</b>
16 Provision for unpaid grants/claims	20,511	22,837
17 Unclaimed trust funds	4,580	4,010
18 <b>Total Liabilities</b>	<b>167,378</b>	<b>161,886</b>
<b>Fund Balances</b>		
<b>General funds</b>		
19 Lawyers	24,799	22,228
20 Paralegals	4,857	3,768
<b>Restricted funds</b>		
21 Compensation - lawyers	13,631	14,439
22 Compensation - paralegals	567	418
23 Errors and omissions insurance	54,882	55,729
24 Capital allocation	6,794	8,328
25 Invested in capital and intangible assets	9,733	10,786
26 County libraries	(80)	(51)
27 Other	879	1,023
28 <b>Total Fund Balances</b>	<b>116,062</b>	<b>116,668</b>
27 <b>Total Liabilities and Fund Balances</b>	<b>283,440</b>	<b>278,554</b>

**THE LAW SOCIETY OF UPPER CANADA****Statement of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the six months ended June 30*

	2016	2015	2016	2015	2016	2015	2016	2015
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total	
<b>Revenues</b>								
1 Annual fees	25,887	25,116	2,068	2,012	10,260	10,098	38,215	37,226
2 Insurance premiums and levies	-	-	-	-	52,570	51,023	52,570	51,023
3 Professional development and competence	10,311	9,886	1,643	1,499	-	-	11,954	11,385
4 Investment income	298	345	28	33	660	837	986	1,215
5 Change in fair value of investments	138	(27)	13	(3)	513	(57)	664	(87)
6 Other	4,289	4,191	570	600	558	92	5,417	4,883
7 <b>Total revenues</b>	<b>40,923</b>	<b>39,511</b>	<b>4,322</b>	<b>4,141</b>	<b>64,561</b>	<b>61,993</b>	<b>109,806</b>	<b>105,645</b>
<b>Expenses</b>								
8 Professional regulation, tribunals and compliance	12,346	12,460	1,169	1,175	-	-	13,515	13,635
9 Professional development and competence	12,716	12,138	1,057	1,004	-	-	13,773	13,142
10 Corporate services	10,416	10,743	982	1,017	-	-	11,398	11,760
11 Convocation, policy and outreach	3,850	3,794	310	320	-	-	4,160	4,114
12 Services to members and public	1,801	1,803	117	114	-	-	1,918	1,917
13 Allocated to Compensation Fund	(3,588)	(3,519)	(304)	(282)	-	-	(3,892)	(3,801)
14 Restricted	-	-	-	-	66,633	65,813	66,633	65,813
15 <b>Total expenses</b>	<b>37,541</b>	<b>37,419</b>	<b>3,331</b>	<b>3,347</b>	<b>66,633</b>	<b>65,813</b>	<b>107,505</b>	<b>106,580</b>
16 <b>Surplus (Deficit)</b>	<b>3,382</b>	<b>2,092</b>	<b>991</b>	<b>794</b>	<b>(2,072)</b>	<b>(3,820)</b>	<b>2,301</b>	<b>(934)</b>
17 <b>Fund balances, beginning of year</b>	<b>21,407</b>	<b>18,507</b>	<b>3,866</b>	<b>2,974</b>	<b>88,488</b>	<b>96,121</b>	<b>113,761</b>	<b>117,602</b>
18 <b>Interfund transfers</b>	<b>10</b>	<b>1,629</b>	<b>-</b>	<b>-</b>	<b>(10)</b>	<b>(1,629)</b>	<b>-</b>	<b>-</b>
19 <b>Fund balances, end of period</b>	<b>24,799</b>	<b>22,228</b>	<b>4,857</b>	<b>3,768</b>	<b>86,406</b>	<b>90,672</b>	<b>116,062</b>	<b>116,668</b>

**THE LAW SOCIETY OF UPPER CANADA****Schedule of Restricted Funds***Unaudited**Stated in thousands of dollars**For the six months ended June 30*

		2016							2015	
		Compensation Fund		Errors and omissions insurance	Capital allocation	Invested in capital and intangible assets	County libraries	Other restricted	Total Restricted funds	Total
		Lawyer	Paralegal							
1	Fund balances, beginning of year	14,905	441	54,342	6,716	11,185	-	899	88,488	96,121
Revenues										
2	Annual fees	4,911	366	-	1,032	-	3,751	200	10,260	10,098
3	Insurance premiums and levies	-	-	52,570	-	-	-	-	52,570	51,023
4	Investment income	375	36	249	-	-	-	-	660	837
5	Change in fair value of investments	268	25	220	-	-	-	-	513	(57)
6	Other	435	41	-	82	-	-	-	558	92
7	Total revenues	5,989	468	53,039	1,114	-	3,751	200	64,561	61,993
Expenses										
8	Allocated expenses	3,588	304	-	-	-	-	-	3,892	3,801
9	Direct expenses	3,675	38	52,499	1,051	1,452	3,831	195	62,741	62,012
10	Total expenses	7,263	342	52,499	1,051	1,452	3,831	195	66,633	65,813
11	(Deficit) Surplus	(1,274)	126	540	63	(1,452)	(80)	5	(2,072)	(3,820)
12	Interfund transfers	-	-	-	15	-	-	(25)	(10)	(1,629)
13	Fund balances, end of period	13,631	567	54,882	6,794	9,733	(80)	879	86,406	90,672

**THE LAW SOCIETY OF UPPER CANADA**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	27,128	27,955	27,959	(4)
2 Professional development and competence	11,385	11,954	10,353	1,601
3 Investment income	378	326	388	(62)
4 Change in fair value of investments	(30)	151	-	151
5 Other	4,791	4,859	4,011	848
6 <b>Total revenues</b>	43,652	45,245	42,711	2,534
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	13,635	13,515	14,955	1,440
8 Professional development and competence	13,142	13,773	13,989	216
9 Corporate services	11,760	11,398	12,384	986
10 Convocation, policy and outreach	4,114	4,160	5,279	1,119
11 Services to members and public	1,917	1,918	1,945	27
12 Allocated to Compensation Fund	(3,801)	(3,892)	(3,977)	(85)
13 <b>Total expenses</b>	40,767	40,872	44,575	3,703
14 <b>Surplus (Deficit)</b>	2,885	4,373	(1,864)	6,237

**THE LAW SOCIETY OF UPPER CANADA****General Fund - Lawyers****Schedule of Revenues and Expenses***Unaudited**Stated in thousands of dollars**For the six months ended June 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	25,116	25,887	26,010	(123)
2 Professional development and competence	9,886	10,311	9,193	1,118
3 Investment income	345	298	342	(44)
4 Change in fair value of investments	(27)	138	-	138
5 Other	4,191	4,289	3,618	671
6 <b>Total revenues</b>	39,511	40,923	39,163	1,760
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	12,460	12,346	13,705	1,359
8 Professional development and competence	12,138	12,716	12,634	(82)
9 Corporate services	10,743	10,416	11,268	852
10 Convocation, policy and outreach	3,794	3,850	4,909	1,059
11 Services to members and public	1,803	1,801	1,833	32
12 Allocated to Compensation Fund	(3,519)	(3,588)	(3,664)	(76)
13 <b>Total expenses</b>	37,419	37,541	40,685	3,144
14 <b>Surplus (Deficit)</b>	2,092	3,382	(1,522)	4,904

**THE LAW SOCIETY OF UPPER CANADA****General Fund - Paralegals****Schedule of Revenues and Expenses***Unaudited**Stated in thousands of dollars**For the six months ended June 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	2,012	<b>2,068</b>	<b>1,949</b>	<b>119</b>
2 Professional development and competence	1,499	<b>1,643</b>	<b>1,160</b>	<b>483</b>
3 Investment income	33	<b>28</b>	<b>46</b>	<b>(18)</b>
4 Change in fair value of investments	(3)	<b>13</b>	-	<b>13</b>
5 Other	600	<b>570</b>	<b>393</b>	<b>177</b>
6 <b>Total revenues</b>	<b>4,141</b>	<b>4,322</b>	<b>3,548</b>	<b>774</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	1,175	<b>1,169</b>	<b>1,250</b>	<b>81</b>
8 Professional development and competence	1,004	<b>1,057</b>	<b>1,355</b>	<b>298</b>
9 Corporate services	1,017	<b>982</b>	<b>1,116</b>	<b>134</b>
10 Convocation, policy and outreach	320	<b>310</b>	<b>370</b>	<b>60</b>
11 Services to members and public	114	<b>117</b>	<b>112</b>	<b>(5)</b>
12 Allocated to Compensation Fund	(282)	<b>(304)</b>	<b>(313)</b>	<b>(9)</b>
13 <b>Total expenses</b>	<b>3,348</b>	<b>3,331</b>	<b>3,890</b>	<b>559</b>
14 <b>Surplus (Deficit)</b>	<b>793</b>	<b>991</b>	<b>(342)</b>	<b>1,333</b>

**THE LAW SOCIETY OF UPPER CANADA****Compensation Fund****Schedule of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the six months ended June 30*

	2016			2015		
	Lawyers	Paralegals	Total	Lawyers	Paralegals	Total
<b>Revenues</b>						
1 Annual fees	4,911	366	5,277	4,229	304	4,533
2 Investment income	375	36	411	468	44	512
3 Change in fair value of investments	268	25	293	(64)	(6)	(70)
4 Recoveries	435	41	476	24	1	25
5 <b>Total Revenues</b>	<b>5,989</b>	<b>468</b>	<b>6,457</b>	<b>4,657</b>	<b>343</b>	<b>5,000</b>
<b>Expenses</b>						
6 Provision for unpaid grants	3,393	11	3,404	2,056	44	2,100
7 Spot audit	1,862	176	2,038	1,813	171	1,984
8 Share of investigation and discipline	989	55	1,044	981	54	1,035
9 Administrative	750	100	850	726	82	808
10 Salaries and benefits	269	-	269	260	-	260
11 <b>Total Expenses</b>	<b>7,263</b>	<b>342</b>	<b>7,605</b>	<b>5,836</b>	<b>351</b>	<b>6,187</b>
12 <b>(Deficit) Surplus</b>	<b>(1,274)</b>	<b>126</b>	<b>(1,148)</b>	<b>(1,179)</b>	<b>(8)</b>	<b>(1,187)</b>
13 Fund balances, beginning of year	14,905	441	15,346	15,618	426	16,044
14 <b>Fund Balances, end of period</b>	<b>13,631</b>	<b>567</b>	<b>14,198</b>	<b>14,439</b>	<b>418</b>	<b>14,857</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Errors and Omissions Insurance Fund**  
**Schedule of Revenues and Expenses and Change in Fund Balance**

*Unaudited*

*Stated in thousands of dollars*

*For the six months ended June 30*

	<b>2016 Actual</b>	<b>2015 Actual</b>
<b>REVENUES</b>		
1 Insurance premiums and levies	<b>52,570</b>	51,023
2 Investment income	<b>249</b>	325
3 Change in fair value of investments	<b>220</b>	13
4 Other income	-	-
5 <b>Total revenues</b>	<b>53,039</b>	<b>51,361</b>
<b>EXPENSES</b>		
6 Administrative	-	-
7 Claims	<b>(71)</b>	164
8 Insurance	<b>52,570</b>	52,273
9 <b>Total expenses</b>	<b>52,499</b>	<b>52,437</b>
10 <b>Surplus (Deficit)</b>	<b>540</b>	<b>(1,076)</b>
10 Interfund transfers	-	<b>(1,500)</b>
11 Change in fund balance	<b>540</b>	<b>(2,576)</b>
12 Fund balance, beginning of year	<b>54,342</b>	58,305
13 Fund balance, end of period	<b>54,882</b>	<b>55,729</b>

**TAB 6.3.2**

**FOR INFORMATION**

**LAWPRO FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30,  
2016**

84. **The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for LAWPRO for information.**

**Rationale**

85. The Law Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly-owned subsidiary of the Law Society. There is a quarterly financial reporting schedule to the shareholder. These interim statements convey the performance of LAWPRO before the end of the year. Unlike annual statements, the interim statements are not audited.



***Report to the Audit and Finance  
Committee of the Law Society of  
Upper Canada  
September 7, 2016***



## ***Report to the Audit and Finance Committee – Law Society***

***September 7, 2016***

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▪ <b><i>Premiums</i></b>	<b><i>7</i></b>
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## **Key Point Summary**

- *LAWPRO has sufficient assets to discharge its claims and other liabilities.*
- *At June 30, 2016, LAWPRO held investment assets totaling \$657.4 million, inclusive of cash and cash equivalents and investment income due and accrued. These funds have been invested in accordance with the Company's investment policy. LAWPRO was in compliance with its policy during the six months ended June 30, 2016 (see pages 11 and 12).*
- *LAWPRO's net income for the six months ended June 30, 2016 was \$5.2 million compared to a budgeted breakeven and a net income of \$14.6 million for the same period in 2015. During the six months ended June 30, 2016 LAWPRO experienced a total comprehensive income of \$3.2 million, which reflects a decrease in unrealized gains of \$2.0 million on its surplus investments, compared to a budgeted income of \$1.1 million and an income of \$2.3 million for the same period in 2015.*
- *Overall, earned premiums on the mandatory program were above expected levels. Investment income of \$11.8 million for the six months of 2016 was higher than budgeted levels by \$2.1 million, mainly due to \$2.6 million of realized gains. Current year investment income was below the results for the same period in 2015 by \$0.7 million, primarily due to a \$1.4 million greater increase in unrealized gains in the prior period.*
- *Claims and adjustment expenses for the six months ended June 30, 2016 were \$4.4 million lower than budget but \$11.2 million higher than the same period last year, primarily due to \$5.6 million more favourable prior year development in the E&O program experienced during 2015, as well as volatile bond markets resulting in a \$1.8 million discount expense in 2016 compared to a 1.9 million income for the same period in 2015. General expenses for the six months ended June 30, 2016 were \$0.3 million higher than budget and \$1.1 million higher than the same period in 2015.*
- *LAWPRO is in compliance with all regulatory requirements regarding solvency and filing of financial information. A summary of LAWPRO's position with respect to its Risk Appetite Statement (including standard insurance ratios) at June 30 is included on page 10.*

**Lawyers' Professional Indemnity Company**  
**STATEMENT OF FINANCIAL POSITION**

Stated in thousands of Canadian dollars

**UNAUDITED**

	As at June 30 2016	As at December 31 2015
<b>Assets</b>		
Cash and cash equivalents	21,188	22,597
Investments	633,779	613,057
Investment income due and accrued	2,425	2,262
Due from reinsurers	1,427	539
Due from insureds	3,783	2,127
Due from the Law Society of Upper Canada	42,893	7,569
Reinsurers' share of provisions for:		
Unpaid claims and adjustment expenses	41,907	44,057
Unearned premiums	3,684	-
Deferred policy acquisition expenses	1,716	-
Other receivables	1,632	1,727
Other assets	2,474	1,217
Property and equipment	1,248	1,474
Intangible asset	987	1,097
Income taxes recoverable	2,638	-
Deferred income tax asset	5,018	5,259
<b>Total assets</b>	<b>766,799</b>	<b>702,982</b>
<b>Liabilities</b>		
Provision for unpaid claims and adjustment expenses	460,963	460,146
Unearned premiums	58,315	860
Unearned reinsurance commissions	763	-
Due to reinsurers	2,894	658
Due to insureds	246	359
Expenses due and accrued	2,021	2,087
Income taxes due and accrued	-	300
Other taxes due and accrued	384	519
	<b>525,586</b>	<b>464,929</b>
<b>Equity</b>		
Capital stock	5,000	5,000
Contributed surplus	30,645	30,645
Retained earnings	178,690	173,484
Accumulated other comprehensive income	26,878	28,924
	<b>241,213</b>	<b>238,053</b>
<b>Total liabilities and equity</b>	<b>766,799</b>	<b>702,982</b>

# Lawyers' Professional Indemnity Company

## STATEMENT OF PROFIT OR LOSS

Stated in thousands of Canadian dollars

**UNAUDITED**

<b><u>For six months ended June 30</u></b>	<b><u>2016</u></b>	<b><u>2015</u></b>
<b>Income</b>		
Gross written premiums	115,748	116,831
Premiums ceded to reinsurers	(7,378)	(7,048)
Net written premiums	108,370	109,783
(Increase) decrease in unearned premiums	(53,771)	(55,516)
Net premiums earned	54,599	54,267
Net investment income	11,820	12,498
Ceded commissions	722	771
	<b><u>67,141</u></b>	<b><u>67,536</u></b>
<b>Expenses</b>		
Gross claims and adjustment expenses	47,921	39,773
Reinsurers' share of claims and adjustment expenses	806	(2,252)
Net claims and adjustment expenses	48,727	37,521
Operating expenses	9,694	8,564
Premium taxes	1,757	1,738
	<b><u>60,178</u></b>	<b><u>47,823</u></b>
<b>Profit (loss) before income taxes</b>	<b><u>6,963</u></b>	<b><u>19,713</u></b>
Income tax expense (recovery) - current	1,515	5,082
- deferred	242	65
	<u>1,757</u>	<u>5,147</u>
<b>Profit (loss)</b>	<b><u>5,206</u></b>	<b><u>14,566</u></b>
<b>Other comprehensive income / (loss)</b>		
Unrealized gains / (losses) - bonds	(19)	730
- equities	(2,027)	1,526
Defined benefit remeasurements	-	-
	<b><u>(2,046)</u></b>	<b><u>2,256</u></b>
<b>Total comprehensive income</b>	<b><u>3,160</u></b>	<b><u>16,822</u></b>

**Lawyers' Professional Indemnity Company****STATEMENT OF COMPREHENSIVE INCOME**

Stated in thousands of Canadian dollars

**UNAUDITED****For six months ended June 30**

	<b>2016</b>	<b>2015</b>
<b>Profit (loss)</b>	<b><u>5,206</u></b>	<b><u>14,566</u></b>
Other comprehensive income, net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit plans, net of income tax expense (recovery) of (\$0) [2015: (\$0) ]	-	-
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<i>Available-for-sale assets</i>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of (\$56) (2015: \$1,486)	(154)	4,121
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$893) [2015: (\$792) ]	(2,477)	(2,196)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$211 (2015: \$120)	585	331
<b>Other comprehensive income</b>	<b>(2,046)</b>	<b>2,256</b>
<b>Comprehensive income</b>	<b><u>3,160</u></b>	<b><u>16,822</u></b>

**Lawyers' Professional Indemnity Company****STATEMENT OF CHANGES IN EQUITY**

Stated in thousands of Canadian dollars

**UNAUDITED**

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2014</b>	<b>5,000</b>	<b>30,645</b>	<b>145,566</b>	<b>27,414</b>	<b>208,625</b>
Total comprehensive income for the year	-	-	28,444	984	29,428
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	(526)	526	-
<b>Balance at December 31, 2015</b>	<b>5,000</b>	<b>30,645</b>	<b>173,484</b>	<b>28,924</b>	<b>238,053</b>
Total comprehensive income for the year	-	-	5,206	(2,046)	3,160
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	-	-	-
<b>Balance at June 30, 2016</b>	<b>5,000</b>	<b>30,645</b>	<b>178,690</b>	<b>26,878</b>	<b>241,213</b>

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY  
REPORT TO AUDIT AND FINANCE COMMITTEE - LAW SOCIETY OF UPPER  
CANADA  
MANDATORY E&O INSURANCE PROGRAM  
SIX MONTHS ENDED JUNE 30, 2016**

**PREMIUMS**

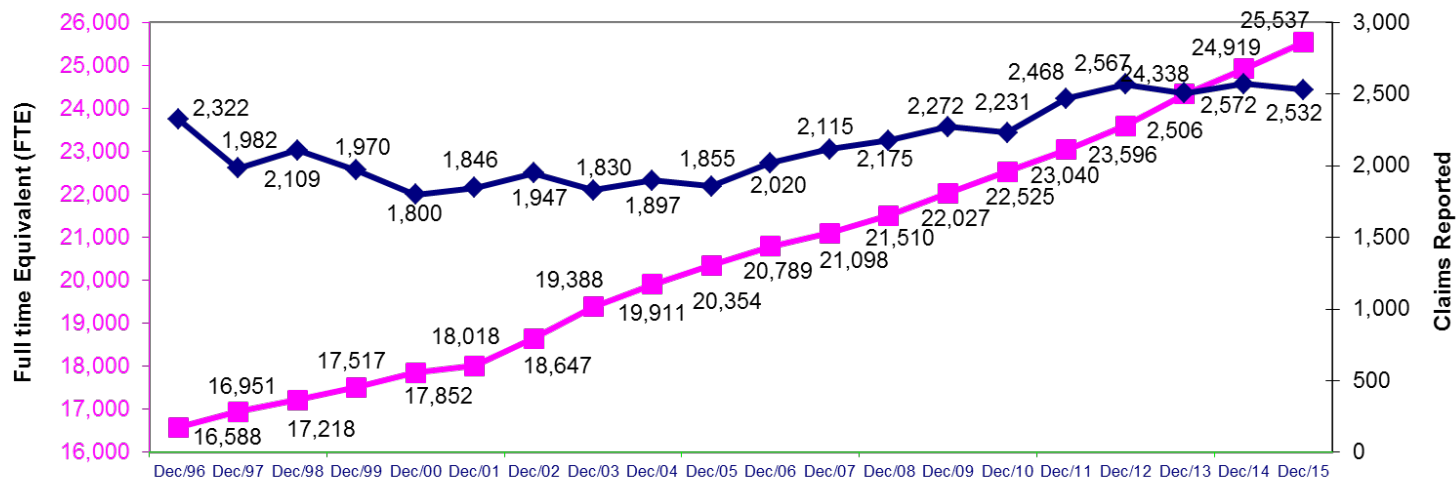
- The 2016 Ontario mandatory professional liability program performed as expected. Overall, earned premiums were above expected levels. At June 30, 2016, there were 25,648 full-time equivalent practitioners, a level which were slightly below the budgeted amount of 26,138.
- For 2016, transaction levies were \$1.6 million above budget, and \$1.4 million above the results for the same period in 2015. Transaction levies collected during the first half of 2016 were \$11.9 million, compared to \$10.8 million collected during the same period prior year.

**CLAIMS & ADJUSTMENT EXPENSES**

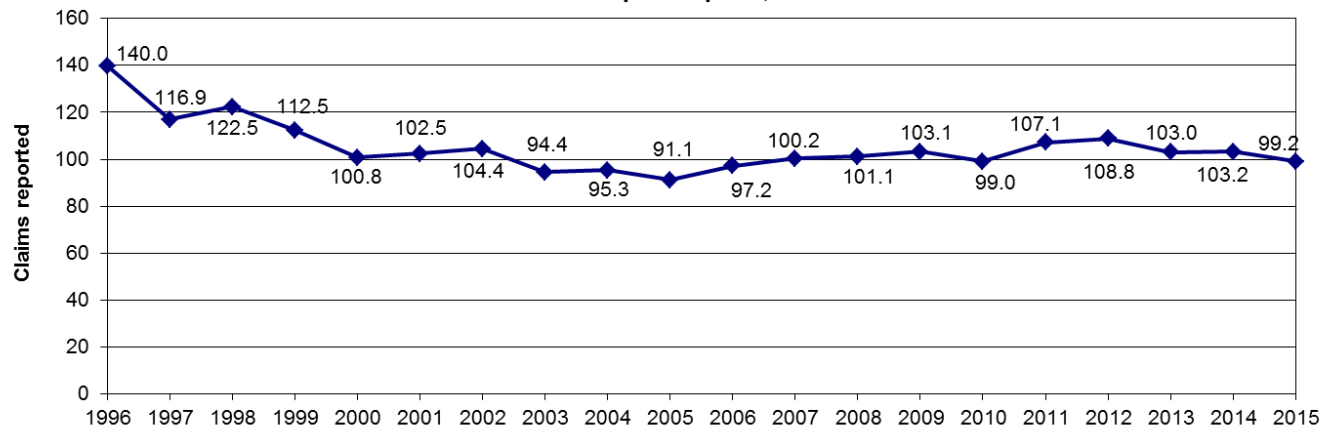
- In the year of 2016, there were 1,069 new 2016 fund year claim files reported compared with 981 new 2015 fund year claim files reported in 2015.
- The number of files remaining open at June 30, 2016 was 3,766, lower than the 3,806 files remaining open at June 30, 2015.
- For all fund years, 1,434 new files were activated through June 30, 2016 (including 112 which were reopened) and 1,276 closed. The comparable figures for the six months ended June 30, 2015 were 1,348 claims files activated (including 97 which were reopened) and 1,355 closed

On an aggregate basis, for the first six months of 2016 there has been a significant net favorable development on claims of prior years (in particular fund years 2013 through 2015. Regarding prior year development, in the same period in 2015, there was a significant net favourable development on claims of prior years (in particular fund years 2008, and 2010 through 2014).

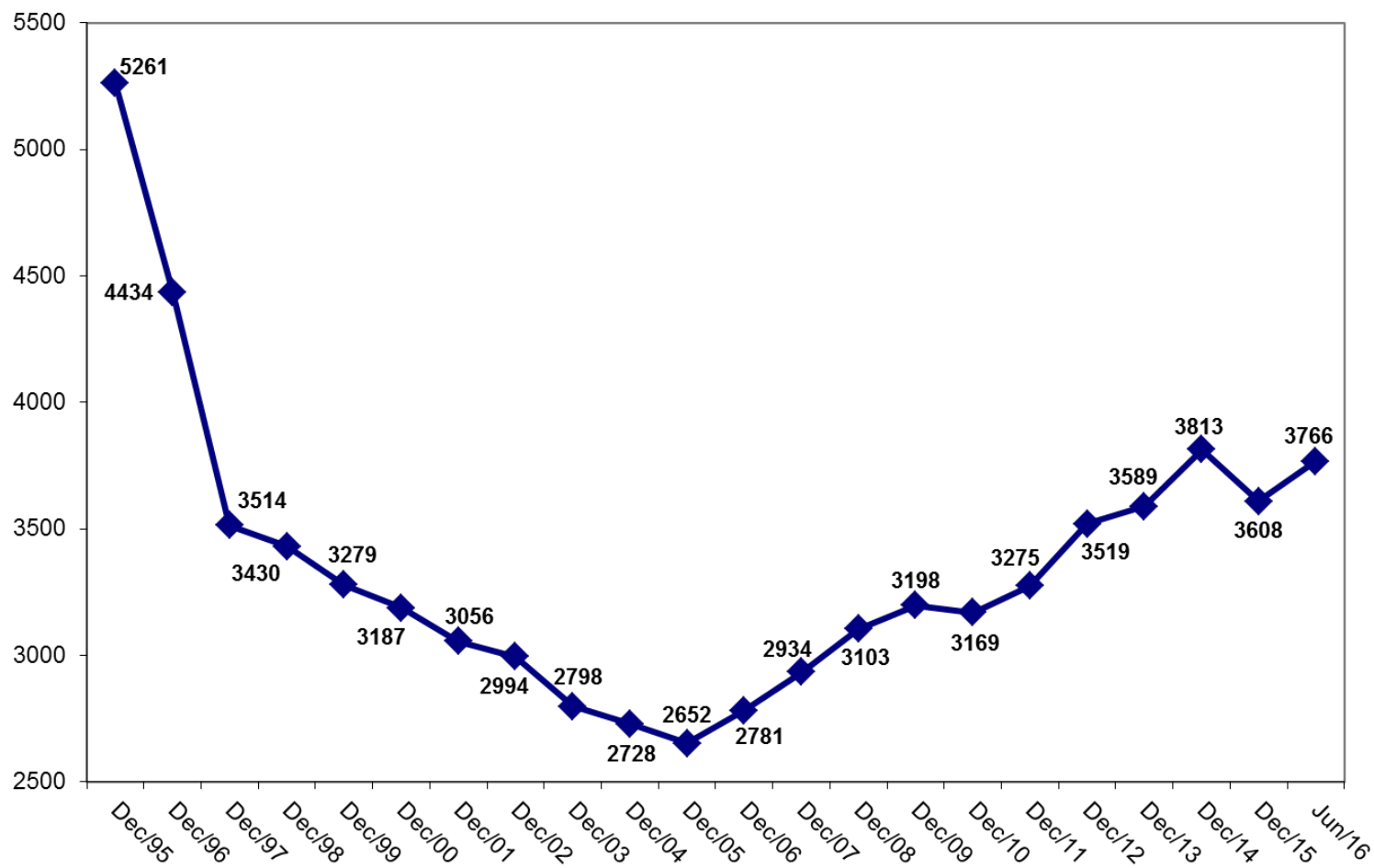
**New Claims Reported & Full Time Equivalents by Fund Year**



**Claims reported per 1,000 FTE**



### Open Claims (for fund years 1995 and forward)



**INSURANCE RATIOS**

TEST	RECOMMENDED RANGE	JUN 2016	DEC 2015	JUN 2015	DEC 2014
<b>I. Solvency Ratios</b>					
<b>1. Minimum Capital Test</b>					
<i>(Measures the excess of capital available to capital required based on a risk-based capital adequacy framework and is used to determine capital adequacy of a company.)</i>	Preferred: 215-240% Minimum: 170%	251%	268%	249%	251%
<b>2. Loss reserves to equity</b>					
<i>(Measures unpaid claim and adjustment reserves as a percentage of surplus and provides a simple test of the leveraged position of the company.)</i>	Preferred: < 225% Maximum: 250%	174%	175%	186%	203%
<b>II. Other Select Ratios</b>					
<b>1. Liabilities as a % of liquid assets</b>					
<i>(Liabilities as a percentage of Cash and other liquid assets-measures company's ability to meet its financial demands.)</i>	Preferred: < 80% Maximum: 105%	73%	66%	74%	70%
<b>2. Net premiums written as a % of surplus</b>					
<i>(Net risk ratio measures the company's ability to absorb financial shocks. The higher the ratio of premiums to surplus, the greater is the potential risk borne by the company in relation to the surplus available to absorb loss variations.)</i>	Preferred: < 80% Maximum: 100%	45%	51%	49%	55%
<b>3. Return on equity</b>					
<i>(Measures an insurer's net income as a percentage of equity. The higher the ratio, the greater the return to shareholders per unit of invested capital. Sustainability of earnings is more important than periods of high returns followed by periods of low returns or losses.)</i>	Greater than 0% <sup>1</sup> ,				
	Net income	4%	13%	14%	9%
	Comprehensive Income	3%	13%	16%	9%
<b>4. General expense ratio</b>					
<i>(Measures an insurer's general expenses, excluding commissions, as a percentage of net earned premiums.). This ratio should be maintained at lower than or equal to comparable small insurance companies.</i>	Up to small insurance company benchmark (28% as at Dec 2015)	21%	18%	19%	18%
<b>5. Optional business segment</b>					
<i>(Excess program and TitlePLUS title insurance is planned to achieve break-even or better on a trailing 4 year average basis).</i>	Greater than \$0 (stated in '\$000s)	750	494	440	862

**Note:**

1. Sufficient to maintain/grow MCT.

Better Than Range
Within Range
Outside of Range



CIBC Asset Management Inc.  
18 York Street, Suite 1400  
Toronto ON M5J 2T8  
Tel: 416-364-5620  
Fax: 416-364-3286

Confidential

July 27, 2016

Subject: Quarterly Compliance Report as at June 30, 2016  
for Lawyers' Professional Indemnity Company

As of and for the quarter ending June 30, 2016, we hereby certify that to the best of our knowledge the investments in the Lawyers' Professional Indemnity Company portfolio were in compliance, based on our records which are issued on a trade date basis, in accordance with the Investment Policy Statement dated January 1, 2016.

Yours truly,

A handwritten signature in black ink, appearing to read "Deborah Lewis".

Deborah Lewis, CFA  
First Vice-President



GESTION DE PLACEMENTS GLOBALE  
GLOBAL INVESTMENT MANAGEMENT  
[www.letkobrosseau.ca](http://www.letkobrosseau.ca)

1800 McGill College  
Suite 2510  
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Suite 2101  
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Canada  
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(800) 307-8557  
✉ (647) 426-1587

April 28, 2016

Lawyer's Professional Indemnity Company  
C/O Ms Kathleen A. Waters, President & CEO  
250 Yonge Street, Suite 3101  
P.O. Box 3  
Toronto, Ontario  
M5B 2L7

SUBJECT: COMPLIANCE CERTIFICATE

Dear Ms. Waters,

This is to confirm that, at the end of each month of the quarter ending March 31<sup>st</sup>, 2016, Letko Brosseau was in compliance with the requirements of the Statement of Investment Policies and Procedures, effective January 1<sup>st</sup>, 2016. To the best of our knowledge, we have no reason to believe that we were not in compliance with all such requirements at any other time during such period.

Should you require additional information, please do not hesitate to contact us at your convenience.

Regards,

Original letter signed by Daniel Brosseau

Daniel Brosseau  
Letko Brosseau & Associates Inc.  
DB/mn

**TAB 6.3.3**

**FOR INFORMATION**

**LIBRARYCO INC. FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED  
JUNE 30, 2016**

86. **The Audit & Finance Committee recommends that Convocation receive the second quarter financial statements for LibraryCo for information.**

**Rationale**

87. LibraryCo Inc. is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations and the Toronto Lawyers' Association. LibraryCo is a wholly-owned subsidiary of the Law Society. There is a quarterly financial reporting schedule to the shareholder. These interim statements convey the performance of LibraryCo during the year. Unlike annual statements, interim statements are not audited.
88. The Law Society provides administrative services to LibraryCo, for a fee, under an administrative services agreement.



**LIBRARYCO INC.**  
**FINANCIAL REPORT**  
**For the six months ended June 30, 2016**

**Overall Results**

- 89. Results for the second quarter identify a surplus of \$21,350 compared to a budgeted deficit of \$102,246 for the 6 months. The 2016 budget envisages a \$143,000 deficit for the year through the use of the General Fund balance.
- 90. Half (\$66,439) of the total positive variance from budget (\$123,596) relates to transition expenses. The transition expense relates to payments to Phase 5 and the user survey. The current contract with Phase 5 totals \$125,000, which exceeds the total transition expense budget of \$84,836. The currently unused budget of \$17,000 for consulting and positive variances in other expense accounts can be used to fund the full amount for Phase 5.
- 91. The balance of the current remaining positive variances are spread across most expense categories particularly consulting fees, the group benefit plan and the bursaries, capital and special needs expenses.

**Revenues**

- 92. The Law Society grant (line 1) includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was \$3.8 million and matched budgeted amounts for the period.
- 93. Interest Income (line 2) is earned on LibraryCo's cash and short term investments.

**Expenses**

- 94. Total expenses (line 16) were \$3,812,121 compared to a budgeted total for the period of \$3,933,252.
- 95. Administration expenses (line 4) of \$152,500 represents the service fee paid to the Law Society and equals budget. The fee was reduced from 2015.
- 96. Professional fees (line 5) include audit expenses and consulting fees. The consulting fee budget remains unspent which has resulted in a positive variance of \$8,730. Unspent amounts will be used to augment the budget for transition expenses.
- 97. Transition expenses (line 6) of \$18,397 represents preliminary payments to Phase 5 Consulting Group for the user needs survey. The current contract with Phase 5 totals \$125,000, which exceeds the total transition expense budget of \$84,836. The currently

unused budget of \$17,000 for consulting and positive variances in other expense accounts can be used to fund the full amount for Phase 5.

98. Other head-office expenses (line 7) include the production of the Annual Report, head office courier/postage costs, Directors and Officers insurance, bank charges, website maintenance costs, the cost of providing most libraries with a toll free telephone number and governance meeting expenses.
99. Totalling \$10,139, other head-office expenses are lower than budget for the period by approximately \$16,381 primarily as a result of underspending for the production of the Annual Report, board of directors' meetings, web initiatives, toll free telephone charges, and miscellaneous expenses.
100. Electronic product expenses of \$169,500 (line 9) are in line with the agreement with LexisNexis and budget.
101. Group benefits and insurance (line 10) of \$156,777 consist of the Group Benefits for enrolled library staff and library D&O and property insurance.
102. Group benefits and insurance are lower than budget by \$12,987 as group benefits premiums are negotiated after the budget and these are budgeted conservatively. Given that both the D&O and property insurance policies expired at the end of April, a conservative increase in insurance for the remainder of 2016 was also taken into consideration when budgeting for 2016.
103. Other centralized expenses (line 11) of \$37,273 includes continuing education bursaries for library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 law libraries, and the Federation of Ontario Law Associations' (FOLA) meeting expenses for their Library Committee.
104. Other centralized expenses are lower than budget by \$10,477 due to underspending in continuing education bursaries, publications and courier costs.
105. County and District law libraries grants (line 13) are in line with budget at \$3,238,382 and increased from 2015.
106. Bursaries, capital and special needs grants (line 14) of \$22,883 consist of computer refreshment grants, special needs grants and conference bursaries for library staff. Computer purchases by the libraries during the year do not follow a pattern.

### **Balance Sheet**

107. Short-term investments (line 2) of \$401,151 consists of a one year GIC and accrued interest.

108. Accounts receivable (line 3) are long term disability benefits premiums paid by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.
109. Prepaid expenses (line 4) primarily represents the property and D&O insurance policies for LibraryCo and the libraries which were renewed at the end of April.
110. Accounts payable and accrued liabilities (line 6) are about \$11,570 lower than 2015. The reduction in the administrative services fee results in lower monthly accrued liabilities.
111. The General Fund has increased to \$274,431. The 2016 budget forecasted a decrease of \$143,000 during the year however, based on information available at June 30, 2016, estimates for year-end show a decrease in the General Fund of approximately \$77,000, meaning a projected General Fund balance at 2016 year-end of \$176,000. The initial draft of LibraryCo's budget for 2017 envisages using \$87,000 of this fund balance to finance operations next year.
112. The Reserve Fund has a balance at the end of June of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

**LIBRARYCO INC.****Schedule of Actual and Budgeted Revenues and Expenses****Stated in Dollars***For the six months ended June 30***Unaudited**

	<b>2016 Actual</b>	<b>YTD Budget</b>	<b>Variance</b>	<b>Annual Budget</b>	<b>2015 Actual</b>
<b>REVENUES</b>					
1 Law Society of Upper Canada grant	3,831,006	3,831,006	-	7,662,000	3,848,002
2 Interest income	2,465	-	2,465	-	3,338
3 <b>Total revenues</b>	<b>3,833,471</b>	<b>3,831,006</b>	<b>2,465</b>	<b>7,662,000</b>	<b>3,851,340</b>
<b>EXPENSES</b>					
<b>Head office/administration</b>					
4 Administration	152,500	152,500	-	305,000	215,000
5 Professional fees	6,270	15,000	8,730	30,000	7,323
6 Transition expenses	18,397	84,836	66,439	84,836	-
7 Other	10,139	26,520	16,381	49,300	18,826
8 <b>Total Head office/administration expenses</b>	<b>187,306</b>	<b>278,856</b>	<b>91,550</b>	<b>469,136</b>	<b>241,149</b>
<b>Law Libraries - centralized purchases</b>					
9 Electronic products and services	169,500	169,500	-	339,000	169,500
10 Group benefits and insurance	156,777	169,764	12,987	345,000	151,119
11 Other	37,273	47,750	10,477	130,700	46,603
12 <b>Total Law Libraries - centralized purchases</b>	<b>363,550</b>	<b>387,014</b>	<b>23,464</b>	<b>814,700</b>	<b>367,222</b>
13 County and District law libraries - grants	3,238,382	3,238,382	-	6,476,764	3,171,870
14 Bursaries, capital and special needs grants	22,883	29,000	6,117	44,400	15,587
15 <b>Total County and District Law Libraries Expenses</b>	<b>3,261,265</b>	<b>3,267,382</b>	<b>6,117</b>	<b>6,521,164</b>	<b>3,187,457</b>
16 <b>Total expenses</b>	<b>3,812,121</b>	<b>3,933,252</b>	<b>121,131</b>	<b>7,805,000</b>	<b>3,795,828</b>
17 <b>Surplus (Deficit)</b>	<b>21,350</b>	<b>(102,246)</b>	<b>123,596</b>	<b>(143,000)</b>	<b>55,512</b>

*This statement includes the revenues and expenses of the LibraryCo entity only.*

**LIBRARYCO INC.****Balance Sheet****Stated in Dollars***As at June 30***Unaudited**

	2016	2015
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	321,755	256,860
2 Short-term investments	401,151	401,338
3 Accounts receivable	17,970	16,628
4 Prepaid expenses	77,202	77,256
5 <b>Total Assets</b>	<b>818,078</b>	<b>752,082</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Current Liabilities</b>		
6 Accounts payable and accrued liabilities	43,447	55,014
7 <b>Total Liabilities</b>	<b>43,447</b>	<b>55,014</b>
<b>Share Capital and Fund Balances</b>		
8 Share capital	200	200
9 General fund	274,431	196,868
10 Reserve fund	500,000	500,000
11 <b>Total Share Capital and Fund Balances</b>	<b>774,631</b>	<b>697,068</b>
12 <b>Total Liabilities, Share Capital and Fund Balances</b>	<b>818,078</b>	<b>752,082</b>

*This Balance Sheet includes the financial resources of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Statement of Changes in Fund Balances**  
**Stated in Dollars**  
*For the six months ended June 30*

	<b>2016</b>		<b>2015</b>	
	General Fund	Reserve Fund	<b>Total</b>	<b>Total</b>
1 Balance, beginning of year	253,081	500,000	<b>753,081</b>	<b>641,356</b>
2 Surplus (Deficit)	21,350	-	<b>21,350</b>	<b>55,512</b>
3 <b>Balance, end of period</b>	<b>274,431</b>	<b>500,000</b>	<b>774,431</b>	<b>696,868</b>

*This statement includes the fund balances of the LibraryCo entity only.*

**TAB 6.3.4**

**FOR INFORMATION**

**INVESTMENT COMPLIANCE REPORTING**

113. Investment Compliance Statements as at June 30, 2016 are for information.

**STATEMENT OF INVESTMENT COMPLIANCE**  
**SHORT TERM**  
**As at June 30, 2016**

		COMPENSATION FUND	GENERAL FUND
Investment Parameters	Guidelines for Both	Compliance	Compliance
1. <u>Asset Mix</u>			
Federal & provincial treasury bills	Allowed	Yes	Yes
Bankers acceptances	Allowed	Yes	Yes
Commercial paper	Allowed	Yes	Yes
Investment manager Money Market Fund	Allowed	Yes	Yes
Premium Savings Account	Allowed	Yes	Yes
FGP S/T Invest Fund	Allowed	Yes	Yes
2. <u>Quality Requirements</u>			
Commercial paper rating	Min. R1	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes
3. <u>Quantity Restrictions</u>			
Commercial paper of a single corporate issuer	Max. 8% of Fund	Yes	Yes
4. <u>Other Restrictions</u>			
Equity securities	None	Yes	Yes
Direct investments in:			
resource properties	None	Yes	Yes
mortgages and mortgage-backed securities	None	Yes	Yes
real estate	None	Yes	Yes
venture capital financings	None	Yes	Yes
Derivatives	None	Yes	Yes



Fred Grady  
Senior Manager, Finance

**STATEMENT OF INVESTMENT COMPLIANCE**  
**LONG TERM**  
**As at June 30, 2016**

Investment Parameters	Guidelines	Target	COMPENSATION	GENERAL	E & O
			FUND	FUND	FUND
1. <u>Asset Mix</u>					
Cash and Short-Term	0 - 15%	0%	Yes	Yes	Yes
Equity investments	5 - 25%	15%	Yes	Yes	Yes
Bonds	60 - 95%	85%	Yes	Yes	Yes
2. <u>Quality Requirements</u>					
Bonds	Min. BBB		Yes	Yes	Yes
3. <u>Quantity Restrictions</u>					
Equities:					
Single holding	Max. 10%		Yes	Yes	Yes
Weight in portfolio > weight in S&P/TSX Composite Index	Varies		Yes	Yes	Yes
Derivatives etc.	None		Yes	Yes	Yes
Non-Canadian	None		Yes	Yes	Yes
Bonds:					
Government of Canada or Government of Canada guaranteed bonds	26-100%	46%	Yes	Yes	Yes
Provincial Government and Provincial Government guaranteed bonds and municipal bonds	0-38%	18%	Yes	Yes	Yes
Corporate Bonds*	0-56%	36%	Yes	Yes	Yes
* Target for BBB bonds within corporate bonds of the fixed income portfolio	8-18%	8%	Yes	Yes	Yes



Fred Grady  
 Senior Manager, Finance

**The Law Society of Upper Canada  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending June 30, 2016)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
Total Fixed Income	75%	85%	95%	Y
Canadian Equity	5%	15%	25%	Y
Minimum bond rating “BBB” or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				Y
Each bond portfolio may be invested within the following parameters:				
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			Y
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			Y
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			Y
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Note: In mid-June 2014 Law Society Compensation Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

July 24, 2016  
Date:

Colin Ripsman  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

# The Law Society of Upper Canada General Fund

Manager: Foyston, Gordon & Payne Inc.

## Compliance Report (Period ending June 30, 2016)

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
Total Fixed Income	75%	85%	95%	Y
Canadian Equity	5%	15%	25%	Y
Minimum bond rating “BBB” or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.				Y
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			Y
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			Y
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			Y
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Note: In mid-June 2014 Law Society General Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

July 29, 2016  
Date:

Colin Ripsman  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services



July 2016

Ms. Wendy Tysall  
Chief Financial Officer  
Osgoode Hall  
Finance Dept., 1<sup>st</sup> Floor  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6

Dear Wendy:

**Re: Manager Compliance Reporting**

For the Law Society of Upper Canada Errors and Omissions Insurance Fund, we wish to confirm that the portfolio being managed by Foyston, Gordon & Payne Inc. was in compliance with the Fund's Investment Policy Statement dated May 2016, for the quarter ending June 30, 2016.

Yours truly,

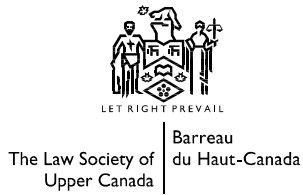
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

**TAB 6.3.5**

**FOR INFORMATION**

**OTHER COMMITTEE WORK**

114. The Committee reviewed the draft budget for 2017 submitted by LibraryCo's board.
115. The Committee reviewed the draft budget for 2017 for the Law Society in preparation for the Budget Information Session for all benchers after Convocation on September 22, 2016 and prior to the submission of the budget to Convocation for approval on November 9, 2016.
116. The Committee reviewed a letter from Kathleen Waters, President & CEO of the Lawyers' Professional Indemnity Company ("LAWPRO") summarizing the implications of the 2017 insurance program on the Errors & Omissions Insurance Fund.
117. The Committee received an additional report on the modernization of the lawyer and paralegal database.



**TAB 7**

## **Report to Convocation September 22, 2016**

---

### **Compensation Fund Committee**

#### **Committee Members**

Carol Hartman (Chair)  
Michelle Haigh (Vice-Chair)  
Gisele Chretien  
Joseph Groia  
Jan Richardson

**Purpose of Report:**      **Decision and Information**

**Prepared by the Professional Regulation Division  
(Dan Abrahams 416.947.7626)**

TABLE OF CONTENTS

**For Decision**

**Increase in the Per-Claimant Limit and Amendment to the Guidelines ..... [TAB 7.1](#)**

**For Information**

**Grants Paid from the Fund ..... [TAB 7.2](#)**

**Summary of Fund Performance ..... [TAB 7.3](#)**

### **COMMITTEE PROCESS**

1. The Committee discussed the matters in this report at meetings on [fill in dates]. Committee members in attendance at the various meetings included current and previous members of the Committee: Carol Hartman – Chair, Michelle Haigh – Vice-Chair and former Chair, Gisele Chretien, Joseph Groia, Jan Richardson and Catherine Strosberg (former member). Staff in attendance were Dan Abrahams, Fred Grady, Karen Manarin, Wendy Tysall and Jim Varro. Kathleen Waters, President and CEO of LawPRO and Steve Jorgensen, CFO of LawPRO attended the September 7, 2016 meeting.

**FOR DECISION**

**INCREASE IN THE PER-CLAIMANT LIMIT**

**Motion**

2. **That Convocation approve:**
  - a. **an increase in the per claimant limit from \$150,000 to \$500,000, to apply only to the claims in respect of funds advanced to a lawyer licensee on or after the date on which Convocation approves the increased limit; and**
  - b. **an amendment to the General Guidelines for the Determination of Grants from the Compensation fund to reflect this increase, as set out at [Tab 7.1.1](#).**

**Issue Under Consideration**

3. For a number of months, the Committee has been considering whether an increase in the per claimant limit applicable to claims made to the Law Society's Compensation Fund respecting a lawyer licensee<sup>1</sup> would be appropriate. This review was prompted, in part, by public attention to the issue of compensation fund payments in Ontario and elsewhere.
4. The last increase was in 2008, from \$100,000 to \$150,000 and as such, a review of the limit was appropriate.
5. After careful and extensive consideration, the Committee agreed to propose to Convocation that the limit be increased to \$500,000 as an enhancement to this public interest protection for clients. Taking into account the current fund balance, and an analysis of the sufficiency of the fund balance, which also relates to a proposed change in the Fund Balance Management Policy<sup>2</sup>, the effect on the Compensation Fund levy for lawyers is expected to be an approximately \$18 increase in 2017.
6. An amendment to the General Guidelines for the Determination of Grants from the Compensation Fund is required if this proposal is adopted.

**Key Background and Context**

7. In 1953, the Law Society established a Compensation Fund to relieve the hardship of clients who have suffered a financial loss due to their lawyer's dishonesty. A fund is required because errors and omissions insurance covers potentially negligent conduct but does not

---

<sup>1</sup> This report only deals with claims made to the Fund respecting lawyer licensees; the limit with respect to claims made to the Fund relating to paralegal licensees is not affected.

<sup>2</sup> This matter is being reported through the Audit and Finance Committee's report to September 22, 2016 Convocation.

cover dishonest conduct, such as theft. The legal profession is considered unique in protecting clients from dishonesty in this fashion.

8. The Compensation Fund is established pursuant to section 51 of the *Law Society Act*. The Act provides that Convocation, in its absolute discretion, may make grants from the Fund as follows:

51(5) Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person in consequence of,

- (a) dishonesty on the part of a person, while a licensee, in connection with his or her professional business or in connection with any trust of which he or she was or is a trustee; or
- (b) dishonesty, before the amendment day<sup>3</sup>, on the part of a person, while a member, in connection with his or her law practice or in connection with any trust of which he or she was or is a trustee.

9. Convocation has established a set of “Guidelines for the Determination of Grants from the Fund” pursuant to its authority in subsection 51(5). The Guidelines indicate the circumstances in which a grant may be awarded from the Compensation Fund. The Guidelines provide consistency and certainty for staff and decision makers when determining if a grant should be awarded. The most recent Guidelines were approved by Convocation in 2014.
10. Over the years, Convocation has established a per claimant limit for claims paid by the Fund, currently at \$150,000 for dishonesty attributed to lawyers and \$10,000 for dishonesty attributed to paralegals (The paralegal limit is not currently under review.) A per claimant limit means that a claimant may expect to receive no more than the limit, regardless of how large their actual loss is. The existing limit applies to funds advanced to a lawyer on or after April 22, 2008, the day on which Convocation approved the increase.<sup>4</sup>
11. The Compensation Fund, an externally restricted fund, is to be funded by an annual levy collected from lawyers and paralegals (each have separate fund balances) and by investment income and recoveries. The Law Society also allocates to the Compensation Fund levy certain administrative expenses, spot audit expenses and a portion of the costs of operating the Society’s investigation and discipline functions.

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<sup>3</sup> 2006, when the *Law Society Act* was amended respecting paralegal regulation.

<sup>4</sup> Previous limits were as follows:

May 25, 1990	\$100,000 per claimant
June 1, 1979	\$50,000 per claimant
January 1, 1988	\$60,000 per claimant

## The Committee's Review

12. In 2014, the Committee initiated a review of the per-claimant limit. The Committee researched the issue and examined data and analyses to assist in its consideration of this issue. Issues considered included the potential impact on the Fund balance of an increased limit and whether an increase in the levy would be required. The Committee had the benefit of input from staff in the Finance Department and representatives of LawPRO. The Committee also consulted with the Fund's actuary, Eckler Consultants and Actuaries.
13. While the Committee ultimately decided to focus on an increase to the per claimant limit to \$500,000, the Committee explored a number of options for increasing the limit including:
  - a. Maintaining the limit at \$150,000 per claimant<sup>5</sup>
  - b. Increasing the limit to \$250,000
  - c. Increasing the limit to \$500,000
  - d. Increasing the limit to \$10 million, with or without insurance coverage
  - e. Removing the limit altogether, with or without insurance coverage.
14. Part of the Committee research involved reviewing information on other Canadian jurisdictions' programs, included at [Tab 7.1.2](#). The Committee acknowledged the difficulty in comparisons given that the scale of the profession in most other Canadian jurisdictions is vastly different from that of Ontario.
15. Information about American jurisdictions was also reviewed. The results from an American Bar Association survey of what are called "client protection funds" every few years, most recently in 2010, showed a wide variance in programs, ranging from limits of \$50,000 to \$400,000.
16. The Committee also reviewed information on grant payments from the Compensation Fund, which focussed on grant activity since April 2008, the effective date of the last increase in the per claim limit from \$100,000 to \$150,000, to August 2015. This analysis indicates that grants reduced by imposition of the per claim limit are relatively infrequent. The total value of the amounts claimed in this period was \$22,191,378 or an average of \$48,772.<sup>6</sup>

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<sup>5</sup> It is worth noting that lawyers who practise in association or in partnership with other lawyers are already required to purchase Innocent Party coverage from LawPRO, for up to \$250,000 per claim and \$250,000 in the aggregate, to protect against the "dishonest, fraudulent, criminal or malicious acts or omissions of present or former partners, associates, employed lawyers and firm employees." This minimum amount can be augmented by optional buy-up coverage.

<sup>6</sup> From April 2008 to August 2015, the Fund paid a total of 455 grants. Of these, 241 were paid at less than the grant requested, 225 of those as a result of decisions by the Fund in the exercise of its discretion to make grant payments according to the approved guidelines. Sixteen grants paid were capped at the applicable per claim limit. Of these 16, only five claims paid were reduced to the \$150,000 per claim limit and 11 were reduced to the \$100,000 per claim limit (a new limit is applied prospectively from the date on which it was increased by Convocation, based on when the funds in question were advanced.) Of the five grants reduced by the \$150,000 cap, three of the grants were reduced by a combined total of less than \$60,000 and two were reduced by a combined total of just over \$3 million.

17. Finally, the Committee reviewed an actuarial analysis prepared by Eckler Consultants and Actuaries of the impact of an increased limit completed earlier this year. The analysis attempted to determine the increase in the value of claims if the limit were increased to \$500,000.
18. The Law Society's historic practice of budgeting the annual provision for claims has been to set the provision at the 50<sup>th</sup> percentile of projected outcomes based on analysis provided by Eckler Consultants and Actuaries. The analysis presented the expected claims outcomes based on the current claim limit of \$150,000 and a \$500,000 per claim limit, utilizing data from 2000-2013 and 2000-2014.
19. The average of the results at the 50<sup>th</sup> percentile at the \$150,000 level is \$3.1 million. The proposals for the budget for 2017 have included a provision of \$3 million, unchanged from 2016 due to the relatively insignificant variance from the estimates provided by the actuary. This provision, along with other current estimates included in the draft budget, would generate a levy of \$272.
20. The average of the results at the 50<sup>th</sup> percentile at the \$500,000 level is \$3.7 million. Based on an estimated 40,200 Full Fee Equivalent lawyers for 2017, the levy would need to be increased by \$18 to \$290 to be consistent with past budgetary practice.

### **The Committee's Conclusions**

21. In light of the over eight years that have elapsed since the last increase and acknowledging the mandate of the Law Society to govern in the public interest, the Committee determined that an increase in the per claimant limit is appropriate at this time, notwithstanding the infrequency with which claims exceeding the limit are likely to arise. The Committee believes that as a responsible regulator, the Law Society should ensure that its programs aimed at protecting the public interest are appropriately structured for the purpose they serve.
22. The Finance Committee recently recommended for Convocation's consideration a change to the Fund Balance Management Policy to reduce the minimum balance from three one-in-one hundred year events to one one-in-two hundred year event. The actuarial analysis included consideration of this question and determined that if the claims limit was increased to

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Looking at claims that were in progress and remained open at the end of August 2015, there are 327 active files with known claim amounts totaling approximately \$25.4 million. Of these, a total of 23 claims will be capped, 19 by the imposition of the \$150,000 limit and just four at the \$100,000 limit. With the passage of time these four should be the last claims impacted by the \$100,000 limit. The total value of the reduction due to the caps is approximately \$3.7 million.

For the 23 outstanding claims impacted by the current limits of \$100,000 and \$150,000, seven are reduced by \$50,000 or less, nine are reduced between \$50,000 and \$150,000 and seven by more than \$150,000, with the largest single reduction being \$650,000.

\$500,000 from the current \$150,000, the fund balance would still be sufficient to withstand an adverse outcome beyond a one-in-two hundred year event.

23. With respect to the provision for grants, as noted above, the average of the results at the 50th percentile based on a \$500,000 per claimant limit is \$3.7 million as opposed to the current budget estimate of \$3 million. As indicated, this may require an increase in the levy by approximately \$18.
24. The Committee is of the view that the increase of the per claimant limit, in the knowledge that the levy may increase, should be approved as a means to enhance the integrity of the compensation program through the Fund and the Society's responsibility to regulate in the public interest.



## LAW SOCIETY OF UPPER CANADA COMPENSATION FUND

### GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE COMPENSATION FUND RELATING TO LAWYERS AND PARALEGALS

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#### A. PREFACE

##### 1. *General:*

These Guidelines outline the general principles that will guide the Compensation Fund in the exercise of its discretion pursuant to the *Law Society Act*, R.S.O. 1990, c.L.8, s.51, as am. These Guidelines are not rules, are not exhaustive and will not necessarily apply to every conceivable situation. The facts and circumstances of each case will be carefully considered as part of decision-making.

Grants are generally payable from the Compensation Fund to those who have suffered losses due to dishonesty on the part of lawyers or licensed paralegals. Most commonly, a loss for which compensation is payable results from theft or misappropriation of money that ought to be held in trust for a client as a retainer or as the proceeds from a settlement, a sale of property or an estate.

These Guidelines were adopted in this form by Convocation in 2014. The updated Guidelines are not intended to change the substantive considerations in determining a claim but are intended to restate and clarify, in plain language, the underlying principles and process that apply to the determination of Compensation Fund claims. The updated Guidelines apply to all outstanding Compensation Fund claims.

2. *Final decision:* A decision by the Compensation Fund to pay or not pay compensation is final.

3. *Proof:* To make a grant, the Compensation Fund must have satisfactory proof of loss. What is satisfactory proof will vary, depending on the nature of the claim and the evidence that is reasonably available. Proof that funds were given to a lawyer or paralegal could include, for example:

- Receipts issued by the lawyer or paralegal
- Statements of account from the lawyer or paralegal
- Bank records of the claimant
- Cancelled cheques issued by the claimant or on the claimant's behalf

4. *Fund of last resort:* The Compensation Fund is a fund of last resort. The Fund will determine, at its discretion, whether all reasonable steps, in the circumstances, have been taken to recover a loss through other means, for example through litigation.

## **B. WHO CAN CLAIM**

5. *Lawyer-client / paralegal client relationship:* Subject to the exceptions set out in these guidelines, the claimant must be a person who had a lawyer-client or paralegal-client relationship or other similar fiduciary relationship with the person whose dishonesty is the reason for the loss.

6. *Exception – estate beneficiaries.* A beneficiary of an estate may claim for compensation, where a loss from the estate is because of the dishonesty of a lawyer who has acted as solicitor for the estate or estate trustee or both.

7. *Financial institutions and insurers:* The Compensation Fund will not pay grants to banks or other financial institutions that are in the business of lending money, nor will it compensate for losses covered by a contract of insurance, including title insurance.

## **C. LOSSES FOR WHICH COMPENSATION MAY BE AVAILABLE**

8. *Loss:* For the purposes of the Compensation Fund, loss is defined as the difference between what the lawyer or licensed paralegal received from the claimant or on the claimant's behalf, and the amount that was earned and accounted for, and/or returned to the claimant.

9. *Dishonest conduct:* The loss must result from a lawyer's or paralegal's dishonest conduct. Dishonest conduct includes wrongful acts committed by a lawyer or paralegal, such as theft or embezzlement of money that ought to be held in trust for a client, or the wrongful taking or conversion of money or property. It can also include wrongfully failing to return a retainer that has been paid by a client but not earned.

10. *Lawyer-client, paralegal-client or fiduciary relationship:* The loss must arise in the context of a lawyer-client or paralegal-client relationship or other similar fiduciary relationship between the lawyer and client or paralegal and client. Such a relationship generally involves the provision of legal advice, legal representation and/or legal services by a lawyer or paralegal to a client.

11. *Practice of law / provision of legal services:* Apart from exceptions contained in these guidelines, the loss must be connected to the practice of law or the provision of legal services. Any funds or property alleged to have been lost must have been received by the lawyer or paralegal in his or her capacity as a lawyer or paralegal. If a lawyer or paralegal has acted dishonestly in a matter that is not connected to the practice of law or provision of legal services, compensation will not be available.

12. *Legal entitlement:* The claimant must be legally or beneficially entitled to the money or property for which he or she is seeking compensation.

## **D. DETERMINING THE AMOUNT OF COMPENSATION THAT IS PAYABLE**

13. *Amount of loss:* The Fund will consider the value of work performed by the lawyer or paralegal and the cost of disbursements, whether or not the claimant received an account for the

work or the disbursements. The fact that work was performed may cause the Fund to reduce a grant or deny one altogether.

14. *Maximum grant:* Convocation will, from time to time, determine the maximum amount payable by the Fund. For losses resulting from funds given to a lawyer on or after September 22, 2016, the maximum grant is \$500,000. For losses resulting from funds given to a lawyer ~~on or after April 24, 2008~~between April 24, 2008, and September 21, 2016, the maximum grant is \$150,000. Grants for such losses originating prior to April 24, 2008 are subject to the maximum in place at the time funds were advanced. The maximum grant is \$10,000 for a loss resulting from dishonesty on the part of a paralegal licensee.

15. *Risk and carelessness:* The Compensation Fund will consider the extent to which the claimant was careless or took unreasonable risks. Risk and carelessness on the part of the claimant may reduce or eliminate a grant. In assessing risk and carelessness, the Fund may consider, for example:

- (a) whether it was reasonable for the claimant to trust the lawyer or paralegal concerned without, for example, considering other sources of professional advice (accounting, legal or otherwise);
- (b) whether the claimant was reckless in entrusting the money to the lawyer or paralegal; and
- (c) whether the claimant was careless in protecting his or her own interest after having a reasonable opportunity to suspect that a loss due to dishonesty might be occurring.

#### **E. LOSSES FOR WHICH COMPENSATION IS NOT PAYABLE**

16. *General:* The following losses will not result in compensation from the Fund:

- (a) Losses by spouses, children, parents, grandparents, siblings, partners, associates and employees of the lawyer(s) or paralegal(s) causing the loss
- (b) Losses covered by a bond, surety agreement, or insurance contract to the extent to which coverage applies
- (c) Losses by any business entity controlled by the lawyer or paralegal
- (d) Losses by any governmental entity or agency
- (e) Losses by banks or other financial institutions
- (f) Interest, damages, expenses, costs and other consequential or incidental losses

17. *Loans:* The Compensation Fund will not compensate for a loss resulting from a loan to a lawyer or paralegal unless the claimant was persuaded to lend money by the lawyer or paralegal because of an ongoing lawyer-client or paralegal-client relationship. Such a relationship must exist separate and apart from the loan itself.

18. *Investments:* The Compensation Fund will not compensate for a loss resulting from an investment solicited or facilitated by a lawyer unless the claimant was persuaded to make the investment because of an ongoing lawyer-client or paralegal-client relationship. Such a relationship must exist separate and apart from the investment itself.

Tab 7.1.2

**CANADIAN COMPENSATION FUND COMPARISON CHART, 2015**

<b>PROVINCE OR TERRITORY</b>	<b>APPROXIMATE NUMBER OF LAWYERS</b>	<b>CURRENT PER-CLAIMANT LIMIT</b>	<b>LIMIT IN PLACE SINCE</b>	<b>INSURANCE</b>
Ontario	35,000 (practising)	\$150,000	2008	No
British Columbia	11,000 (practising)	\$300,000 per claimant. There is a profession-wide aggregate limit of \$17.5 million (after which no claims will be paid).	2004	Compensation is pursuant to an insurance scheme provided by BC Lawyers Insurance Fund
Alberta	9,000 (approximate number of practising lawyers covered by insurance)	No limit prior to insurance model in July 2014. The new insurance model imposes a "misappropriation limit" of \$5 million per instance of misappropriation (could involve single lawyer or multiple lawyers); profession-wide annual aggregate of \$25 million (after which no claims will be paid)	Insurance model in place since July 1, 2014; previously an excess bond for many years	Compensation is pursuant to an insurance scheme provided by ALIAX (Alberta Lawyers Insurance Exchange)
Saskatchewan	1,800	No per claimant limit; a per-lawyer limit of \$250,000	Around 1990	Law Society purchases insurance through an underwriting group in CLIA, with a deductible of \$500,000, and limits of \$10 million.

<b>PROVINCE OR TERRITORY</b>	<b>APPROXIMATE NUMBER OF LAWYERS</b>	<b>CURRENT PER-CLAIMANT LIMIT</b>	<b>LIMIT IN PLACE SINCE</b>	<b>INSURANCE</b>
Manitoba	2,000	\$300,000	Around 2005	The Fund is insured for \$10 million, with a deductible of \$100,000 per claim.
Quebec - Barreau	25,500	\$100,000	Limit was increased from \$50,000 in 2014	No
Quebec: Chambres	3,500 (notaries)	\$100,000	1966	No
New Brunswick	1,300	No limit	Around 1970	Yes
Newfoundland	742	\$300,000	1983	\$10 million per loss/aggregate limit, with a group deductible of \$100,000 per loss, with a \$500,000 aggregate
Nova Scotia	1,911	No limit (previously was \$300,000 - per lawyer, not per claimant)	2004	Through CLIA. Limit is \$10 million for all claims, with a "self-retention" amount of \$100,000 per claim

<b>PROVINCE OR TERRITORY</b>	<b>APPROXIMATE NUMBER OF LAWYERS</b>	<b>CURRENT PER-CLAIMANT LIMIT</b>	<b>LIMIT IN PLACE SINCE</b>	<b>INSURANCE</b>
Prince Edward Island	320	No per claimant limit but there is a per lawyer limit: 50% of the total amount in the Fund on the first day of the fiscal year in which the claim is made	2004	Through CLIA. Limit is \$5 million for all claims, with a \$100,000 deductible.
Yukon	292 (2014 statistics; practising, including non-resident)	No limit	Unknown	Covered by CLIA
Northwest Territories	393	Up to \$50,000 per claim can be paid immediately after the "appeal period" passes. The remainder of the claim can be paid in its entirety at the end of the fiscal year provided the total amount of approved claims does not exceed \$300,000. If the total amount of all approved claims in excess of \$50,000 exceeds \$300,000 then the remainder of the \$300,000 will be divided among claimants on a pro rata basis.	Unknown	No

## FOR INFORMATION

## GRANTS PAID BY THE COMPENSATION FUND

## Summary

25. Since the period covered in the last report to Convocation, individual grants have been paid from the Fund in the amounts shown. This report covers the period from February 1, 2014, to August 31, 2016.
26. Licensees whose discipline proceedings are completed, or who are not subject to discipline, are identified by name. All others are referred to anonymously to avoid prejudice to ongoing proceedings.

Lawyers	Number of Claimants	Total Grants Paid \$
Solicitor #233 (Sole Practitioner Nov 2014)	1	2,000.00
Solicitor #269 (Licence Suspended May 2015)	1	2,000.00
Solicitor #241 (Licence Suspended February 2013)	1	3,328.97
Solicitor # 242 (Licence Suspended May 2014)	4	6,838.95
Solicitor # 9 (Licence Suspended July 2012)	2	8,000.00
Solicitor # 254 (Licence Suspended July 2014)	1	120,917.94
Solicitor # 253 (Licence Suspended March 2015)	9	145,526.17
Solicitor # 261 (Sole Practitioner April 2016)	1	232.06
Solicitor # 248 (Licence Suspended October 2013)	2	20,090.00
Solicitor # 200 (Licence Suspended March 2015)	1	1,000.00
Solicitor # 255 (Licence Suspended April 2013)	1	500.00
Solicitor # 246 (Licence Suspended March 2013)	2	3,000.00
Solicitor # 224 (Licence Suspended October 2010)	2	7,400.00
Solicitor # 251 (Licence Suspended December 2014)	1	150,000.00
Solicitor # 259 (Licence Suspended January 2015)	1	222.60
Solicitor # 258 (Sole Practitioner February 2016)	2	14,000.00
Solicitor # 245 (Licence Suspended June 2013)	5	23,193.47
Solicitor # 222 (Licence Suspended June 2011)	1	71.30
Solicitor #267 (Suspended May 2015)	1	49,435.00
Solicitor #268 (Suspended December 2015)	6	1,035.79
Solicitor #270 (Suspended June 2015)	1	1,500.00
Solicitor #266 (Final Undertaking to Cease Practice March 2015)	1	3,229.28
Solicitor #265 (Suspended July 2016)	11	251,111.90
Abrahams, Glen (Licence Revoked January 2016)	3	10,500.00
Barker, Simon (Licence Revoked May 2014)	2	106,186.75
Barrick, Luc (Licence Revoked October 2013)	5	280,596.02
Caroline, Paul (Licence Surrendered – Permitted to Resign October 2005)	1	100,000.00

<b>Lawyers</b>	<b>Number of Claimants</b>	<b>Total Grants Paid \$</b>
Chojnacki, Richard (Licence Revoked October 2010)	10	1,075,000.00
Coristine, Vicki (Licensee Deceased March 2014)	1	3,000.00
Dobson, Alec (Licence Revoked November 2009)	3	164,717.50
Eberhard, Peter (Licensee Deceased April 2015)	13	48,414.87
Flumian, George (Licence Surrendered – Permitted to Resign Sept. 2015)	2	8,277.78
Ghobrial, Cherif (Licence Revoked October 2015)	10	39,420.75
Goldman, Gordon (Deceased September 2015)	1	1,500.00
Harding, John (Licence Revoked December 2013)	11	768,328.96
Hatcher, Ron (Licence Revoked November 2012)	1	47,200.00
Heydary, Javad (Licensee Deceased November 2013)	35	1,388,948.56
Johnston, Daphne (Licensee Deceased January 2012)	2	140,000.00
Kaminer, Jehuda (Licence Surrendered – Permitted to Resign March 2014)	3	87,850.60
Line, John (Licence Revoked January 2014)	12	36,800.00
Lyon, Warren (Licence Revoked January 2015)	1	2,325.00
Makepeace, Dennis (Licensee Deceased March 2013)	1	5,000.00
McGahey, Kym (Licence Revoked March 2013)	4	34,484.40
McClelland, John (Licence Surrendered – Permitted to Resign July 2015)	3	22,636.00
Middlebrook, John (Licence Surrendered – Permitted to Resign March 2016)	1	16,000.00
Molson, David (Licence Surrendered June 2015)	1	75,082.21
Munro, Michael (Licence Revoked November 2014)	12	202,300.00
Olszowy, Anthony (Licensee Deceased September 2015)	5	407,892.91
Pichelli, John (Licensee Deceased May 2013)	19	645,902.64
Rother, Michael (Licensee Deceased March 2015)	3	12,000.00
Scott, Christopher (Licence Revoked November 2013)	2	140,309.00
Silver, Norman (Licence Surrendered – Permitted to Resign April 2016)	1	7,720.23
Slocombe, Paul – (Licence Revoked November 2011)	1	7,000.00
Solnik, Irving (Licensee Deceased January 2013)	3	66,259.71
Sutherland, Charles (Licence Revoked August 2011)	1	5,000.00
Taylor, Paul – Licence Revoked August 2012)	1	10,000.00
Telford, Randall (Licensee deceased February 2014)	1	15,000.00
Vakili, Golnaz (Licence Revoked November 2015)	3	100,006.77
Watkin, Gordon (Licence Revoked May 2011)	1	14,000.00
White, Jennifer (Licence Revoked July 2013)	1	1,000.00
Wilson, Graham (Licence Revoked May 2013)	3	9,021.97
Wolfe, Mitchell (Licence Revoked January 2014)	19	570,000.00
<b>Sub-total (Lawyers)</b>	<b>260</b>	<b>7,490,316.06</b>

<b>Paralegals</b>	<b>Number of Claimants</b>	<b>Total Grants Paid \$</b>
Paralegal #14 (Sole Practitioner January 2016)	1	791.00
Paralegal # 16 (Suspended October 2014)	9	36787.50
Paralegal #21 – (Suspended November 2014)	1	500.00
Paralegal #19 – (Sole Practitioner June 2016)	1	613.67
Bathurst, William (Licence Revoked October 2011)	2	1,075.00
Fitzpatrick, Colleen (Licensee Deceased August 2012)	7	11,300.00
Garth, Adrienne (Licence Revoked January 2015)	1	3,105.25
Gowling, Allison (Licence Revoked October 2013)	2	4,250.00
Khan, Abdul (Licence Revoked August 2013)	2	2,525.00
Klein, Kenneth (Licence Surrendered – Permitted to Resign December 2015)	1	7,000.00
Lebargé, Nicole (Licence Surrendered – Permitted to Resign November 2013)	1	200.00
Le Blanc, Susan (Licence Revoked September 2014)	2	743.10
Mafi, Saba (Licence Suspended March 2014)	1	300.00
Morrison, Glen (Licensee Deceased January 2012)	1	10,000.00
Smith, Diane (Licence Revoked January 2015)	2	4,400.00
Stephenson, Clifford (Licensee Deceased July 2013)	3	2,050.00
<b>Sub-total (Paralegals)</b>	<b>37</b>	<b>85,640.52</b>
<b>TOTAL GRANTS PAID</b>	<b>297</b>	<b>7,575,956.58</b>

## TAB 7.3

## FOR INFORMATION

## COMPENSATION FUND ACTIVITIES, TO JULY 31, 2016

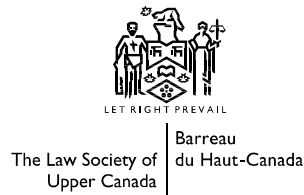
27. The following charts summarize the key claims-related activity at the Compensation Fund in 2014, 2015 and 2016 (to July 31).

**TABLE 1 - Summary of Lawyer Fund Operations,  
January 1 2014, to July 31, 2016**

	2014	2015	2016 (to July 31)
Number of New Claims Received	223	178	99
Gross Dollar Value Of New Claims (\$ Millions)	17	34.2	11.9
At Limits Value of New Claims (\$ Millions)	11.5	11.4	5.7
Number of Claims Closed	102	145	97
Grants Paid on Closed Claims (\$ Millions)	1.7 (69 claims)	3.1 (109 claims)	2.5 (76 claims)
Number of Claims Outstanding at Dec 31 (and value with limits applied, in \$ Millions)	291 (15.8)	323 (21.3)	325 (22.3)
Fund Balance at Year End (\$ Millions)	15.8	12.7	13.8

**TABLE 2- Summary of Paralegal Fund Operations,  
January 1, 2014, to July 31, 2016**

	<b>2014</b>	<b>2015</b>	<b>2016 (to July 31)</b>
<b>Number of New Claims Received</b>	<b>26</b>	<b>22</b>	<b>8</b>
<b>Gross Dollar Value Of New Claims (\$ Thousands)</b>	<b>205</b>	<b>203</b>	<b>24</b>
<b>At Limits Value of New Claims (\$ Thousands)</b>	<b>102</b>	<b>107</b>	<b>24</b>
<b>Number of Claims Closed</b>	<b>23</b>	<b>19</b>	<b>12</b>
<b>Grants Paid on Closed Claims (\$ Thousands)</b>	<b>17</b> <b>(15 claims)</b>	<b>48</b> <b>(11 claims)</b>	<b>19</b> <b>(10 claims)</b>
<b>Number of Claims Outstanding at Dec 31 (and value with limits applied, in \$ Thousands)</b>	<b>28</b> <b>(127)</b>	<b>31</b> <b>(149)</b>	<b>27</b> <b>(151)</b>
<b>Fund Balance at Year End (\$ Thousands)</b>	<b>446</b>	<b>332</b>	<b>561</b>



**TAB 8**

**Report to Convocation  
September 22<sup>nd</sup> 2016**

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**Paralegal Standing Committee**

**Committee Members**  
**Michelle Haigh, Chair**  
**Janis Criger, Vice-Chair**  
**Marion Boyd**  
**Robert Burd**  
**Cathy Corsetti**  
**Ross Earnshaw**  
**Brian Lawrie**  
**Marian Lippa**  
**Susan McGrath**  
**Barbara Murchie**  
**Jan Richardson**  
**Baljit Sikand**  
**Anne Vespry**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Margaret Drent 416 947-7613)**

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### For Decision

Amendments to *Paralegal Rules of Conduct*:..... **TAB 8.1**

- Pro Bono Short-Term Legal Services
- Harassment and Discrimination
- Conflicts of Interest – General
- Conflicts of Interest – Transfers
- Responsibility to the Law Society

### For Information

Paralegal Annual Report.....**TAB 8.2**

Amendments to the Paralegal Guidelines.....**TAB 8.3**

## **COMMITTEE PROCESS**

1. The Committee met on September 7, 2016, Committee members present were Michelle Haigh (Chair), Janis Criger (Vice-Chair), Marion Boyd (by telephone), Robert Burd, Cathy Corsetti, Brian Lawrie, Marian Lippa (by telephone), Barbara Murchie, Jan Richardson (by telephone), and Baljit Sikand (by telephone). Malcolm Mercer also attended the meeting.
2. The Committee reviewed the Quarterly Report from the Professional Regulation Division summarizing the Division's activities and achievements during the first two quarters of 2016. The Committee also reviewed the 2016 Paralegal Annual Report.
3. Staff in attendance were Karen Manarin, Terry Knott, Naomi Bussin, Cathy Braid, Eric Smith, and Margaret Drent.

Tab 8.1

## FOR DECISION

### AMENDMENTS TO *PARALEGAL RULES OF CONDUCT*

#### Motion

4. That Convocation approve the amendments to the Paralegal Rules of Conduct set out at [TAB 8.1.1](#)

#### Rationale

5. The Committee is proposing amendments to Rule 3.04 on Conflicts of Interest to create an appropriate standard for conflicts of interest in the context of *pro bono* short-term legal services. These amendments will ensure consistency between the Paralegal Rules of Conduct and the lawyers' Rules of Professional Conduct, both of which are based on the Model Code of Professional Conduct of the Federation of Law Societies of Canada (FLSC). Convocation has adopted the policy that the Paralegal Rules should be consistent with the lawyers' Rules to the extent possible.
6. The purpose of Rules on conflicts of interest regarding the provision of *pro bono* summary services is to facilitate access to legal services by a wide range of non-profit legal service providers. These programs are generally provided on a *pro bono* basis.
7. The amendments would provide a modified conflicts of interest standard for paralegals who provide these services, who would otherwise be required to clear conflicts with their firm before assisting members of the public. These amendments are consistent with the policy that underlies the amendments to the Rules of Professional Conduct for lawyers some time ago on this subject, which was primarily to support access to justice for those needing *pro bono* short-term legal services. As discussed in this report, companion amendments are also being proposed to the lawyers' Rules on this subject through the report of the Professional Regulation Committee.
8. The other proposed amendments, as set out in [TAB 8.1.1](#) are, with one exception, as described, recommended by the Committee to address typographical issues in the Paralegal Rules of Conduct, and are self-explanatory.

## DISCUSSION

### Principles Underlying Amendments to Lawyers' Rules – *Pro Bono* Short-Term Legal Services

9. In 2014, the FLSC's Model Code was amended to introduce new conflicts of interest rules related to the provision of *pro bono* short-term legal services, defined as "advice or

representation to a client under the auspices of a *pro-bono* or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter”.<sup>1</sup>

10. The lawyer's Rules of Professional Conduct were amended in 2010 to provide for conflicts rules applicable to these circumstances. The current Rules are specific to programming offered by Pro Bono Ontario (PBO). The Paralegal Rules of Conduct do not currently contain any guidance in this area.
11. In 2015, the Law Society sought feedback from lawyers and paralegals regarding the proposed amendments.
12. The Professional Regulation Committee approved amendments to the lawyers' Rules on September 8, 2016. The revised Rules would, if passed, amend the wording of the current Rules to provide guidance on conflicts issues that may arise as part of programming offered by organizations other than PBO, in addition to PBO. These changes are incorporated in the proposed amendments to the Paralegal Rules, discussed below.

### **Summary of Proposed Changes to the Paralegal Rules of Conduct**

13. The proposed amendments would provide that a *pro bono* paralegal, a defined term, may provide short-term pro bono services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the paralegal's firm, or of the pro bono provider.
14. The phrase “*pro bono* provider” is defined as follows: “a *pro bono* or not-for-profit legal service provider that makes pro bono paralegals available to provide advice or representation to clients”.
15. The amendments would also require a “*pro bono* paralegal” to take reasonable measures to ensure that no disclosure of the client's confidential information is made to another paralegal in the paralegal's firm.
16. The Committee proposes the following definition of “*pro bono* paralegal”: (i) a volunteer paralegal who provides short-term *pro bono* services to clients under the auspices of a *pro bono* provider and (ii) a paralegal providing services under the auspices of a Pro Bono Ontario program.

### **Other Proposed Amendments to the Paralegal Rules**

17. Various typographical and stylistic changes proposed by the Committee to the Paralegal Rules of Conduct related to the subjects are listed below.

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<sup>1</sup> Rules 3.4-2A to 3.4-2D, Model Code of Professional Conduct, online at <http://flsc.ca/wp-content/uploads/2014/12/conduct1.pdf>

- a. conflicts of interest – general (Rule 3.04(12))
- b. conflicts of interest – transfers (Rule 3.05(2) )
- c. responsibility to the Law Society (Rule 9.01(7) and (8);
- d. conduct unbecoming a paralegal – definitions (Rule 9.02(13)).

18. The proposed amendments are shown at **TAB 8.1.1**.

19. The one substantive change is being recommended to ensure consistency between Rules 2.03(3) and (4) on the subject of discrimination and harassment. The Committee recommends that the phrase “family status” be inserted in Rule 2.03(4). If approved, Rule 2.03(4), as shown at **Tab 8.1.1**, would provide

2.03(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability with respect to the employment of others or in dealing with other licensees or any other person (emphasis added).

**TAB 8.1.1**

**REDLINE SHOWING PROPOSED AMENDMENTS TO THE PARALEGAL RULES OF  
CONDUCT**

**SEPTEMBER 22, 2016**

**2.03 HARASSMENT AND DISCRIMINATION**

( . . . )

**Discrimination**

2.03(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability with respect to the employment of others or in dealing with other licensees or any other person (emphasis added).

( . . . )

**3.04 CONFLICTS OF INTEREST - GENERAL**

**Avoidance of Conflicts of Interest**

3.04(1) A paralegal shall not act or continue to act for a client where there is a conflict of interest, except as permitted under this rule.

- (2) A paralegal shall not advise or represent opposing parties in a dispute.
- (3) A paralegal shall not represent a client in a matter when there is a conflict of interest unless
  - (a) there is express or implied consent from all clients; and
  - (b) it is reasonable for the paralegal to conclude that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.
- (4) For the purpose of this rule:
  - (a) Express consent must be fully informed and voluntary after disclosure.
  - (b) Consent may be implied and need not be in writing where all of the following apply:
    - (i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel,
    - (ii) the matters are unrelated,

(iii) the paralegal has no relevant confidential information from one client that might reasonably affect the representation of the other client, and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

### **Acting Against Former Clients**

(5) Unless the former client consents, a paralegal shall not act against a former client in,

(a) the same matter;

(b) any related matter; or

(c) except as provided by subrule (6), in any new matter, if the paralegal has relevant confidential information arising from the representation of the former client that may prejudice that client.

(6) If a paralegal has acted for a client and obtained confidential information relevant to a matter, the paralegal's partner or employee may act in a subsequent matter against that client, provided that:

(a) the former client consents to the paralegal's partner or employee acting; or

(b) the paralegal's firm establishes that it has taken adequate measures on a timely basis to ensure that there will be no risk of disclosure of the former client's confidential information to the other licensee having carriage of the new matter.

### **Joint Retainers**

(7) Before agreeing to act for more than one client in a matter or transaction, a paralegal shall advise the clients that,

(a) the paralegal has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the paralegal cannot continue to act for both or all of them and may have to withdraw completely.

(8) If a paralegal has a continuing relationship with a client for whom he or she acts regularly, before agreeing to act for that client and another client in a matter or transaction, the paralegal shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

(9) If a paralegal has advised the clients, as provided under subrules (8) and (9), and the parties are content that the paralegal act for both or all of them, the paralegal shall obtain their consent.

(10) Consent to a joint retainer must be obtained from each client in writing, or recorded through a separate written communication to each client.

(11) Although all parties concerned may consent, a paralegal shall avoid acting for more than one client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(12) Except as provided by subrule (13) if a contentious issue arises between two clients who have consented to a joint retainer, the paralegal must not advise either of them on the contentious issue and the following rules apply:

(a) The paralegal shall

- (i) refer the clients to other licensees for that purpose; or
- (ii) if not legal advice is required and the clients are sophisticated, advise them of their option to settle the contentious issue by direct negotiation in which the paralegal does not participate.

(b) If the contentious issue is not resolved, the paralegal shall withdraw from the joint representation.

(13) If a paralegal's clients consent to a joint retainer and also agree that if a contentious issue arises the paralegal may continue to advise one of them and a contentious issue does arise, the paralegal may advise the one client about the contentious matter and shall refer the other or others to another licensee for that purpose.

### **Multi-Discipline Practices**

(14) A paralegal in a multi-discipline practice shall ensure that non-licensee partners and associates observe this rule for the provision of legal services and for any other business or professional undertaking carried on by them outside the professional business.

### **Affiliations**

(15) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a paralegal shall disclose to the client

- (a) any possible loss of confidentiality because of the involvement of the affiliated entity, including circumstances where a non-licensee or staff of the affiliated entity provide services, including support services, in the paralegal's office,
- (b) the paralegal's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,
- (c) any financial, economic or other arrangements between the paralegal and the affiliated entity that may affect the independence of the paralegal's representation of the client, including whether the paralegal shares in the revenues, profits or cash flows of the affiliated entity; and
- (d) agreements between the paralegal and the affiliated entity, such as agreements with respect to referral of clients between the paralegal and the affiliated entity, that may affect the independence of the paralegal's representation of the client.

(16) Where there is an affiliation, after making the disclosure as required by subrule (15), a paralegal shall obtain the client's consent before accepting a retainer under that subrule.

(17) Where there is an affiliation, a paralegal shall establish a system to search for conflicts of interest of the affiliation.

*[Amended October 2014]*

(18) In this rule,

“paralegal’s firm” means the paralegal firm at which the pro bono paralegal provides legal services as a partner, associate, employee, or otherwise;

“pro bono provider” means a pro bono or not-for-profit legal service provider that makes pro bono paralegals available to provide advice or representation to clients;

“pro bono paralegal” means (i) a volunteer paralegal who provides short-term pro bono services to clients under the auspices of a pro bono provider; or (ii) a paralegal providing services under the auspices of a Pro Bono Ontario program;

“short-term legal services” means pro bono legal services or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the paralegal and the client that the paralegal will not provide continuing legal representation in the matter.

(19) A pro bono paralegal may provide short-term pro bono services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the paralegal’s firm or of the pro bono provider;

(20) A pro bono paralegal must take reasonable measures to ensure that no disclosure of the client’s confidential information is made to another paralegal in the paralegal’s firm;.

(21) A pro bono paralegal must not provide or must cease providing short-term legal services to a client where the pro bono paralegal knows or becomes aware of a conflict of interest;

(22) A pro bono paralegal who is unable to provide short-term pro bono services to a client because there is a conflict of interest shall cease to provide such services as soon as the paralegal becomes aware of the conflict of interest and the paralegal shall not seek the pro bono client’s waiver of the conflict.

(22) A paralegal who is unable to provide short-term legal services to a pro bono client because of the operation of subrules (18) to (21) shall cease to provide short term legal services to the pro bono client as soon as the paralegal actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in subrule (20) and the paralegal shall not seek the pro bono client’s waiver of the conflict.

(. . .)

### 3.05 CONFLICTS OF INTEREST – TRANSFERS

#### Paralegal Firm Disqualification

3.05(2) If the transferring paralegal actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new firm, the new firm shall cease its representation of its client in that matter unless

- a. The former client consents to the new firm's continued representation of its client; or
- b. The new firm has
  - (i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring paralegal to any member of the new firm; and
  - (ii) advised the paralegal's former client, if requested by the client, of the measures taken (emphasis added).

( . . . )

### 9.01 RESPONSIBILITY TO THE LAW SOCIETY

( . . . )

#### Duty to Report

( . . . )

9.01(7) A paralegal shall inform the client of the provision of the *Criminal Code of Canada* dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration (section 141).

9.01(8) If the client wishes to pursue a private agreement with the apparently dishonest licensee, the paralegal shall not continue to act if the agreement constitutes a breach of section 141 of the *Criminal Code of Canada*.

( . . . )

#### Definitions

( . . . )

(13) In subrules (11) and (12),

( . . . )

‘professional misconduct’ means conduct in a paralegal’s professional capacity that tends to bring discredit upon the paralegal profession, including

- (a) violating or attempting to violate one of the Paralegal Rules of Conduct, or a requirement of the *Law Society Act* or its regulations or by-laws,
- (b) knowingly assisting or inducing another licensee to violate or attempt to violate ~~these~~ *Rules* the Paralegal Rules of Conduct, a requirement of the *Law Society Act* or its regulations or by-laws,
- (c) knowingly assisting or inducing a non-licensee partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Paralegal Rules of Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws (emphasis added).

( . . . )

**TAB 8.1.2**

**CLEAN SHOWING PROPOSED AMENDMENTS TO THE PARALEGAL RULES OF  
CONDUCT**

**SEPTEMBER 22, 2016**

**2.03 HARASSMENT AND DISCRIMINATION**

( . . . )

**Discrimination**

2.03(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability with respect to the employment of others or in dealing with other licensees or any other person (emphasis added).

( . . . )

**3.04 CONFLICTS OF INTEREST - GENERAL**

**Avoidance of Conflicts of Interest**

3.04(1) A paralegal shall not act or continue to act for a client where there is a conflict of interest, except as permitted under this rule.

- (2) A paralegal shall not advise or represent opposing parties in a dispute.
- (3) A paralegal shall not represent a client in a matter when there is a conflict of interest unless
  - (a) there is express or implied consent from all clients; and
  - (b) it is reasonable for the paralegal to conclude that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.
- (4) For the purpose of this rule:
  - (a) Express consent must be fully informed and voluntary after disclosure.
  - (b) Consent may be implied and need not be in writing where all of the following apply:
    - (i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel,
    - (ii) the matters are unrelated,

(iii) the paralegal has no relevant confidential information from one client that might reasonably affect the representation of the other client, and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

### **Acting Against Former Clients**

(5) Unless the former client consents, a paralegal shall not act against a former client in,

(a) the same matter;

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(c) except as provided by subrule (6), in any new matter, if the paralegal has relevant confidential information arising from the representation of the former client that may prejudice that client.

(6) If a paralegal has acted for a client and obtained confidential information relevant to a matter, the paralegal's partner or employee may act in a subsequent matter against that client, provided that:

(a) the former client consents to the paralegal's partner or employee acting; or

(b) the paralegal's firm establishes that it has taken adequate measures on a timely basis to ensure that there will be no risk of disclosure of the former client's confidential information to the other licensee having carriage of the new matter.

### **Joint Retainers**

(7) Before agreeing to act for more than one client in a matter or transaction, a paralegal shall advise the clients that,

(a) the paralegal has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the paralegal cannot continue to act for both or all of them and may have to withdraw completely.

(8) If a paralegal has a continuing relationship with a client for whom he or she acts regularly, before agreeing to act for that client and another client in a matter or transaction, the paralegal shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

(9) If a paralegal has advised the clients, as provided under subrules (8) and (9), and the parties are content that the paralegal act for both or all of them, the paralegal shall obtain their consent.

(10) Consent to a joint retainer must be obtained from each client in writing, or recorded through a separate written communication to each client.

(11) Although all parties concerned may consent, a paralegal shall avoid acting for more than one client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(12) Except as provided by subrule (13) if a contentious issue arises between two clients who have consented to a joint retainer, the paralegal must not advise either of them on the contentious issue and the following rules apply:

(a) The paralegal shall

- (i) refer the clients to other licensees for that purpose; or
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(b) If the contentious issue is not resolved, the paralegal shall withdraw from the joint representation.

(13) If a paralegal's clients consent to a joint retainer and also agree that if a contentious issue arises the paralegal may continue to advise one of them and a contentious issue does arise, the paralegal may advise the one client about the contentious matter and shall refer the other or others to another licensee for that purpose.

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(14) A paralegal in a multi-discipline practice shall ensure that non-licensee partners and associates observe this rule for the provision of legal services and for any other business or professional undertaking carried on by them outside the professional business.

### **Affiliations**

(15) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a paralegal shall disclose to the client

- (a) any possible loss of confidentiality because of the involvement of the affiliated entity, including circumstances where a non-licensee or staff of the affiliated entity provide services, including support services, in the paralegal's office,
- (b) the paralegal's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,
- (c) any financial, economic or other arrangements between the paralegal and the affiliated entity that may affect the independence of the paralegal's representation of the client, including whether the paralegal shares in the revenues, profits or cash flows of the affiliated entity; and
- (d) agreements between the paralegal and the affiliated entity, such as agreements with respect to referral of clients between the paralegal and the affiliated entity, that may affect the independence of the paralegal's representation of the client.

(16) Where there is an affiliation, after making the disclosure as required by subrule (15), a paralegal shall obtain the client's consent before accepting a retainer under that subrule.

(17) Where there is an affiliation, a paralegal shall establish a system to search for conflicts of interest of the affiliation.

*[Amended October 2014]*

(18) In this rule,

“paralegal’s firm” means the paralegal firm at which the pro bono paralegal provides legal services as a partner, associate, employee, or otherwise;

“pro bono provider” means a pro bono or not-for-profit legal service provider that makes pro bono paralegals available to provide advice or representation to clients;

“pro bono paralegal” means (i) a volunteer paralegal who provides short-term pro bono services to clients under the auspices of a pro bono provider; or (ii) a paralegal providing services under the auspices of a Pro Bono Ontario program;

“short-term legal services” means pro bono legal services or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the paralegal and the client that the paralegal will not provide continuing legal representation in the matter.

(19) A pro bono paralegal may provide short-term pro bono services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the paralegal’s firm or of the pro bono provider;

(20) A pro bono paralegal must take reasonable measures to ensure that no disclosure of the client’s confidential information is made to another paralegal in the paralegal’s firm;.

(21) A pro bono paralegal must not provide or must cease providing short-term legal services to a client where the pro bono paralegal knows or becomes aware of a conflict of interest;

(22) A pro bono paralegal who is unable to provide short-term pro bono services to a client because there is a conflict of interest shall cease to provide such services as soon as the paralegal becomes aware of the conflict of interest and the paralegal shall not seek the pro bono client’s waiver of the conflict.

(22) A paralegal who is unable to provide short-term legal services to a pro bono client because of the operation of subrules (18) to (21) shall cease to provide short term legal services to the pro bono client as soon as the paralegal actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in subrule (20) and the paralegal shall not seek the pro bono client’s waiver of the conflict.

(. . .)

### 3.05 CONFLICTS OF INTEREST – TRANSFERS

#### Paralegal Firm Disqualification

3.05(2) If the transferring paralegal actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new firm, the new firm shall cease its representation of its client in that matter unless

- a. The former client consents to the new firm's continued representation of its client; or
- b. The new firm has
  - (i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring paralegal to any member of the new firm; and
  - (ii) advised the paralegal's former client, if requested by the client, of the measures taken (emphasis added).

( . . . )

### 9.01 RESPONSIBILITY TO THE LAW SOCIETY

( . . . )

#### Duty to Report

( . . . )

9.01(7) A paralegal shall inform the client of the provision of the *Criminal Code* dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration (section 141).

9.01(8) If the client wishes to pursue a private agreement with the apparently dishonest licensee, the paralegal shall not continue to act if the agreement constitutes a breach of section 141 of the *Criminal Code*.

( . . . )

## Definitions

( . . . )

(13) In subrules (11) and (12),

( . . . )

‘professional misconduct’ means conduct in a paralegal’s professional capacity that tends to bring discredit upon the paralegal profession, including

- (a) violating or attempting to violate one of the Paralegal Rules of Conduct, or a requirement of the *Law Society Act* or its regulations or by-laws,
- (b) knowingly assisting or inducing another licensee to violate or attempt to violate the Paralegal Rules of Conduct, a requirement of the *Law Society Act* or its regulations or by-laws,
- (c) knowingly assisting or inducing a non-licensee partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the Paralegal Rules of Conduct or a requirement of the *Law Society Act* or its regulations or by-laws (emphasis added).

( . . . )

**Tab 8.2**

**FOR INFORMATION**

**2016 PARALEGAL ANNUAL REPORT**

20. The 2016 Paralegal Annual Report is shown at **TAB 8.2.1** for Convocation's information. There are no substantive changes from the 2015 Annual Report.

**Background**

21. Subsection 5(1) of By-Law 8 requires that every licensee file a report with the Law Society by March 31 of each year, in respect of the licensee's professional business during the preceding year; and the licensee's other activities during the preceding year related to the licensee's practice of law or the provision of legal services.
22. There have been some stylistic improvements since 2015. The sections and questions in the 2016 Paralegal Annual Report have been rearranged and renumbered where necessary to enhance the appearance of the Annual Report portlet and to ensure consistency with the Law Society of Upper Canada portal.
23. The redesign and reconfiguration of the Annual Report portlet will result in the following additional benefits:
- a. The portlet will now be compliant with the *Accessibility for Ontarians with Disabilities Act*.<sup>1</sup>
  - b. The portlet will be mobile friendly.

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<sup>1</sup> *Accessibility for Ontarians With Disabilities Act*, S.O. 2005, c. 11, online at <https://www.ontario.ca/laws/statute/05a11>



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

## 2016 Paralegal Annual Report

### Introduction Page

#### **YOUR 2016 PARALEGAL ANNUAL REPORT IS DUE MARCH 31, 2017.**

This report is based on the calendar year ending December 31, 2016, and is due by March 31, 2017. Failure to complete and file the report within 60 days of the due date will result in a late filing fee and a summary order suspending your licence until such time as this report is filed and the late filing fee is paid.

Your responses to Section 3, relating to mixed trust accounts, will be shared with the Law Foundation of Ontario (LFO).

**GUIDE:** For definitions or assistance in completing this report, please review the enclosed Guide or visit the Law Society's website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

**FINANCIAL FILING DECLARATION (FFD):** Only the Designated Financial Filing Licensee for each firm needs to complete the Financial Filing Declaration. A single Financial Filing Declaration is required from each firm. The Financial Filing Declaration is found at the end of Section 3.

If you require filing assistance, contact By-Law Administration Services at (416) 947-3315 or at (800) 668-7380 ext. 3315 or by email at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca).



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

## 2016 Paralegal Annual Report

### Section 1 – LICENSEE IDENTIFICATION AND STATUS

#### 1. Licensee Status as at December 31, 2016

The Law Society's records show your status on December 31, 2016 as follows:

Status: \_\_\_\_\_

Is this status for December 31 correct? ☐ Yes ☐ No

If "No", select the correct status from the options below. Choose only one status (your status on December 31, 2016) regardless of changes during the 2016 calendar year. Your response to this question will not be used to change your status. To review or update your current status, you must use the Change of Information portlet in the LSUC Portal. By-Law 8 requires licensees to notify the Law Society immediately after any change in status or contact information.

#### Practising Law/Providing Legal Services

- ☐ Sole Practitioner in Ontario
- ☐ Partner in a Paralegal Firm/Professional Business in Ontario
- ☐ Employee in a Paralegal Firm/Professional Business in Ontario
- ☐ Associate in a Paralegal Firm/Professional Business in Ontario
- ☐ Employed in Education in Ontario
- ☐ Employed in Government in Ontario
- ☐ In-House
- ☐ Legal Aid or Clinic Paralegal
- ☐ Not in Ontario

#### Not Practising Law/Not Providing Legal Services

- ☐ Employed in Education in Ontario
- ☐ Employed in Government in Ontario
- ☐ Otherwise Employed in Ontario
- ☐ Not in Ontario

#### Not Working

- ☐ Retired or Not Working
- ☐ Temporary Leave of Absence
- ☐ Parental Leave
- ☐ Not in Ontario



The Law Society of  
Upper Canada

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du Haut-Canada

## 2016 Paralegal Annual Report

### 2. Benchers Election Privacy Option (non-mandatory response)

During the benchers election, many candidates want to communicate with voters by email.

Check the box if you give the Law Society permission to provide your email address for benchers election campaigning purposes:

☐

### 3. Provision of Legal Services in French (non-mandatory response)

a) Can you communicate with your clients and provide legal advice to them in French?

☐ Yes ☐ No

b) Can you communicate with your clients, provide legal advice to them, and represent them in French?

☐ Yes ☐ No

### 4. Other Languages (non-mandatory response)

- |   |                                    |                                     |
|---|------------------------------------|-------------------------------------|
| <input type="checkbox"/> ASL or LSQ (Sign Language) | <input type="checkbox"/> Albanian  | <input type="checkbox"/> Arabic     |
| <input type="checkbox"/> Bulgarian                  | <input type="checkbox"/> Cantonese | <input type="checkbox"/> Croatian   |
| <input type="checkbox"/> Czech                      | <input type="checkbox"/> Danish    | <input type="checkbox"/> Dutch      |
| <input type="checkbox"/> English                    | <input type="checkbox"/> Estonian  | <input type="checkbox"/> Finnish    |
| <input type="checkbox"/> French                     | <input type="checkbox"/> German    | <input type="checkbox"/> Greek      |
| <input type="checkbox"/> Gujarati                   | <input type="checkbox"/> Hebrew    | <input type="checkbox"/> Hindi      |
| <input type="checkbox"/> Hungarian                  | <input type="checkbox"/> Italian   | <input type="checkbox"/> Japanese   |
| <input type="checkbox"/> Korean                     | <input type="checkbox"/> Latvian   | <input type="checkbox"/> Lithuanian |
| <input type="checkbox"/> Macedonian                 | <input type="checkbox"/> Mandarin  | <input type="checkbox"/> Norwegian  |
| <input type="checkbox"/> Persian                    | <input type="checkbox"/> Polish    | <input type="checkbox"/> Portuguese |
| <input type="checkbox"/> Punjabi                    | <input type="checkbox"/> Romanian  | <input type="checkbox"/> Russian    |
| <input type="checkbox"/> Serbian                    | <input type="checkbox"/> Slovak    | <input type="checkbox"/> Slovene    |
| <input type="checkbox"/> Spanish                    | <input type="checkbox"/> Swedish   | <input type="checkbox"/> Ukrainian  |
| <input type="checkbox"/> Urdu                       | <input type="checkbox"/> Yiddish   |                                     |

☐ Other – Please specify: \_\_\_\_\_



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

## 2016 Paralegal Annual Report

### Section 2 – INDIVIDUAL PRACTICE ACTIVITIES

To be completed by all paralegals.

#### NOTES ABOUT THIS SECTION:

- For further assistance in completing this section, refer to The Bookkeeping Guide for Paralegals available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca).
- \* Refer to the PAR Guide for definitions.

#### 1. Cash Transactions

**All paralegals must report on large cash transactions regardless of jurisdiction where legal services were provided.**

- a) Did you receive cash\* in an aggregate amount equivalent to \$7,500 CDN or more in respect of any one client file in 2016?

☐ Yes ☐ No

**If “Yes” to a):**

- b) Was the cash solely for legal fees and/or client disbursements\*?

☐ Yes ☐ No

**If “No” to b):**

- c) Provide full particulars below with respect to compliance with Part III of By-Law 9 (Cash Transactions).

#### 2. Trust Funds/Property – 2a), 2b) and 2c) must be answered.

- a) In 2016, did you receive\* trust funds\* and/or trust property\* on behalf of your firm in connection with the provision of legal services in Ontario?

☐ Yes ☐ No

- b) In 2016, did you disburse\* (payout), or did you have signing authority to disburse, trust funds\* or trust property\* on behalf of your firm in connection with the provision of legal services in Ontario?

☐ Yes ☐ No

Law Society Number

Licensee Name

4



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- c) In 2016, did you hold\* trust funds\* or trust property\* on behalf of your firm in connection with the provision of legal services in Ontario?

☐ Yes ☐ No

### 3. Borrowing from Clients – 3a) must be answered and 3b), if applicable.

**Note:** If your borrowing was/is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer “No” to a).

See Rules 3.06(6)(a) and (b) of the *Paralegal Rules of Conduct*.

- a) At any time in 2016, were you personally indebted to a person or organization who, at the time of borrowing, was a current or former client of you or the firm through which you provided legal services?

☐ Yes ☐ No

**If “Yes” to a):**

- b) Was the client or person a related\* person as defined in the *Income Tax Act* (Canada), R.S.C., 1985, c.1?

☐ Yes ☐ No ☐ N/A

**If “Yes” to a) or b):**

- c) Provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.

### 4. Client Identification – All paralegals must answer questions 4a) and 4b).

- a) i) In 2016, when you provided professional services to clients, did you obtain and record identification information for every (each) client and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

**If “No” to i), answer ii).**



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ii) In 2016, when you provided professional services to clients, were you exempt from the requirement to obtain and record identification information for every (each) client and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

If “No” to ii), answer iii).

iii) Provide an explanation below.

b) i) In 2016, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, did you obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

If “No” to i), answer ii).

ii) In 2016, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, were you exempt from the requirement to obtain information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

If “No” to ii), answer iii).

iii) Provide an explanation below.

### 5. Pro Bono Legal Services

**(Pro bono legal services means the provision of legal services to persons of limited means or to charitable or not-for-profit organizations without expectation of a fee from the client.)**

a) Did you provide pro bono legal services in Ontario in 2016?

☐ Yes ☐ No



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If “Yes” to a), complete b).

- b) How many hours did you devote to pro bono legal services in Ontario in 2016?

\_\_\_\_\_

### 6. Membership in other Regulatory Bodies

- a) Are you now a member of another professional/regulatory/governing body in any jurisdiction?

☐ Yes ☐ No

If “Yes” to a), answer b).

- b) Please identify the professional/regulatory/governing body.

### 7. Self Study

The annual minimum expectation is 50 hours of self-study. For the purposes of this section, self-study means self-directed reading or research using print materials, electronic or otherwise. CPD hours must be reported in the CPD section of the LSUC Portal by December 31<sup>st</sup> of each calendar year.

- a) Did you undertake any self-study during 2016?

☐ Yes ☐ No

If “Yes” to a), answer b) to d).

If “No” to a), you may provide an explanation in the area at the end of this section.

- b) Approximate total number of self-study hours spent on **file specific** reading or research: \_\_\_\_\_

- c) Approximate total number of self-study hours spent on **general** reading or research: \_\_\_\_\_

- d) Indicate below the tools used, overall, for all types of self-study. Check all that apply:

☐ Printed Material

☐ Internet

☐ Other



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### 8. Additional Information

If required, use the area below to provide further information or comments about your Individual Practice Activities.



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### Section 3 – FINANCIAL REPORTING

To be completed by all paralegals who:

- As at December 31<sup>st</sup>, were sole practitioners;
- As at December 31<sup>st</sup>, were partners, employees and associates of paralegal firms or law firms;
- As at December 31<sup>st</sup>, were employed by Legal Aid Ontario and were responsible for general\*, trust\* and/or mixed trust accounts\*; and
- Throughout the filing year, held client monies or property from a former legal services business in Ontario.
- The term “employee” means employed in a providing legal services status, for which professional liability insurance coverage is required. This section does not apply to a paralegal working at a paralegal firm or law firm in a non-legal capacity (e.g. clerk, assistant, bookkeeper, etc.).

#### NOTES ABOUT THIS SECTION:

1. For further assistance in completing this section, refer to The Bookkeeping Guide for Paralegals available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca).
2. \* Refer to the PAR Guide for definitions.

#### 1. Trust and General (Non-Trust) Accounts – 1a) and 1b) must be answered.

- a) During the filing year, did either you or your firm operate a trust\* account or mixed\* trust account in Ontario?

☐ Yes ☐ No

- b) During the filing year, did either you or your firm operate a general\* (non-trust) account in Ontario?

☐ Yes ☐ No

If “Yes” to a), proceed to question 2.

If “No” to a) and “Yes” to b), proceed to question 4, and then proceed to Section 4.

If “No” to both a) and b), proceed to Section 4.

#### 2. Trust Account Information

During the filing year, were you a sole practitioner, or were you the paralegal responsible for filing the trust\* account information on behalf of other licensees in Ontario?

☐ Yes ☐ No

If “Yes” to 2, proceed to questions 4 through 11.

**NOTE about Financial Filing Declaration (FFD):** If you are reporting financial information on behalf of other licensees, you must also submit a Financial Filing Declaration. Your report is not considered complete without submitting the Financial Filing Declaration.

If “No” to 2, complete the Designated Financial Filing Option (question 3) below.

#### 3. Designated Financial Filing Option

This option is available to you if you are not responsible for filing trust account information.



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Indicate on lines a) and b) below who will be reporting the firm's financial information on your behalf, then proceed to Section 4.

### ENTER DESIGNATED FINANCIAL FILING LICENSEE'S NAME & LAW SOCIETY NUMBER

a) **FINANCIAL FILING LICENSEE'S NAME:** \_\_\_\_\_

b) **Law Society Number:** \_\_\_\_\_  
(e.g. 12345A or P12345)

The Designated Financial Filing Licensee that you have named is responsible for submitting the Financial Filing Declaration to report the firm's financial information on your behalf. Your report will not be considered complete without the submission of the **Financial Filing Declaration by the licensee you have named. If you are unable to obtain the Financial Filing Licensee's Law Society Number, as you are no longer employed by the firm, please enter "unknown" in question b).**

#### 4. Firm Records

Were financial records for all your firm's trust\* accounts (mixed\*, separate\*, and other interest generating investments\*) and/or general\* (non-trust) bank accounts maintained throughout the filing year, on a current basis, in accordance with all applicable sections in By-Law 9?

☐ Yes ☐ No

If "No" to 4, indicate below which areas were deficient and provide an explanation for each.

#### COMPLETE THIS CHART ONLY IF YOU ANSWERED "NO" ABOVE COMPLETE ONLY THOSE AREAS WHERE YOU WERE DEFICIENT

By-Law 9: Financial Transactions and Records	By-Law 9 Sections 18 & 19 (Maintain)	By-Law 9 Section 22 (Current)	Explanation for Deficiency
1. <b>Trust Receipts Journal</b> <i>Subsection 18(1)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
2. <b>Trust Disbursements Journal</b> <i>Subsection 18(2)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
3. <b>Client's Trust Ledger</b> <i>Subsection 18(3)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
4. <b>Trust Transfer Journal</b> <i>Subsection 18(4)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
5. <b>General Receipts Journal</b> <i>Subsection 18(5)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
6. <b>General Disbursements Journal</b> <i>Subsection 18(6)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
7. <b>Fees Book or Chronological Billing File</b> <i>Subsection 18(7)</i>	<input type="checkbox"/>	<input type="checkbox"/>	



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<b>8. Trust Bank Comparison **</b> <i>Subsection 18(8)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>9. Valuable Property Record</b> <i>Subsection 18(9)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>10. Source documents including deposit slips, bank statements and cashed cheques</b> <i>Subsection 18(10)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>11. Electronic Trust Transfer Requisitions and Confirmations</b> <i>Subsection 18(11) and Section 12 (Form 9A)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>12. Duplicate Cash Receipts Book for all cash received</b> <i>Section 19</i>	<input type="checkbox"/>	<input type="checkbox"/>	

\*\* Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.

### 5. Comparison of Trust Bank Reconciliations and Trust Listing of Client Liabilities as at December 31, 2016.

Trust Reconciliation and Comparison	December 31, 2016 Balances
i) The total dollar value of mixed* trust bank accounts	\$
ii) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*	+\$
iii) <b>TOTAL</b> of i) and ii)	=
iv) Total outstanding deposits (if any)	+
v) Total bank/posting errors (if any)	+/-
vi) Total outstanding cheques (if any)	-
vii) <b>Reconciled Bank Balance</b>	=
viii) <b>Total Client Trust Liabilities</b> (Client Trust Listing)	-
ix) <b>Difference between Reconciled Bank Balance and Total Client Trust Liabilities</b>	=

If there is a difference between the Reconciled Bank Balance **viii)** and the Total Client Trust Liabilities **ix)**, provide a written explanation below.



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### 6. Mixed Trust Accounts

- This question must be answered if you operated a mixed trust account at any time during the filing year (2016 calendar year).
- A licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or registered trust corporations, to be kept in the name of the licensee, or the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.
- A mixed trust account is a trust account holding, or intended to hold, trust funds for more than one client. Mixed trust accounts are governed by subsection 57(1) of the *Law Society Act*, which requires any interest payable on a mixed trust account to be paid to the Law Foundation of Ontario.

Financial Institution Name	Transit Number	Account Number	Branch Address	Account Holder Name
<i>SAMPLE</i> <i>Royal Bank of Canada</i>	<i>0652</i>	<i>1234567</i>	<i>123 Main Street</i> <i>Oakville, ON L6J 7M4</i>	<i>Smith Jones LLP</i>

i)	Has this financial institution (at any time) been directed to pay interest on this account to the Law Foundation of Ontario?	<input type="radio"/> Yes <input type="radio"/> No
ii)	Was this account opened during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
	<b>If "Yes" to ii):</b>  Date account was opened:	  MM / DD
iii)	Was this account closed during the filing year?	<input type="radio"/> Yes <input type="radio"/> No



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If "Yes" to iii):		
Date account was closed:		<u>    </u> / <u>    </u> MM / DD
iv)	If the account was closed, was the balance of the closed account transferred to the Law Society of Upper Canada's Unclaimed Trust Fund?	<input type="radio"/> Yes <input type="radio"/> No
v)	Was there at least one transaction in this account during the filing year?	<input type="radio"/> Yes <input type="radio"/> No

If you are filing your Paralegal Annual Report by paper and if you have multiple mixed trust accounts, please contact By-Law Administration Services at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca) or (416) 947-3315 for an additional form, or enter the information in the space provided at the end of this Section.

### 7. Trust Accounts

- This question must be answered if you operated a trust account at any time during the filing year (2016 calendar year)
- A licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or registered trust corporations, to be kept in the name of the licensee, or the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

Financial Institution Name	Transit Number	Account Number	Branch Address	Account Holder Name
<i>SAMPLE</i> <i>Royal Bank of Canada</i>	<i>0652</i>	<i>1234567</i>	<i>123 Main Street</i> <i>Oakville, ON L6J 7M4</i>	<i>Smith Jones LLP</i>

i)	Was this account opened during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
If "Yes" to ii):		
Date account was opened:		<u>    </u> / <u>    </u> MM / DD
ii)	Was this account closed during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
If "Yes" to iii):		
Date account was closed:		<u>    </u> / <u>    </u> MM / DD



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iii)	If the account was closed, was the balance of the closed account transferred to the Law Society of Upper Canada's Unclaimed Trust Fund?	<input type="radio"/> Yes <input type="radio"/> No
iv)	Was there at least one transaction in this account during the filing year?	<input type="radio"/> Yes <input type="radio"/> No

If you are filing your Paralegal Annual Report by paper and if you have multiple trust accounts, please contact By-Law Administration Services at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca) or (416) 947-3315 for an additional form, or enter the information in the space provided at the end of this Section.

### 8. Answer all questions as at December 31, 2016.

- a) What is the total number of mixed\* trust bank accounts referred to in 5(i)?

\_\_\_\_\_

- b) What is the total number of separate\* interest bearing trust accounts or income generating trust accounts/investments\* referred to in 5(ii)?

\_\_\_\_\_

### 9. Overdrawn Accounts

- a) During 2016, did your records at any month end disclose overdrawn clients' trust ledger account(s)?

☐ Yes ☐ No

If "Yes" to a):

- b) Were the account(s) corrected by December 31, 2016?

☐ Yes ☐ No

If "No" to b):

- c) The total dollar value of overdrawn clients' trust ledger account(s) as at December 31, 2016 was:

\$ \_\_\_\_\_

- d) The total number of overdrawn clients' trust ledger account(s) as at December 31, 2016 was:

\_\_\_\_\_

### 10. Outstanding Deposits

- a) During 2016, did your records at any month end disclose outstanding trust account deposits, not deposited the following business day?

☐ Yes ☐ No

If "Yes" to a):



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b) Were the account(s) corrected by December 31, 2016?

☐ Yes ☐ No

**If “No” to b):**

c) The total dollar value of outstanding trust account deposits as at December 31, 2016 was:

\$ \_\_\_\_\_

d) The total number of outstanding trust account deposits as at December 31, 2016 was:

\_\_\_\_\_

### 11. Unchanged Client Trust Ledger Account Balances

a) Were there client trust ledger account balances that were unchanged\* (i.e. had no activity) for the entire year?

☐ Yes ☐ No

**If “Yes” to a):**

b) The total dollar value of these account balances as at December 31, 2016 was:

\$ \_\_\_\_\_

c) The total number of client trust ledger accounts that remained unchanged\* for the entire year as at December 31, 2016 was:

\_\_\_\_\_

### 12. Unclaimed Client Trust Ledger Account Balances

a) Of the amounts identified in question 11, were any unclaimed\* for two years or more? (Refer to Section 59.6 of the *Law Society Act*)

☐ Yes ☐ No ☐ N/A

**If “Yes” to a):**

b) The total dollar value of the unclaimed\* client trust ledger account balances was:

\$ \_\_\_\_\_

c) The total number of unclaimed\* client trust ledger accounts was:

\_\_\_\_\_



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### 13. Financial Filing Declaration (FFD)

Will you be filing the above financial information on behalf of any other paralegals and/or lawyers?

☐ Yes ☐ No

Sole practitioners providing legal services alone in Ontario do not need to file the FFD.

### 14. Additional Information

If required, use the area below to provide further information about your Financial Reporting (Section 3), including details of any additional trust or mixed trust accounts.



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### Section 4 – AREAS OF LEGAL SERVICES

This section is to be completed by all paralegals providing legal services in Ontario.

#### NOTES ABOUT THIS SECTION:

- Where exact information is not available to respond to the questions under this heading, provide your best approximation.
- \* Refer to the PAR Guide for definitions.

**1. Indicate the approximate percentage of time you devoted in 2016 to the areas of legal services listed below:**

Ontario Court of Justice <i>Provincial Offences Act</i> matters	_____ %
Ontario Court of Justice – Summary Conviction offences	_____ %
Worker's Compensation	_____ %
Small Claims Court matters	_____ %
Property Tax Assessment	_____ %
Statutory Accident Benefits Schedule matters (SABS)	_____ %
Human Rights	_____ %
Landlord and Tenant	_____ %
Other Tribunals – Please specify in the area below	_____ %

**Total:** \_\_\_\_\_ %

Question 1 must total 100%.

**2. In what primary area do you provide legal services? Choose only one.**

- ☐ Ontario Court of Justice *Provincial Offences Act* matters
- ☐ Ontario Court of Justice – Summary Conviction offences
- ☐ Worker's Compensation
- ☐ Small Claims Court matters
- ☐ Property Tax Assessment
- ☐ Statutory Accident Benefits Schedule matters (SABS)



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- ☐ Human Rights
- ☐ Landlord and Tenant
- ☐ Other Tribunals – Please specify in the area below

### 3. Lawyer Supervision

- a) Do you work under the supervision\* of a lawyer?

☐ Yes      ☐ No

**If “Yes” to a):**

- b) Indicate the percentage of time you spend in the following areas:

Advocacy\* \_\_\_\_\_ %

Non-advocacy\* \_\_\_\_\_ %

**Total:** \_\_\_\_\_ %

Question 3b) must total 100%.



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### Section 5 – CERTIFICATION AND SUBMISSION

---

I am the paralegal filing this 2016 Paralegal Annual Report. I have reviewed the matters reported and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to the Law Society of Upper Canada.

\_\_\_\_\_  
Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_  
DD MM YYYY

## FOR INFORMATION

### PROPOSED AMENDMENTS TO THE PARALEGAL GUIDELINES

24. Amendments to the Paralegal Guidelines, which do not require the approval of Convocation, have been made by the Committee, primarily to correct typographical errors and improve grammar, as set out below.

#### Guideline 4 – Harassment and Discrimination

25. Paragraph 8 of Guideline 4 was amended to insert the word “the” in front of “language or accent of a particular group”. Paragraph 9 of Guideline 4 now provides

8. Examples of behaviour considered as harassment include, but are not limited to

( . . . )

Repeated racial slurs directed at the language or accent of a particular group (emphasis added).

#### Guideline 8 – Confidentiality

26. Paragraph 3 of this Guideline is amended to replace the word “facts” by “fact”. Paragraph 3 would provide

The obligation to protect client information extends to information whether or not it is relevant or irrelevant to the matter for which the paralegal is retained. The source of the information does not matter. The information could be received from the client or from others. The information may come in any form – the spoken word, paper, computer documents, emails, audio or video recordings. The obligation also extends to the client’s papers and property, the client’s identity and the fact that the client has consulted or retained the paralegal.

27. A correction is also required to paragraph 20 to insert the word “and” in front of the phrase “ensuring appropriate security for off-site storage of files”. The relevant paragraph provides

...keeping file cabinets away from the reception area, placing computer screens so that they cannot be viewed by people not in the firm, keeping client files out of sight, locking file cabinets when no one is in the office, limiting access to client files only to staff who work on the matter, shredding confidential information before discarding, and ensuring appropriate security for off-site storage of files (emphasis added).

Guideline 9 – Conflicts of Interest

28. The Committee directed staff to amend various typographical issues listed below:

- (a) in paragraph 13, the word “taken” should be replaced by “take” (“In some circumstances, the client must receive advice from an independent legal advisor regarding the matter or transaction before the paralegal may take any further steps in the client’s matter”).
- (b) in paragraph 19, the word “and” should be added to the last line (“This will ensure that the client’s consent to the joint retainer is informed, genuine, and not obtained through coercion”).
- (c) in paragraph 21, the word “clients” should be changed to “client” (A paralegal is not permitted to act against a former client in the same or related matters, except with the former client’s informed consent”).
- (d) in paragraph 22, the word “not” should be inserted; the paragraph would provide “a paralegal is not permitted to act against a former client in a new matter, except in accordance with subrules 3.04(5)(c) and (6).
- (e) paragraph 23 should be amended to address a lack of parallelism in drafting by removing the word “may” where it currently appears in front of “court proceedings”. As amended, the paragraph would provide

Even where the Rules do not prohibit a paralegal from acting against a client or former client, the paralegal should consider whether to accept the retainer (or continue acting). To act against a client or former client may damage the paralegal-client relationship, result in court proceedings, or a complaint to the Law Society.



**TAB 9**

## **Report to Convocation September 22, 2016**

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### **Professional Regulation Committee**

#### **Committee Members**

William C. McDowell (Chair)  
Jonathan Rosenthal (Vice-Chair)  
Malcolm Mercer (Vice-Chair)  
Fred Bickford  
John Callaghan  
Gisèle Chrétien  
Suzanne Clément  
Seymour Epstein  
Carol Hartman  
Michael Lerner  
Brian Lawrie  
Virginia MacLean  
Susan Richer  
Raj Sharda  
Jerry Udell

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
Margaret Drent (416-947-7613)**

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2015 Lawyer Annual Report.....TAB 9.4

### **COMMITTEE PROCESS**

1. The Professional Regulation Committee (“the Committee”) met on September 8, 2016. In attendance were William C. McDowell (Chair), Jonathan Rosenthal (Vice-Chair), Malcolm Mercer (Vice-Chair), Fred Bickford, John Callaghan, Gisèle Chrétien, Suzanne Clément, Seymour Epstein, Carol Hartman, Michael Lerner, Brian Lawrie, Susan Richer, and Jerry Udell.
2. The following Law Society staff members attended the meeting: Karen Manarin, Terry Knott, Caterina Galati, Naomi Bussin, Cathy Braid, Eric Smith, and Margaret Drent.

## Tab 9.1

## AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT REGARDING SHORT TERM PRO BONO SERVICES

### FOR DECISION

#### Motion

3. **That Convocation approve amendments to the Rules of Professional Conduct respecting conflicts of interest relevant to short term *pro bono* legal services, as set out in [Tab 9.1.1](#).**

#### Development of Rules Regarding Court-Based Brief Services

4. The current Rules of Professional Conduct on this subject were first approved in 2010, and provide a modified conflict of interest standard for lawyers participating in Pro Bono Law Ontario (PBLO) court-based brief services program in the Superior Court of Justice or Small Claims Court by permitting a lawyer to provide brief services to a person in such programs unless the lawyer knows of a conflict of interest that would prevent him or her from acting.
5. Since 2010, the range of programming offered by PBLO, now known as Pro Bono Ontario (PBO) has greatly expanded. For example, start-up legal advice to young entrepreneurs is now provided under the auspices of some PBO programs.
6. The Rule is intended to apply to lawyers who provide services under the auspices of a PBO program, but also to a volunteer lawyer who provides short-term *pro bono* services under the auspices of a *pro bono* provider.

#### The Committee's Review

7. The impetus for the Committee's review of these rules was the Model Code of the Federation of Law Societies of Canada. In 2014, the Model Code was amended in a variety of areas and rules regarding short-term pro bono services were added to the Code for the first time.<sup>1</sup> The Model Code's version of these rules were similar but not identical to the existing Law Society rules.
8. In 2015, as part of its consideration of the Model Code 2014 amendments, the Committee held a Call for Input, which included rules on short term *pro bono* services. As a result of the responses received during the Call for Input, the Committee further amended the draft prepared for the call for input to clarify that the rules are intended to apply to lawyers who volunteer for programs such as those offered by PBO. In these circumstances, a lawyer may provide short-term pro bono assistance without taking steps to determine whether there is a

---

<sup>1</sup> The other areas were Conflict of Interest, Transactions with Clients, and Incriminating Physical Evidence. Convocation approved amendments in these areas earlier this year.

conflict of interest arising from duties owed to current or former clients of the lawyer's firm or of the *pro bono* provider.

### **Current Guidance in the Rules of Professional Conduct and Proposed Amendments**

9. Rule 3.4-16.2 currently provides that "short term legal services" are:

*pro bono* summary legal services provided by a lawyer to a client under the auspices of Pro Bono Law Ontario's Law Help Program for matters in the Superior Court of Justice or in Small Claims Court, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

10. The Rules currently permit a lawyer to provide legal services to a *pro bono* client unless
- (a) the lawyer knows, or becomes aware, that the interests of the *pro bono* client are directly adverse to the immediate interest of another current client of the lawyer, the lawyer's firm, or Pro Bono Law Ontario;
  - (b) the lawyer has, or while providing the short-term limited legal services, obtains confidential information relevant to a matter involving a current or former client of the lawyer, the lawyer's firm or Pro Bono Law Ontario whose interests are adverse to those of the *pro bono* client.
11. The Committee wishes to acknowledge the thoughtful contributions of the Advocates Society, Ecojustice, the Federation of Law Associations, Pro Bono Law Ontario, the Toronto Lawyers Association, and an individual respondent who responded to the call for input on this subject.
12. Some respondents suggested that the use of the word "limited" in the definition of "short-term limited legal services" should be removed, since it may obscure the distinction between these services and limited scope retainers. The Committee has adopted this suggestion and removed the word "limited" in the proposed draft amended rule.
13. It was also suggested that the Commentary be amended to provide guidance on the subject of conflict of interest, in accordance with the Supreme Court of Canada's decision in *Canadian National Railway Co v. McKercher*.<sup>2</sup> Paragraph [2] of the Commentary has been amended accordingly and the proposed language is as follows:

The limited nature of short-term *pro bono* services significantly reduces the risk of conflicts of interest. Accordingly, the lawyer is disqualified from acting for a client receiving short-term *pro bono* services because the adverse party is a client of the

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<sup>2</sup> 2013 SCC 39.

lawyer's firm only if the lawyer has actual knowledge that the lawyer's firm acts for the adverse party in the same or a related matter.

14. It was also suggested that a lawyer should be permitted to obtain a waiver from a new client to provide volunteer short-term pro bono services, in the event that a lawyer is aware of a conflict of interest involving a current client, or a client of the lawyer's firm. After careful consideration, the Committee is of the view that waivers should not be permitted in these circumstances because of the risk of adverse impact on a lawyer's existing client.
15. The Committee also considered suggestions from several respondents that the volunteer lawyer should be permitted to share confidential information about a client with other lawyers in the firm, in order to obtain advice and guidance. The Committee is of the view that such help can be provided without disclosure of confidential information. Paragraph [6] of the Commentary continues to provide that appropriate screening measures must be in place to prevent disclosure of confidential information related to the pro bono client or to other persons at the lawyer's firm.

## Tab 9.1.1

## Redline Showing Proposed Changes to the Rules of Professional Conduct Regarding Short-Term Pro Bono Legal Services

### Short-term Limited Legal Services

**3.4-16.2** In this rule and rules 3.4-16.3 to 3.4-16.6,

‘lawyer’s firm’ means the law firm at which the pro bono lawyer practices law as a partner, associate, employee or otherwise.

‘pro bono provider’ means a pro bono or not-for-profit legal services provider that makes pro bono lawyers available to provide advice or representation to clients.

‘pro bono lawyer’ means (i) a volunteer lawyer who provides short-term pro bono services to clients under the auspices of a pro bono provider or (ii) a lawyer providing services under the auspices of a Pro Bono Ontario program.

‘short-term limited-pro bono legal services’ means pro bono summary legal services advice or representation provided by a lawyer to a client under the auspices of a pro bono provider Pro Bono Law Ontario’s Law Help Ontario program for matters in the Superior Court of Justice or in Small Claims Court, with the expectation by the pro bono lawyer and the client that the pro bono lawyer will not provide continuing legal advice or representation in the matter.

**3.4-16.3** A pro bono lawyer ~~engaged in the provision of~~ may provide short-term pro bono limited legal services ~~may provide legal services to a pro bono client unless without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the lawyer’s firm or of the pro bono provider. (a) the lawyer knows or becomes aware that the interests of the pro bono client are directly adverse to the immediate interests of another current client of the lawyer, the lawyer’s firm or Pro Bono Law Ontario; or~~

~~(b) — the lawyer has or, while providing the short term limited legal services, obtains confidential information relevant to a matter involving a current or former client of the lawyer, the lawyer’s firm or Pro Bono Law Ontario whose interests are adverse to those of the pro bono client~~

**3.4-16.4** A pro bono lawyer ~~who is a partner, an associate, an employee or an employer of a lawyer providing short term limited legal services to a pro bono client may act for other clients of the law firm whose interests are adverse to the pro bono client so long as adequate and timely~~ shall take reasonable ~~measures are in place to ensure that no disclosure of the pro bono client’s confidential information is made to another the lawyer in the lawyer’s firm acting for the other clients.~~

**3.4-16.5** A pro bono lawyer ~~who is unable to provide short-term limited legal services to a pro bono client because of the operation of rules 3.4-16.3(a) or 3.4-16.3(b)~~ shall ~~cease to not~~ provide or shall cease providing short-term limited legal pro bono services to ~~the pro bono a~~ client where the pro bono lawyer knows or as soon as the lawyer actually becomes aware of a conflict of the adverse interest.

~~or as soon as he or she has or obtains the confidential information referred to in rule 3.4-16.3 and the lawyer shall not seek the pro bono client's waiver of the conflict.~~

**3.4-16.6** A pro bono In providing short-term limited legal services, a lawyer who is unable to provide short-term pro bono services to a client because there is a conflict of interest shall cease to provide such services as soon as the lawyer actually becomes aware of the conflict of interest and the lawyer shall not seek the pro bono client's waiver of the conflict.

~~ensure, before providing the legal services, that the appropriate disclosure of the nature of the legal services has been made to the client; and~~

~~(b) — determine whether the client may require additional legal services beyond the short-term limited legal services and if additional services are required or advisable, encourage the client to seek further legal assistance.~~

#### Commentary

[1] Short-term ~~limited~~ legal pro bono services, such as duty counsel programs, are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the pro bono provider Pro Bono Law Ontario (PBL O) the pro bono lawyer and the lawyer's ~~and law firm,s who provide these services~~. Performing a full conflicts screening in circumstances in which short-term the pro bono services ~~described in rule 3.4-16.2~~ are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

[2] ~~The Rules 3.4-16.2 to 3.4-16.6 apply in circumstances in which the~~ limited nature of short-term pro bono ~~the leg~~ services ~~being provided by a lawyer~~ significantly reduces the risk of conflicts of interest ~~with other matters being handled by the lawyer's firm~~. Accordingly, the lawyer is disqualified from acting for a client receiving short-term pro bono limited legal services only if the lawyer has actual knowledge of a conflict of interest ~~between the pro bono client and an existing or former client of the lawyer, the lawyer's firm or PBL O~~. in the same or a related matter. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term pro bono services. ~~limited legal~~

[3] In the provision of short-term pro bono legal services, ~~t~~The lawyer's knowledge about conflicts would be is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the ~~consultation consulting with the pro bono provider regarding the short-term pro bono services.~~

~~and in the client's application to PBLO for legal assistance.~~

[4] The ~~personal~~ disqualification of a lawyer participating in a short-term pro bono services ~~PBLO's~~ program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

[5] Confidential information obtained by a lawyer representing a pro bono client, ~~as defined in rule 3.4-16.2,~~ will not be imputed to the lawyers, paralegals and others at the lawyer's firm, ~~lawyer's licensee partners, associates and employees or non-licensee partners or associates in a multi-discipline partnersh~~. As such, these individuals ~~people~~ may continue to act for another client adverse in interest to the pro bono client ~~who is obtaining or has obtained short-term limited legal services,~~ and may act in future for another client adverse in interest to the pro bono client ~~who is obtaining or has obtained short-term limited legal services.~~

[6] Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the pro bono client ~~or to other persons at~~ the lawyer's firm, ~~partners, associates, employees or employer (in the practice of law).~~ Rule 3.4-16.4 extends, with necessary modifications, the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rules 3.4-17 to 3.4-23~~3~~) to the situation of a law firm acting against a current client of the firm in providing short-term ~~limited~~ legal services. Measures that the lawyer providing the short-term limited legal pro bono services should take to ensure the confidentiality ~~of information of~~ the client's information include

(a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the pro bono client;

(b) identifying relevant files, if any, of the pro bono client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

(c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

[7] Rule 3.4-16.5 precludes a lawyer from obtaining a waiver in respect of conflicts of interest that arise in providing short-term pro bono legal services.

[8] The provisions of Rules 16.3 and 16.4 are intended to permit the provision of short-term pro bono services by a pro bono lawyer without the client being considered to be a client of the lawyer's firm for conflicts and other purposes. However, it is open to the pro bono lawyer and the client to agree that the resources of the lawyer's firm, including other lawyers, may be accessed for the benefit of the client, in which case the provisions of Rule 16.3 and 16.4 do not apply, the pro bono lawyer would be required to clear conflicts and the client would be considered a client of the lawyer's firm.

*[New – April 22, 2010]*

**Tab 9.1.2**

**Clean Showing Proposed Changes to the Rules of Professional Conduct Regarding Short-Term Pro Bono Legal Services**

**Short-term Limited Legal Services**

**3.4-16.2** In this rule and rules 3.4-16.3 to 3.4-16.6,

‘lawyer’s firm’ means the law firm at which the pro bono lawyer practices law as a partner, associate, employee or otherwise.

‘pro bono provider’ means a pro bono or not-for-profit legal services provider that makes pro bono lawyers available to provide advice or representation to clients.

‘pro bono lawyer’ means (i) a volunteer lawyer who provides short-term pro bono services to clients under the auspices of a pro bono provider or (ii) a lawyer providing services under the auspices of a Pro Bono Ontario program.

‘short-term pro bono services’ means pro bono legal advice or representation to a client under the auspices of a pro bono provider with the expectation by the pro bono lawyer and the client that the pro bono lawyer will not provide continuing legal advice or representation in the matter.

**3.4-16.3** A pro bono lawyer may provide short-term pro bono services without taking steps to determine whether there is a conflict of interest arising from duties owed to current or former clients of the lawyer’s firm or of the pro bono provider.

**3.4-16.4** A pro bono lawyer shall take reasonable measures to ensure that no disclosure of the client’s confidential information is made to another lawyer in the lawyer’s firm.

**3.4-16.5** A pro bono lawyer shall not provide or shall cease providing short-term pro bono services to a client where the pro bono lawyer knows or becomes aware of a conflict of interest.

**3.4-16.6** A pro bono lawyer who is unable to provide short-term pro bono services to a client because there is a conflict of interest shall cease to provide such services as soon as the lawyer actually becomes aware of the conflict of interest and the lawyer shall not seek the pro bono client’s waiver of the conflict.

### Commentary

[1] Short-term legal pro bono services, such as duty counsel programs, are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the pro bono provider, the pro bono lawyer and the lawyer's firm. Performing a full conflicts screening in circumstances in which short-term pro bono services are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

[2] The limited nature of short-term pro bono services significantly reduces the risk of conflicts of interest. Accordingly, the lawyer is disqualified from acting for a client receiving short-term pro bono legal services only if the lawyer has actual knowledge of a conflict of interest in the same or a related matter. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term pro bono services.

[3] In the provision of short-term pro bono legal services, the lawyer's knowledge about conflicts is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the consulting with the pro bono provider regarding the short-term pro bono services.

[4] The disqualification of a lawyer participating in a short-term pro bono services program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

[5] Confidential information obtained by a lawyer representing a pro bono client, will not be imputed to the lawyers, paralegals and others at the lawyer's firm. As such, these people may continue to act for another client adverse in interest to the pro bono client and may act in future for another client adverse in interest to the pro bono client.

[6] Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the pro bono client or to other persons at the lawyer's firm. Rule 3.4-16.4 extends, with necessary modifications, the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rules 3.4-17 to 3.4-23) to the situation of a law firm acting against a current client of the firm in providing short-term legal services. Measures that the lawyer providing the short-term pro bono services should take to ensure the confidentiality the client's information include

(a) having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the pro bono client;

(b) identifying relevant files, if any, of the pro bono client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

(c) ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

[7] Rule 3.4-16.5 precludes a lawyer from obtaining a waiver in respect of conflicts of interest that arise in providing short-term pro bono legal services.

[8] The provisions of Rules 16.3 and 16.4 are intended to permit the provision of short-term pro bono services by a pro bono lawyer without the client being considered to be a client of the lawyer's firm for conflicts and other purposes. However, it is open to the pro bono lawyer and the client to agree that the resources of the lawyer's firm, including other lawyers, may be accessed for the benefit of the client, in which case the provisions of Rule 16.3 and 16.4 do not apply, the pro bono lawyer would be required to clear conflicts and the client would be considered a client of the lawyer's firm.

*[New – April 22, 2010]*

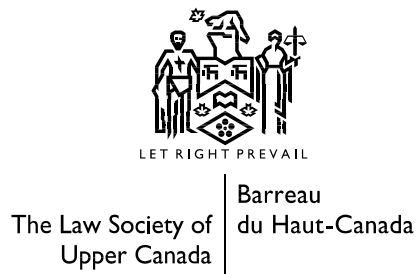
*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

**TAB 9.3**

**FOR INFORMATION**

**PROFESSIONAL REGULATION DIVISION  
QUARTERLY REPORT**

48. The Professional Regulation Division's Quarterly Report (first two quarters of 2016), provided to the Committee by Karen Manarin, Executive Director of the Professional Regulation Division, appears at **TAB 9.3.1**. The report includes information on the Division's activities and responsibilities, including file management and monitoring. The report was also considered by the Paralegal Standing Committee on September 7, 2016.



# **The Professional Regulation Division**

## **Quarterly Report**

June 30, 2016

The Law Society of Upper Canada  
The Professional Regulation Division  
Quarterly Report (June 30, 2016)

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## **The Quarterly Report**

The Quarterly Report provides a summary of the Professional Regulation Division's activities and achievements during the first 2 quarters of 2016. The purpose of the Quarterly Report is to provide information on the production and work of the Division during the time period, to explain the factors that may have influenced the Division's performance, and to provide a description of exceptional or unusual projects or events in the period.

## **The Professional Regulation Division**

Professional Regulation is responsible for responding to complaints against licensees, including the resolution, investigation and prosecution of complaints which are within the jurisdiction provided under the *Law Society Act*. In addition the Professional Regulation provides trusteeship services for the practices of licensees who are incapacitated by legal or health reasons. Professional Regulation also includes the Compensation Fund which compensates clients for losses suffered as a result of the wrongful acts of licensees.

See Appendices for a case flow chart describing the complaints process as well as a description of the Professional Regulation division processes and organization.

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# **SECTION 1**

## **DIVISIONAL UPDATE**

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### Summary of Activity in Professional Regulation

Notices Issued	2014	2015	2016 as at June 30th
Notices of Application (conduct & capacity)	101	117	71
Notices of Referral for Hearing (licensing [good character], reinstatement, terms dispute, restitution)	10	11	9
Notices of Motion for Interlocutory Suspension / Restriction	14	14	11
<b>TOTAL</b>	<b>124</b>	<b>142</b>	<b>91</b>

Complaints Closed (pre-issuance)	2014	2015	2016 as at June 30th
Complaints Closed with Diversion <sup>1</sup>	57	59	47
Complaints Closed with Staff Caution or Best Practice Advice	794	565	318
Complaints Closed as Resolved	392	384	173
Other Staff Closings <sup>2</sup>	3137	3125	1592

CRC Reviews - Recommendations	2014	2015	2016 as at June 30th
File to remain closed (% of decisions rendered)	160 (96%)	150 (93%)	71 (95%)
Further investigation to be conducted (% of decisions rendered)	7 (4%)	11 (7%)	4 (5%)

Monitoring & Enforcement	2014	2015	2016 as at June 30th
Discipline Costs Collected	\$324,104	\$572,703	\$187,733

Trustee Services	2014	2015	2016 as at June 30th
Trusteeship Orders Obtained from Court	20	23	7
Client Requests Completed (including trust distribution)	2396	2126	706

Compensation Fund		2014	2015	2016 as at June 30th
Claims Received:	against lawyers	223 claims	176 claims	94 claims
	against paralegals	26 claims	22 claims	7 claims
Claims Granted:	against lawyers	69 claims	109 claims	61 claims
	against paralegals	15 claims	11 claims	8 claims

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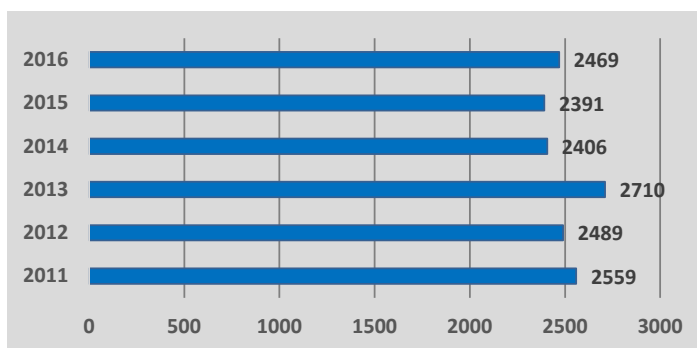
<sup>1</sup> Regulatory Meeting, Invitation to Attend, Letter of Advice, practice / spot audit recommendation, undertaking, mentoring

<sup>2</sup> Includes complaints closed as the evidence did not support further regulatory proceedings, discontinued complaints and complaints outside the jurisdiction of the Law Society

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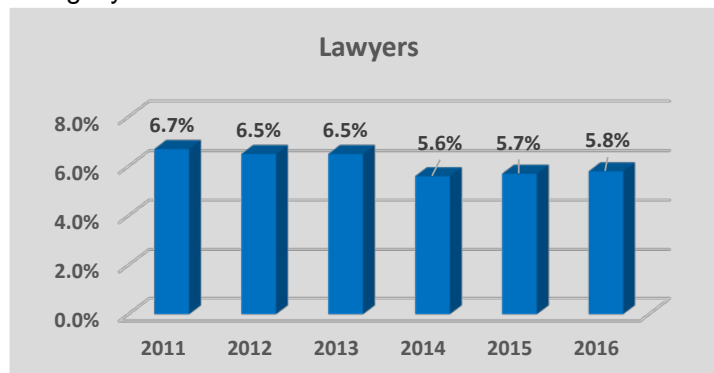
## Complaints<sup>3</sup> Received in Professional Regulation, January to June 2016

The first half of 2016 saw an increase in the number of complaints received in the Division compared to the number received in the same periods in 2015 (3.2% increase) and in 2014 (2.6% increase).

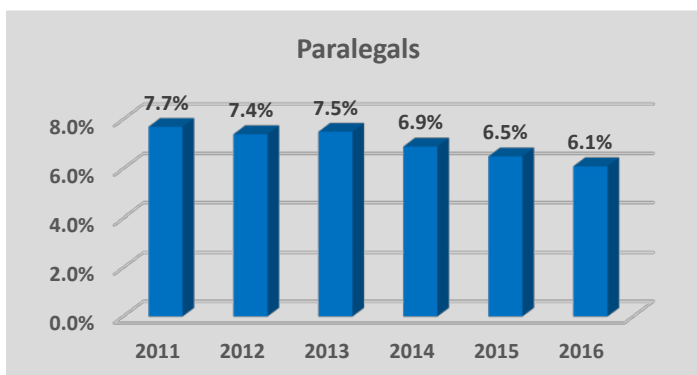


In the first half of 2016:

- The per capita rate of complaints received by lawyers in private practice in the first half of 2016 increased slightly over the rate in 2014 and 2015.



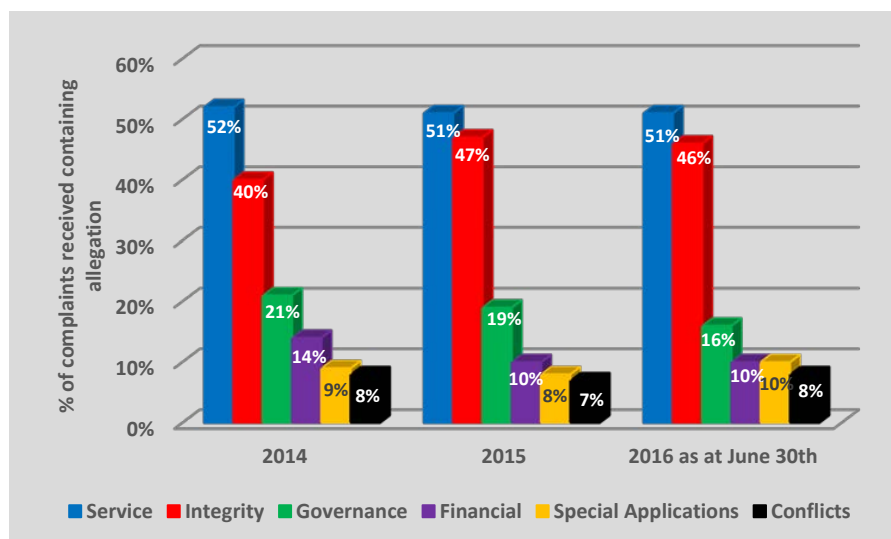
- The per capita rate of complaints received by paralegals in private practice continued to decrease from 2011



<sup>3</sup> Includes all complaints received in PRD from Complaints Services.

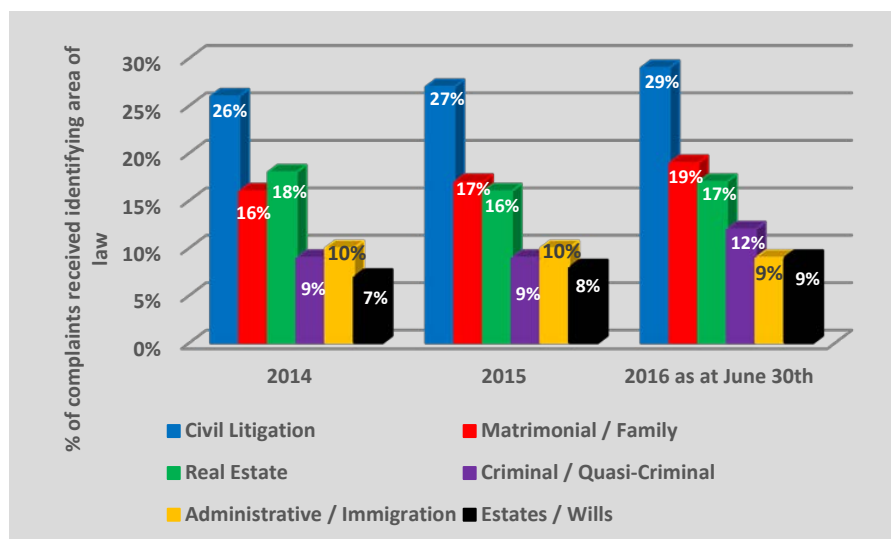
### Types of Allegations Raised in the Complaints Received

The distribution of the types of complaints received is similar in the three time periods depicted: the highest proportion of complaints received related to service issues while the lowest proportion of complaints received raised conflict issues.



### Area of Law Identified in the Complaints Received

In the first half of 2016, civil litigation, real estate and matrimonial / family law were the three areas of law receiving the most complaints. The graph also reveals that the distribution of complaints by area of law remains stable.

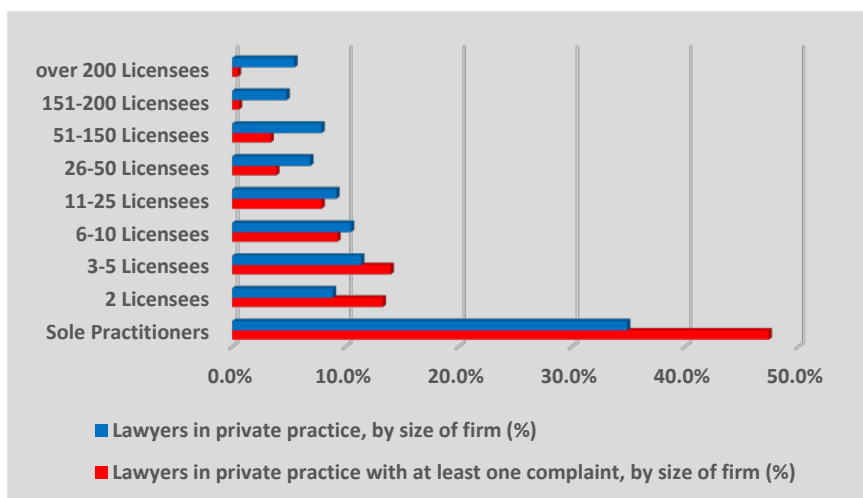


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## Complaints Received – By Size of Firm

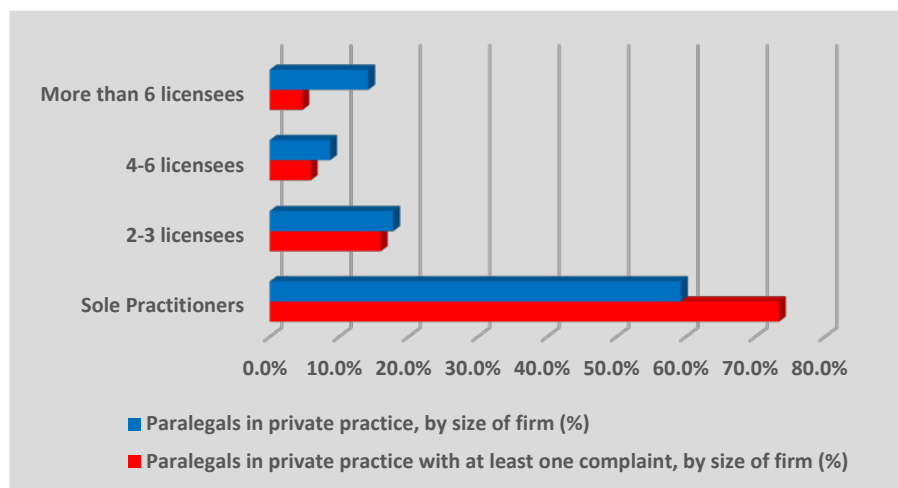
### Lawyers

Sole Practitioners continue to receive the highest number and proportion of complaints. As at June 30, 2016, sole practitioners constituted 35% of all lawyers in private practice yet this group received 47% of all complaints in the first half of the year.



### Paralegals

Similarly, paralegals working as sole practitioners received the highest number and proportion of complaints. As at June 30, 2016, sole practitioners constituted 59% of all paralegals in private practice yet this group received 73% of all complaints in the first half of the year.



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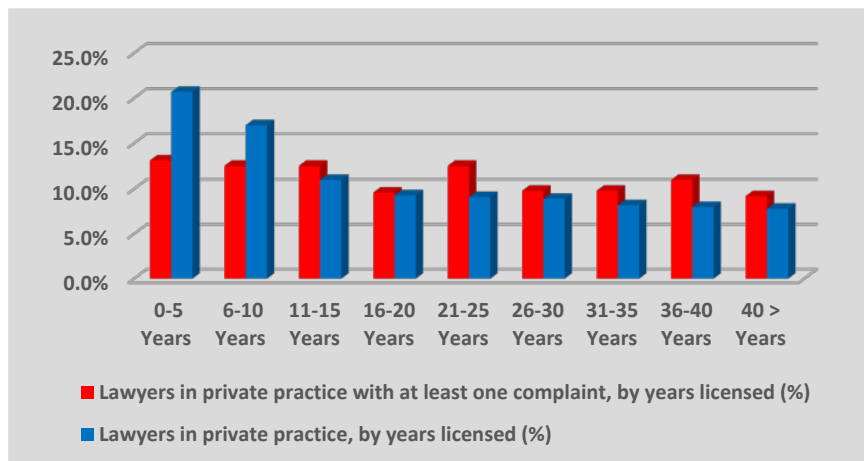
## Complaints Received – By Years Licensed

### Lawyers

Approximately 38% of lawyers in private practice have been in practice for 10 years or less. However, lawyers in this group only received 25.6% of complaints against lawyers in the first half of 2016.

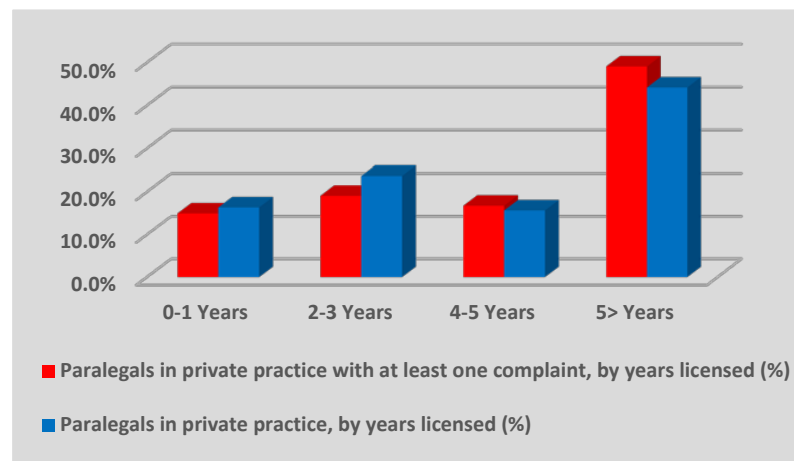
Lawyers in private practice for more than 10 years consistently received a higher proportion of complaints than would be expected. Of significance ( $p < .001$ ) are lawyers in private practice who have been licensed for

- 21 to 25 years and
- 36 to 40 years



### Paralegals

No significant differences were noted in the complaints received by the different age groups of paralegals in private practice. When compared to the percent of all paralegals in private practice, each group received about the same proportion of complaints.



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## **SECTION 2**

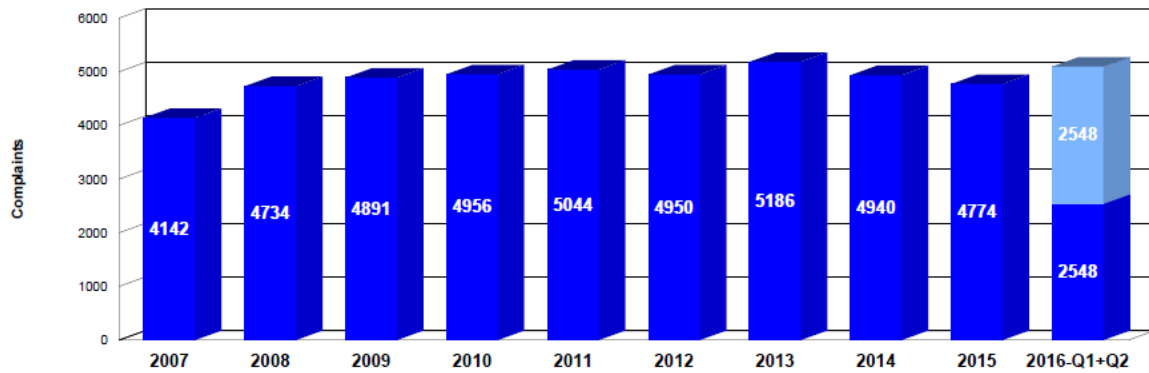
### **DEPARTMENTAL UPDATE**

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## 2.1 – Intake Department

**Graph 2.1A: Input<sup>4</sup>**



For 2016, the graph displays actual complaints received in Q1 and Q2 (including reactivated complaints) and a projected value for complaints to be received in Q3 and Q4. As at the end of Q2, the projected number of complaints to be received (including reactivated) in 2016 is 5096.

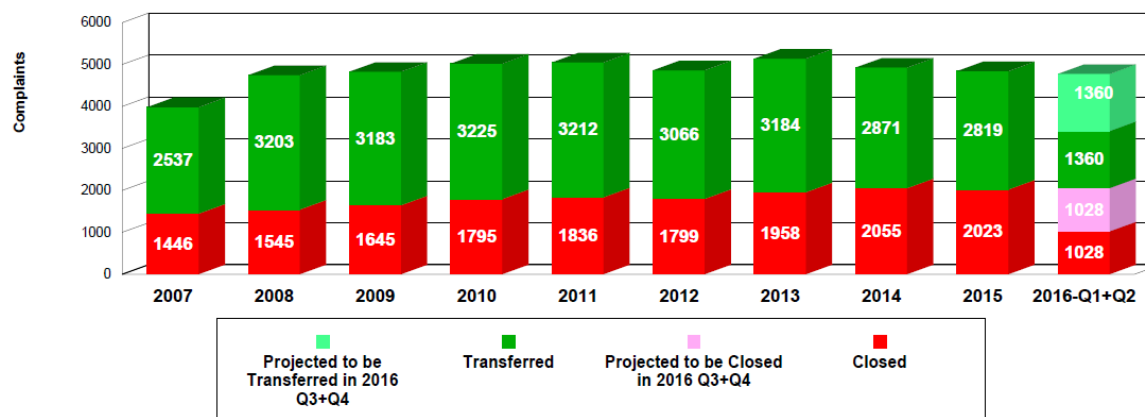
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<sup>4</sup> Includes new complaints received and re-opened complaints

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## 2.1 – Intake (cont'd)

**Graph 2.1B: Complaints Closed and Transferred Out**



For 2016, the graph displays the actual number of complaints closed and transferred in the first half of the year and a projected value for complaints to be closed and transferred in the second half of the year. As at the end of Q2, the projected number of complaints to be completed by Intake in 2016 is 4776 (2056 closed and 2720 transferred).

### Detailed Analysis of Complaints Closed and Transferred From Intake

	2009	2010	2011	2012	2013	2014	2015	Q1 + Q2 2016
<b>Complaints against Lawyers</b>	4023	3974	4062	3895	3991	3851	3807	1833
<b>Lawyer Applicant Cases ★</b>	32	51	94	98	113	119	106	75
<b>Complaints against Licensed Paralegals</b>	427	555	508	483	568	556	550	296
<b>Paralegal Applicant Cases ★</b>	61	71	150	157	197	188	165	106
<b>Complaints against Non-Licensees/Non-Applicants*</b>	285	369	234	232	273	212	214	78
<b>TOTAL</b>	4828	5020	5048	4865	5142	4926	4842	2388

★ Applicant cases include good character cases and UAP complaints

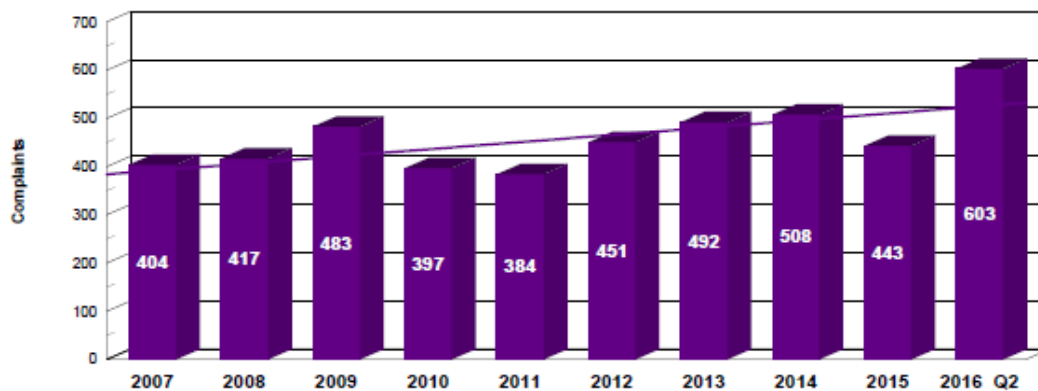
\* For a complete analysis of UAP complaints see section 2.4.

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## 2.1 – Intake (cont'd)

**Graph 2.1 C: Department Inventory**



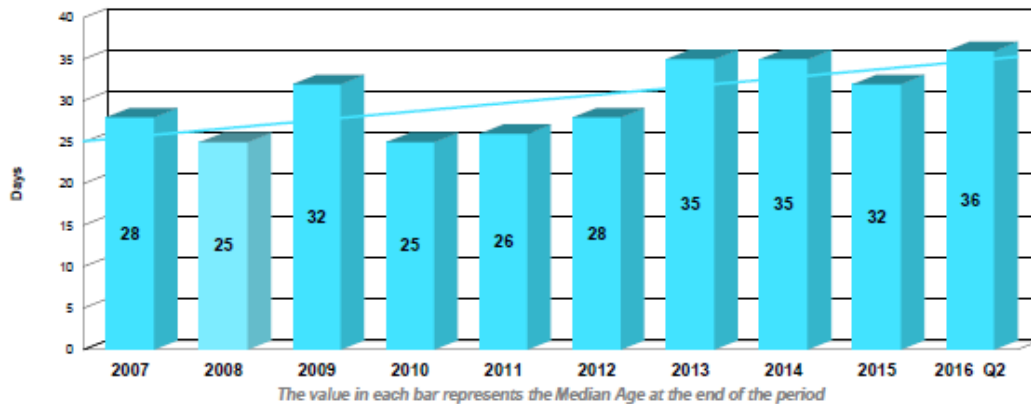
*The value in each bar represents the Inventory at the end of the period*

2016: as at June 30, 2016

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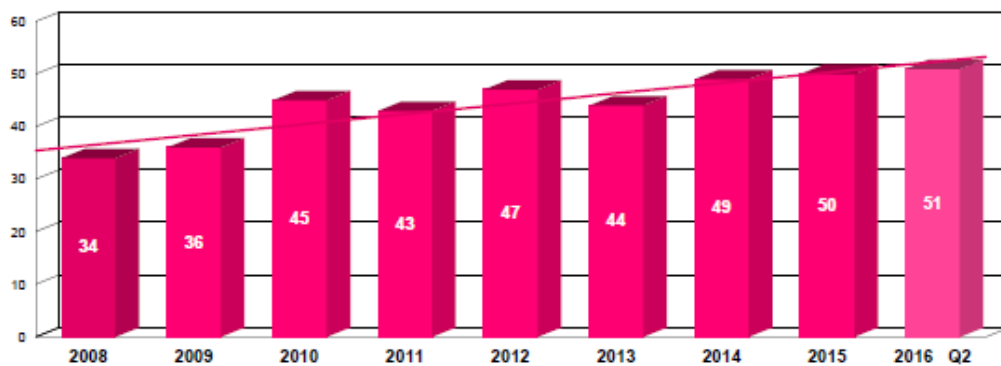
## 2.1 – Intake (cont'd)

**Graph 2.1D: Median Age of Active Complaints**



2016: as at June 30, 2016

**Graph 2.1E: Median Age of Closed Complaints (days)**

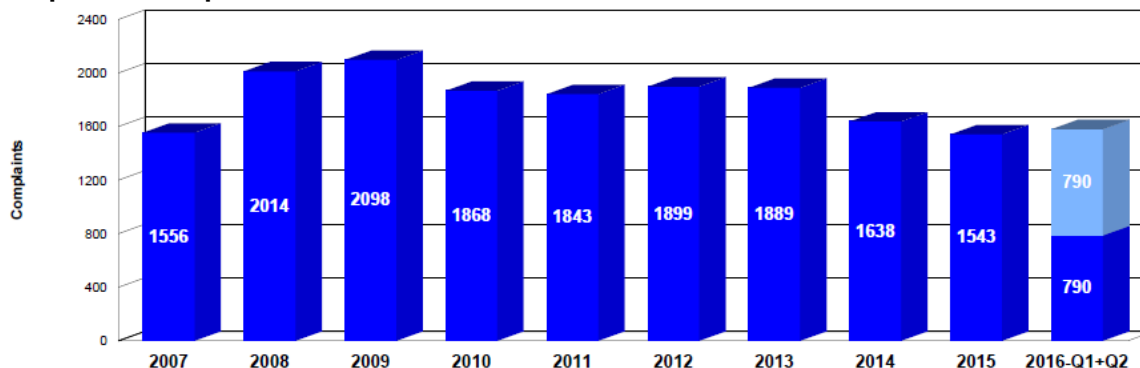


2016: as at June 30, 2016

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## 2.2 – Complaints Resolution Department

**Graph 2.2A: Input<sup>5</sup>**



For 2016, the graph displays actual complaints received in Q1 + Q2, and a projected value for complaints to be received in Q3 + Q4. As at the end of Q2, the projected number of complaints to be received in Complaints Resolution in 2016 is 1580.

### Detailed Analysis of New and Re-opened Complaints in Complaints Resolution

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Q1+ Q2 2016
<b>Complaints against Lawyers</b>	1493	1901	1896	1693	1692	1736	1683	1426	1377	693
<b>Lawyer Applicant Cases ★</b>	8	0	1	0	0	0	0	0	0	0
<b>Complaints against Licensed Paralegals</b>	0	63	137	171	149	163	205	210	165	97
<b>Paralegal Applicant Cases ★</b>	6	5	2	0	0	0	0	0	0	0
<b>Complaints against Non-Licensees/Non-Applicants*</b>	49	45	62	4	2	0	1	2	1	0
<b>TOTAL</b>	1556	2014	2098	1868	1843	1899	1889	1638	1543	790

★ Applicant cases include good character cases and UAP complaints

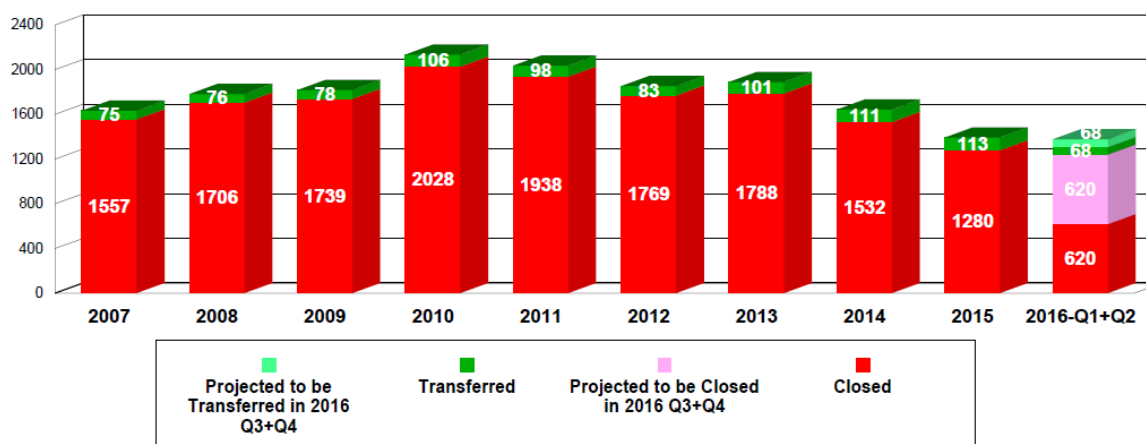
\* For a complete analysis of UAP complaints see section 2.4.

<sup>5</sup> Includes new complaints received into the department as well as complaints re-opened during the period.

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## 2.2 – Complaints Resolution (cont'd)

**Graph 2.2B: Complaints Resolution - Complaints Closed and Transferred Out**



For 2016, the graph displays the actual number of complaints closed and transferred in Q1 + Q2, and a projected value for complaints to be closed and transferred in Q3 + Q4. As at the end of Q2, the projected number of complaints to be completed by Complaints Resolution in 2016 is 1376 (1240 closed and 136 transferred).

### Detailed Analysis of Complaints Closed and Transferred From Complaints Resolution

	2009	2010	2011	2012	2013	2014	2015	Q1+ Q2 2016
<b>Complaints against Lawyers</b>	1684	1938	1864	1698	1709	1460	1214	628
<b>Lawyer Applicant Cases ★</b>	1	0	0	0	0	0	0	0
<b>Complaints against Licensed Paralegals</b>	91	162	179	154	179	183	178	60
<b>Paralegal Applicant Cases ★</b>	3	0	0	0	0	0	0	0
<b>Complaints against Non-Licensees/Non-Applicants*</b>	38	34	3	0	1	0	1	0
<b>TOTAL</b>	1817	2134	2036	1852	1889	1643	1393	688

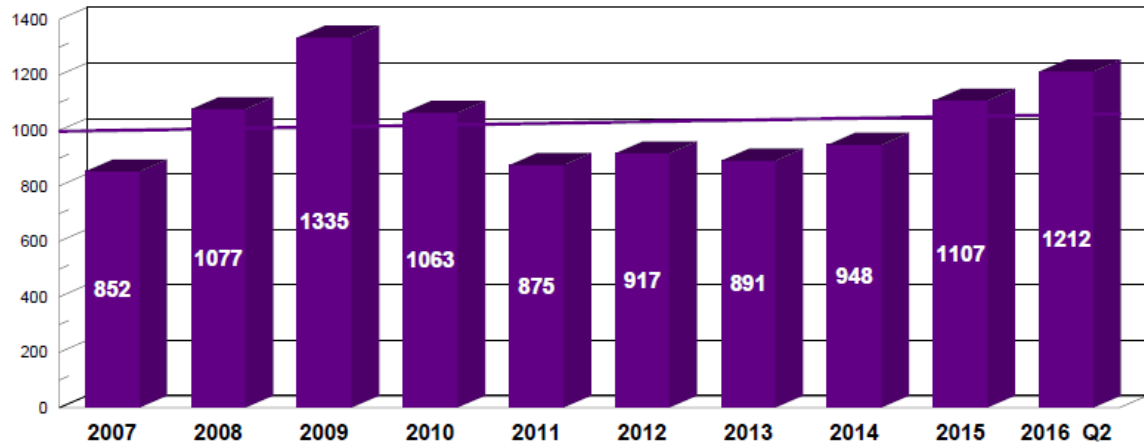
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.2 – Complaints Resolution (cont'd)

**Graph 2.2C: Department Inventory**



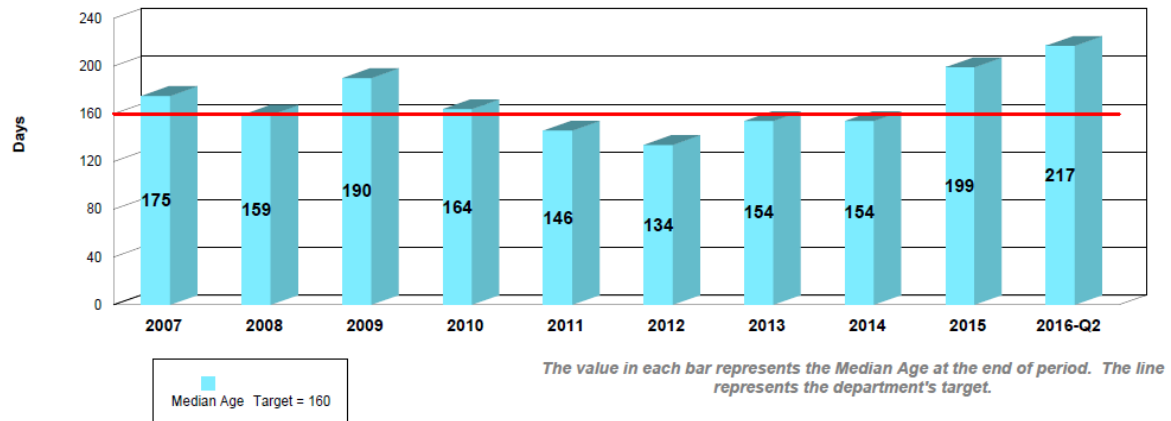
*The value in each bar represents the Inventory at the end of the period*

2016: as at June 30, 2016

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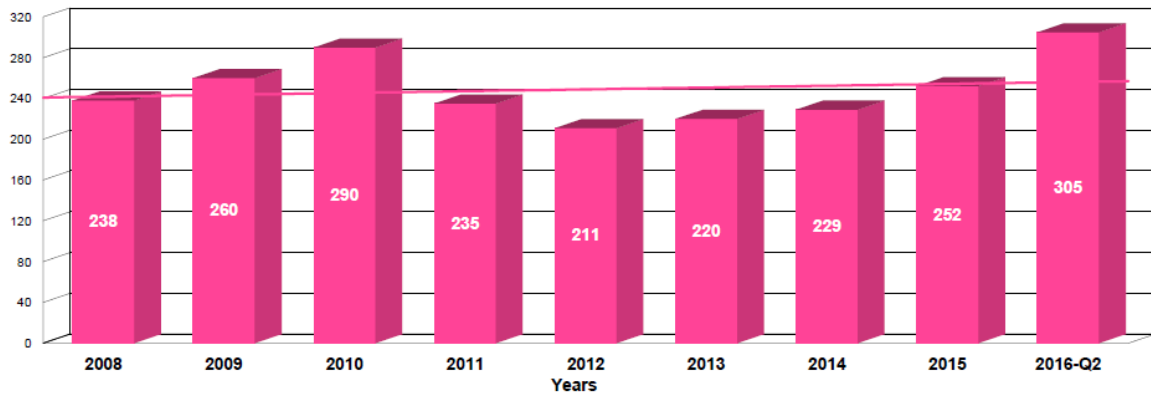
## 2.2 – Complaints Resolution (cont'd)

**Graph 2.2D: Median Age of Active Complaints**



2016: as at June 30, 2016

**Graph 2.2E: Median Age of Completed<sup>6</sup> Complaints**



2016: as at June 30, 2016

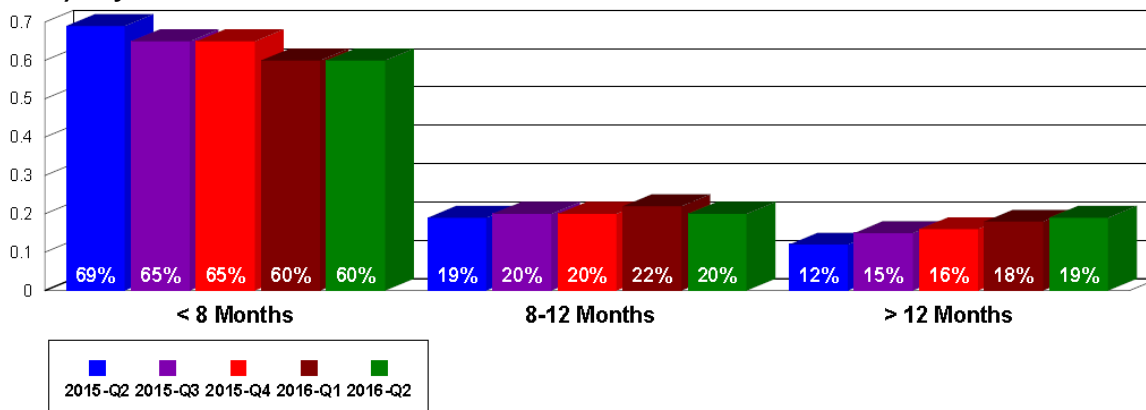
<sup>6</sup> Included are complaints closed by Complaints Resolution or transferred by the department to Discipline.

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## 2.2 – Complaints Resolution (cont'd)

Graph 2.2F: Aging of Complaints

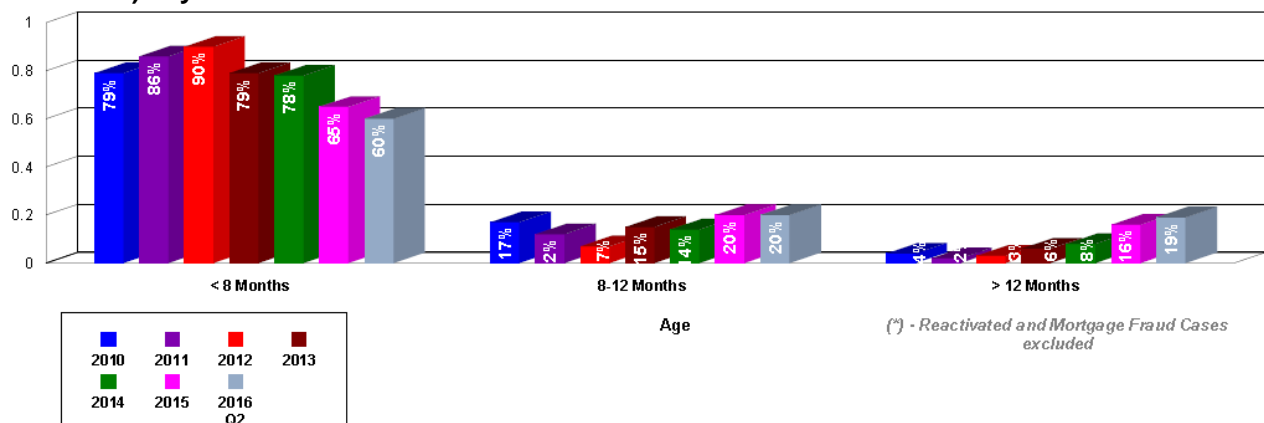
### a) By Quarters



(\*) - Reactivated Cases Excluded

	<8 months	8 to 12 months	>12 months
<b>Q2 2015</b>	627 cases involving 579 subjects	177 cases involving 168 subjects	107 cases involving 78 subjects
<b>Q3 2015</b>	638 cases involving 584 subjects	201 cases involving 190 subjects	144 cases involving 108 subjects
<b>Q4 2015</b>	667 cases involving 610 subjects	203 cases involving 191 subjects	160 cases involving 132 subjects
<b>Q1 2016</b>	672 cases involving 620 subjects	242 cases involving 224 subjects	197 cases involving 160 subjects
<b>Q2 2016</b>	688 cases involving 632 subjects	229 cases involving 216 subjects	221 cases involving 178 subjects

### b) By Years



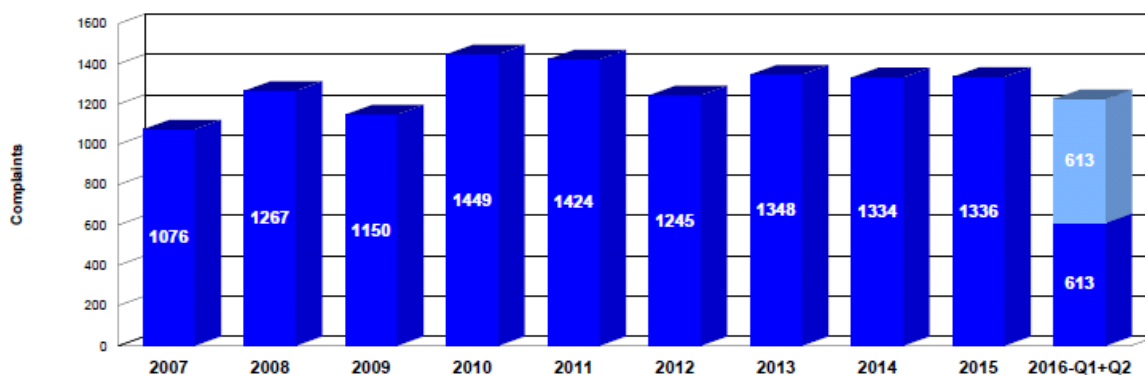
(\*) - Reactivated and Mortgage Fraud Cases excluded

	<8 months	8 to 12 months	>12 months
<b>2010</b>	766 cases involving 712 subjects	165 cases involving 130 subjects	39 cases involving 35 subjects
<b>2011</b>	676 cases involving 614 subjects	93 cases involving 82 subjects	19 cases involving 16 subjects
<b>2012</b>	765 cases involving 679 subjects	55 cases involving 48 subjects	29 cases involving 19 subjects
<b>2013</b>	658 cases involving 600 subjects	124 cases involving 119 subjects	51 cases involving 43 subjects
<b>2014</b>	673 cases involving 620 subjects	120 cases involving 112 subjects	73 cases involving 60 subjects
<b>2015</b>	667 cases involving 610 subjects	203 cases involving 191 subjects	160 cases involving 132 subjects
<b>Q2 2016</b>	688 cases involving 632 subjects	229 cases involving 216 subjects	221 cases involving 178 subjects

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## 2.3 –Investigations Department

**Graph 2.3A: Input**



For 2016, the graph displays actual complaints received in Q1+Q2 and a projected value for complaints to be received in Investigations in Q3 + Q4. As at the end of Q2, the projected number of complaints to be received in the department in 2016 is 1226.

### Detailed Analysis of New and Re-opened Complaints Received in Investigations

	2007	2008	2009	2010	2011	2012	2013	2014	2015	Q1 + Q2 2016
<b>Complaints against Lawyers</b>	818	893	810	935	930	798	821	927	879	403
<b>Lawyer Applicant Cases★</b>	30	27	39	0	34	37	47	28	28	18
<b>Complaints against Licensed Paralegals</b>	0	29	87	288	237	190	230	192	252	125
<b>Paralegal Applicant Cases★</b>	174	196	125	0	66	77	85	53	55	25
<b>Complaints against Non-Licensees/Non-Applicants*</b>	54	122	89	226	155	141	163	134	122	42
<b>TOTAL</b>	1076	1267	1150	1449	1422	1243	1346	1334	1336	613

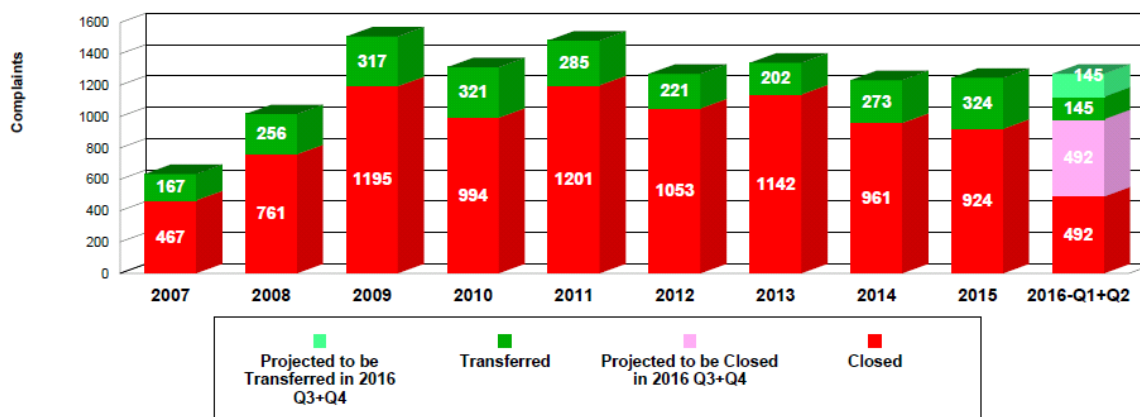
★Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.3 –Investigations (cont'd)

**Graph 2.3B Complaints Closed and Transferred Out**



For 2016, the graph displays the actual number of complaints closed and transferred in Q1 + Q2 and a projected value for complaints to be closed and transferred in Q3 + Q4. As at the end of Q2, the projected number of complaints to be completed by Investigations in 2016 is 1274 (984 closed and 290 transferred).

### Detailed Analysis of Complaints Closed and Transferred Out of Investigations

	2009	2010	2011	2012	2013	2014	2015	Q1 + Q2 2016
<b>Complaints against Lawyers</b>	1083	930	1012	815	875	808	832	450
<b>Lawyer Applicant Cases ★</b>	38	22	40	27	52	20	30	20
<b>Complaints against Licensed Paralegals</b>	139	136	219	206	175	195	240	95
<b>Paralegal Applicant Cases ★</b>	174	51	60	69	96	48	43	23
<b>Complaints against Non-Licensees/Non-Applicants*</b>	78	176	155	157	147	164	104	49
<b>TOTAL</b>	1512	1315	1486	1274	1344	1235	1248	637

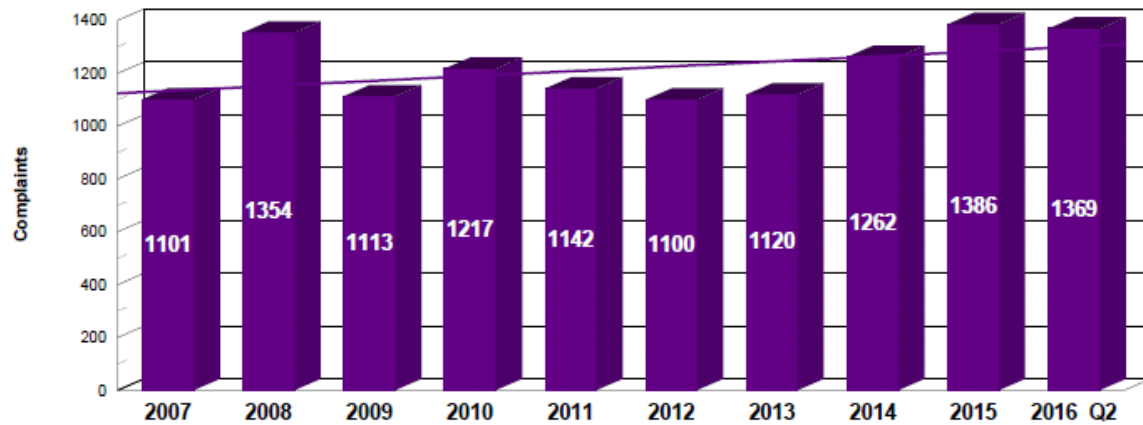
★ Applicant cases include good character cases and UAP complaints

\* For a complete analysis of UAP complaints see section 2.4.

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## 2.3 – Investigations (cont'd)

**Graph 2.3C: Department Inventory**



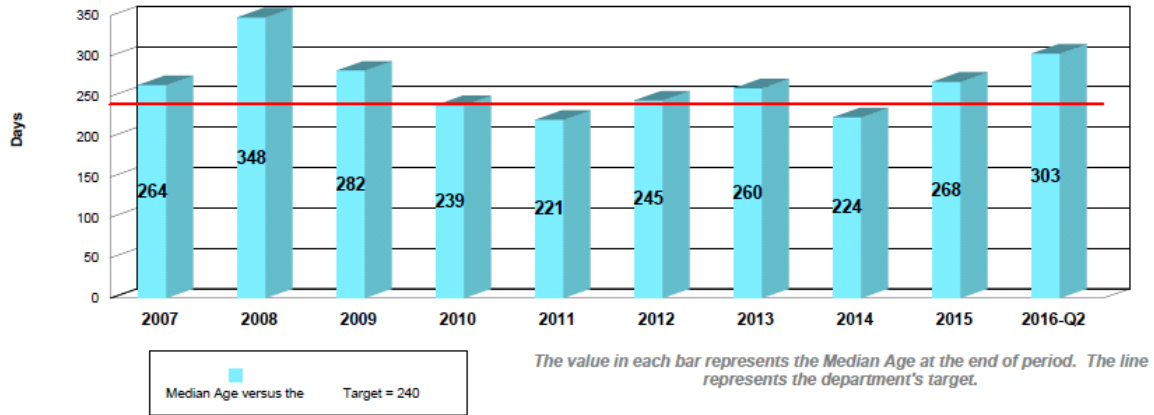
*The value in each bar represents the Inventory at the end of the period*

2016: as at June 30, 2016

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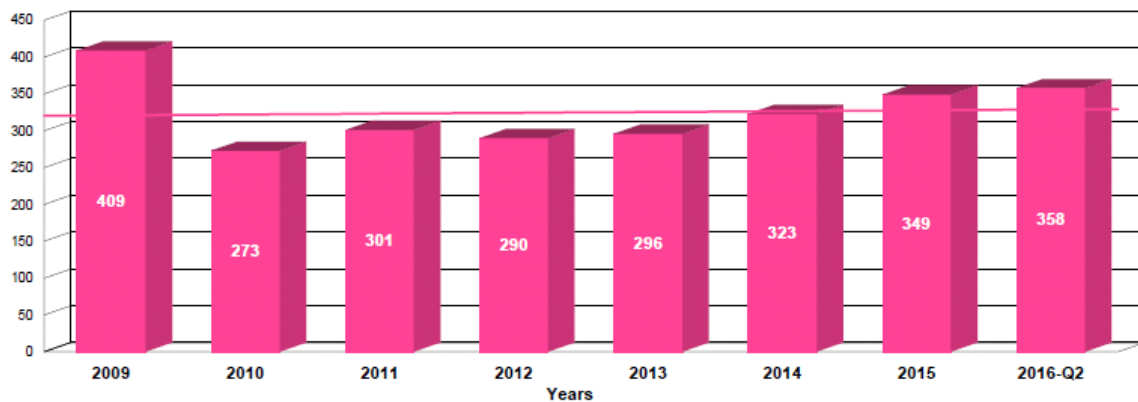
## 2.3 – Investigations (cont'd)

**Graph 2.3D: Median Age of Active Complaints**



2016: as at June 30, 2016

**Graph 2.3E: Median Age of Completed<sup>7</sup> Complaints**



2016: as at June 30, 2016

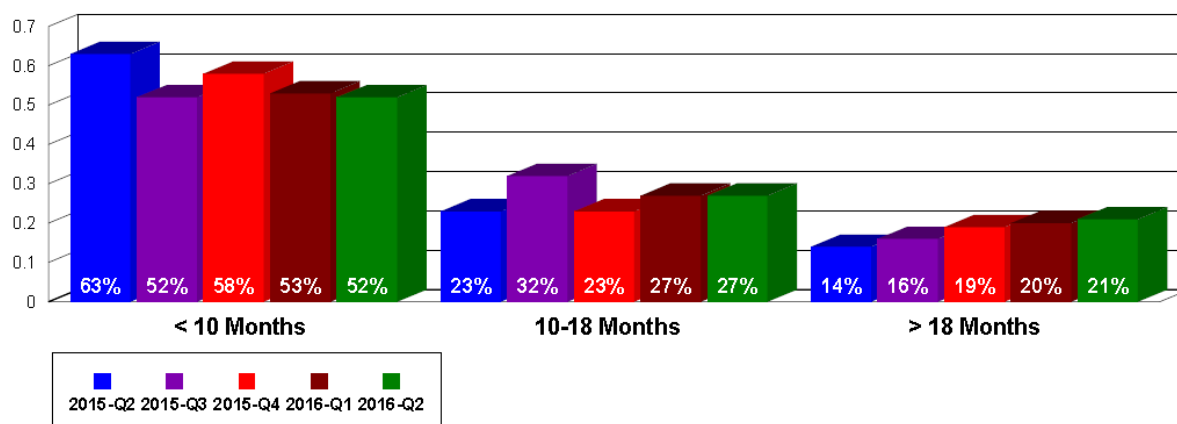
<sup>7</sup> Included are complaints closed by Investigations or transferred by the department to Discipline.

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## 2.3 – Investigations (cont'd)

Graph 2.3F: Aging of Complaints

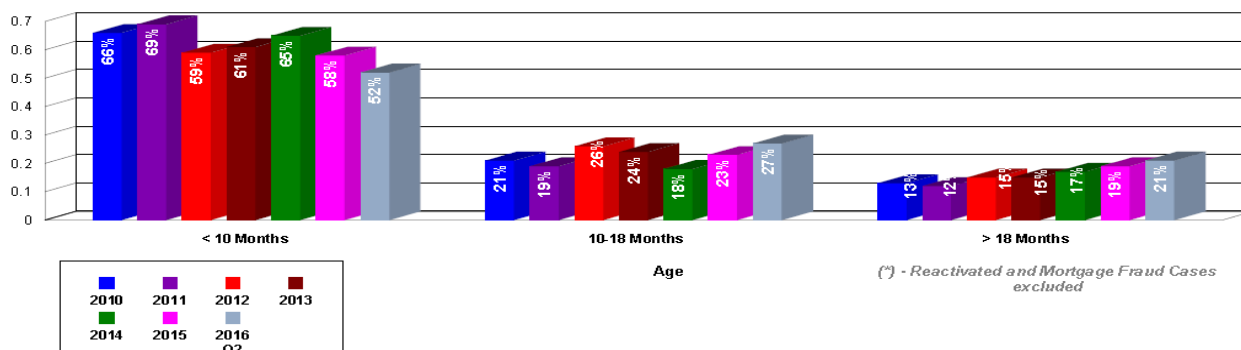
a) Core Cases  
(i) By Quarter



(\*) - Reactivated Cases Excluded

	<10 months	10 to 18 months	>18 months
Q2 2015	787 cases involving 548 subjects	284 cases involving 190 subjects	183 cases involving 121 subjects
Q3 2015	676 cases involving 539 subjects	408 cases involving 211 subjects	205 cases involving 124 subjects
Q4 2015	695 cases involving 543 subjects	282 cases involving 222 subjects	230 cases involving 148 subjects
Q1 2016	612 cases involving 458 subjects	312 cases involving 251 subjects	236 cases involving 155 subjects
Q2 2016	639 cases involving 487 subjects	332 cases involving 277 subjects	253 cases involving 168 subjects

(ii) By Year



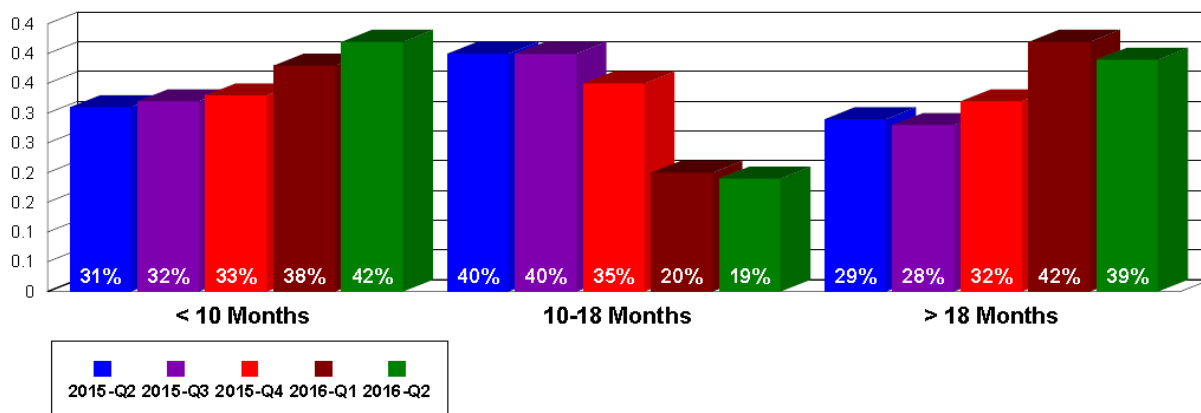
(\*) - Reactivated and Mortgage Fraud Cases excluded

	<10 months	10 to 18 months	>18 months
2010	659 cases involving 526 subjects	210 cases involving 151 subjects	130 cases involving 96 subjects
2011	669 cases involving 529 subjects	181 cases involving 145 subjects	113 cases involving 87 subjects
2012	550 cases involving 457 subjects	245 cases involving 208 subjects	142 cases involving 113 subjects
2013	591 cases involving 451 subjects	228 cases involving 177 subjects	147 cases involving 109 subjects
2014	693 cases involving 451 subjects	193 cases involving 152 subjects	181 cases involving 191 subjects
2015	695 cases involving 543 subjects	282 cases involving 222 subjects	230 cases involving 148 subjects
Q2 2016	639 cases involving 487 subjects	332 cases involving 277 subjects	253 cases involving 168 subjects

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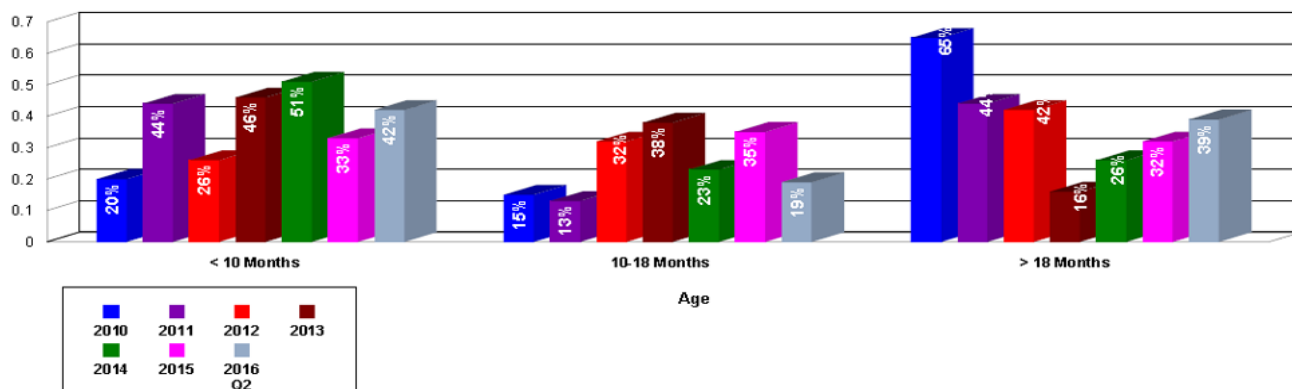
## 2.3 – Investigations (cont'd)

### b) Mortgage Fraud Cases (i) By Quarter



	<10 months	10 to 18 months	>18 months
<b>Q2 2015</b>	30 cases involving 25 subjects	39 cases involving 31 subjects	28 cases involving 25 subjects
<b>Q3 2015</b>	29 cases involving 28 subjects	36 cases involving 22 subjects	26 cases involving 23 subjects
<b>Q4 2015</b>	30 cases involving 22 subjects	32 cases involving 19 subjects	29 cases involving 25 subjects
<b>Q1 2016</b>	26 cases involving 22 subjects	14 cases involving 13 subjects	23 cases involving 19 subjects
<b>Q2 2016</b>	30 cases involving 22 subjects	14 cases involving 14 subjects	28 cases involving 15 subjects

### (ii) By Year



	<10 months	10 to 18 months	>18 months
<b>2010</b>	19 cases involving 15 subjects	14 cases involving 11 subjects	61 cases involving 49 subjects
<b>2011</b>	42 cases involving 31 subjects	13 cases involving 9 subjects	41 cases involving 30 subjects
<b>2012</b>	14 cases involving 10 subjects	17 cases involving 16 subjects	21 cases involving 17 subjects
<b>2013</b>	35 cases involving 28 subjects	29 cases involving 19 subjects	26 cases involving 21 subjects
<b>2014</b>	57 cases involving 41 subjects	26 cases involving 21 subjects	29 cases involving 26 subjects
<b>2015</b>	30 cases involving 22 subjects	32 cases involving 19 subjects	29 cases involving 25 subjects
<b>Q2 2016</b>	30 cases involving 22 subjects	14 cases involving 14 subjects	28 cases involving 15 subjects

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## 2.4 – Unauthorized Practice (UAP)

**Graph 2.4A: Unauthorized Practice Complaints in Intake**

Quarter	New	Closed/Transferred			Inventory at Year End
		Closed	Transfer to CR	Transfer to Investigations	
2010	330	151	1	249	18
2011	255	87	2	206	15
2012	256	86	0	182	19
2013	260	102	0	197	11
2014	223	77	0	154	21
2015	196	79	0	151	6
Q1 2016	29	16	0	22	3
Q2 2016	59	15	0	32	19

**Graph 2.4B: Unauthorized Practice investigations (in Complaints Resolution and Investigations)**

	New		Closed <sup>8</sup>		Inventory	
	CR	INV	CR	INV	CR	INV
2010	1	249	28	190	124	
2011	2	206	0	188	140	
2012	0	182	1	185	131	
2013	0	197	0	187	137	
2014	0	154	0	206	90	
2015	0	151	0	129	112	
Q1 2016	0	22	0	35	98	
Q2 2016	0	32	0	26	104	

**Graph 2.4D: UAP Enforcement Actions**

There were 2 new UAP enforcement matters commenced in Q2 2016. As at June 30, 2016, there were 3 active UAP matters.

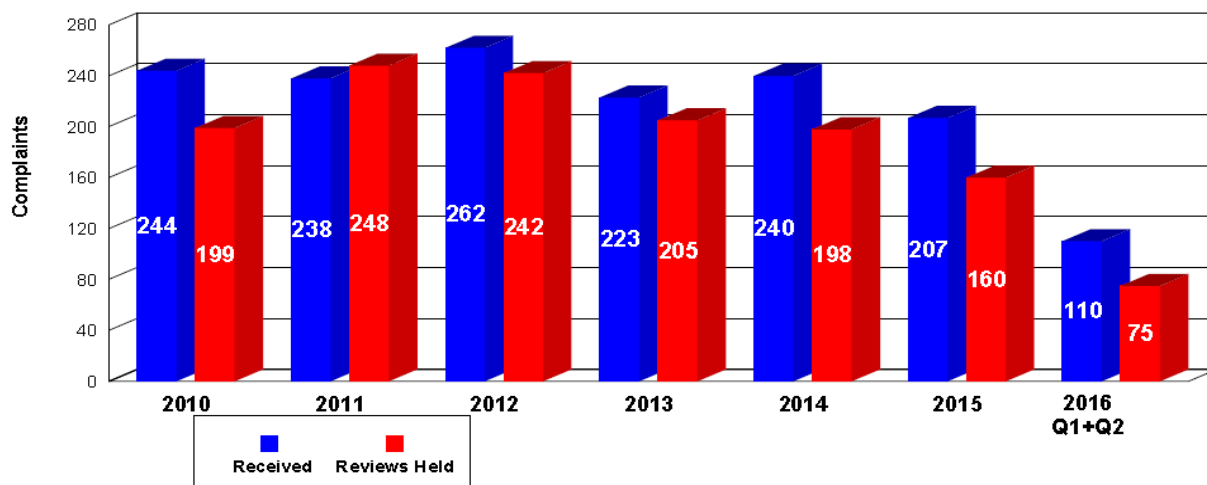
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<sup>8</sup> "Closed" refers to completed investigations and therefore consists of both those investigations that were closed by the Law Society and those that were referred for prosecution/injunctive relief.

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## 2.5 – Complaints Resolution Commissioner

**Graph 2.5A: Reviews Requested and Files Reviewed (by Quarter)**



**Graph 2.5B: Decisions Rendered, by Year**

Year	Decisions Rendered	Files to Remain Closed	Files Referred Back to PRD
2009	194	174 (90%)	20 (10%)
2010	193	160 (83%)	33 (17%)
2011	260	248 (95%)	12 (5%)
2012	242	224 (93%)	18 (7%)
2013	205	192(94%)	13(6%)
2014	167	160 (96%)	7 (4%)
2015	161	150 (93%)	11 (7%)
Q1+ Q2 2016	75	71 (95%)	4 (5%)

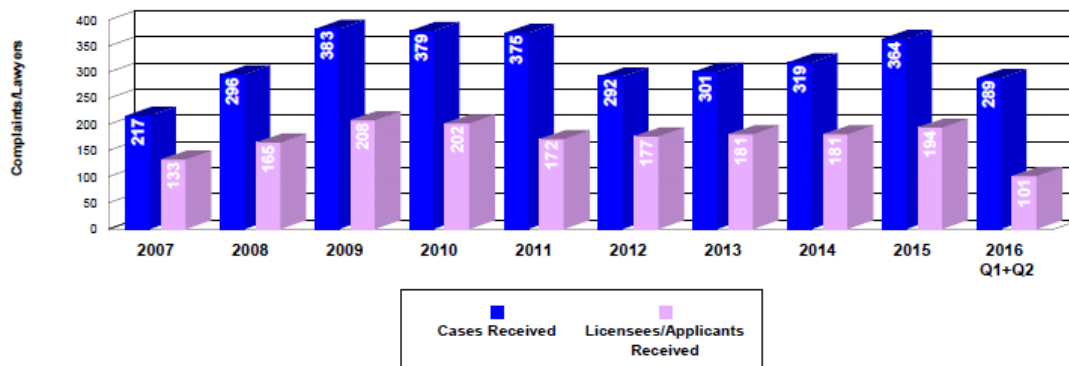
Of the 75 decisions rendered in the first half of 2016, the Commissioner referred 4 files back to Professional Regulation with a recommendation for further investigation. In three files, the Commissioner was not satisfied that the decision to close was reasonable. In the other file, the Commissioner felt that the decision to close was reasonable but referred the matter back for further investigation based on submissions made by the Complainant at the review meeting.

With respect to the 4 cases referred back, the Executive Director of Professional Regulation, as at June 30, 2016: adopted the recommendation in 1 case; declined to adopt the recommendation in 1 case; had not rendered a decision with respect to the other 2 cases.

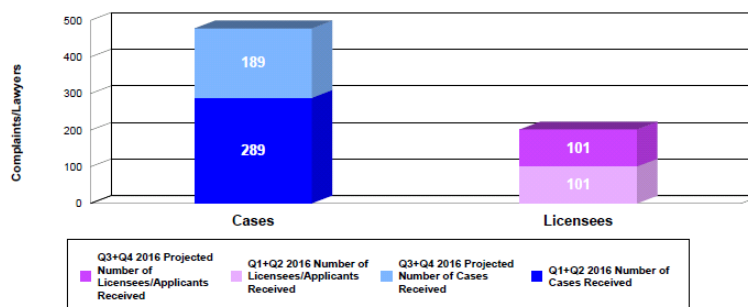
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## 2.6 – Discipline Department

**Graph 2.6A: Input<sup>9</sup>**



For 2016, the above graph displays the number of cases and licensees/applicants received in Q1 + Q2. The graph below displays projected numbers of cases and licensee/applicants to be received in Discipline in Q3 + Q4. As at the end of Q2, the projected number of cases to be received in the department in 2016 is 478 and the projected number of licensees/applicants to be received in the department in 2016 is 202.



### Detailed Analysis of New Cases Received in Discipline

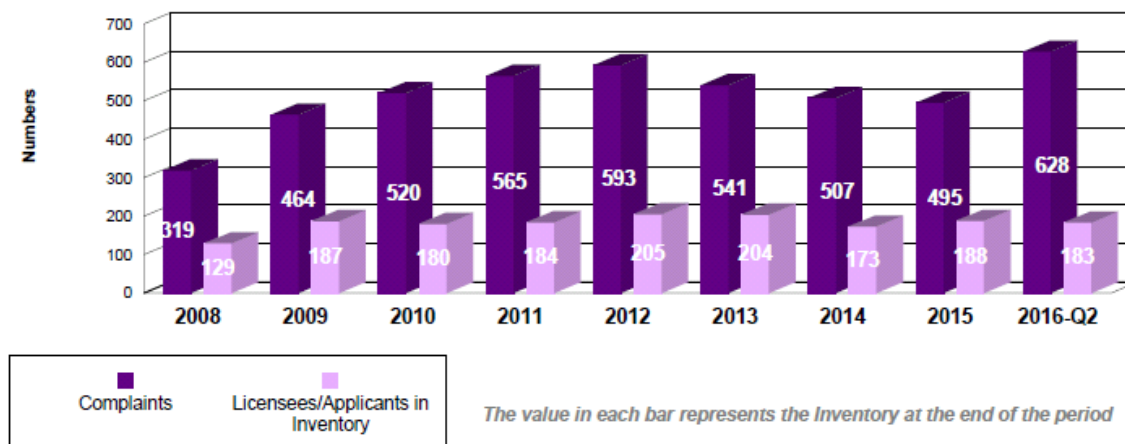
		2007	2008	2009	2010	2011	2012	2013	2014	2015	Q1+ Q2 2016
<b>Lawyers</b>	Cases	200	252	248	304	317	226	238	267	242	256
	Lawyers	117	129	139	162	137	143	135	150	132	80
<b>Lawyer Applicants</b>	Cases	17	11	4	0	5	4	1	1	3	6
	Applicants	16	6	6	1	3	4	1	1	3	5
<b>Licensed Paralegals</b>	Cases	0	0	123	74	35	56	49	46	108	18
	Paralegals	0	0	7	25	25	26	37	25	52	11
<b>Paralegal Applicants</b>	Cases	0	33	8	1	18	6	13	5	11	9
	Applicants	0	30	56	14	7	4	8	5	7	5
<b>TOTAL</b>	Cases	217	296	383	379	375	292	301	319	364	289
	All Subjects	133	165	208	202	172	177	181	181	194	101

<sup>9</sup> "Input" refers to complaints that were transferred into Discipline from various other departments during the specific quarter. It includes new complaints/cases received in Discipline and the lawyers/applicants to which the new complaints relate. New appeals commenced in the period are not included in these numbers.

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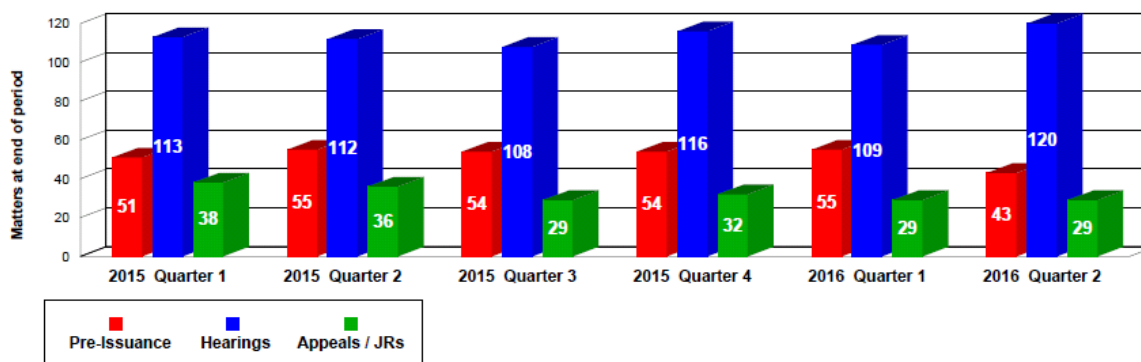
## 2.6 – Discipline (cont'd)

**Graph 2.6B: Department Inventory<sup>10</sup>**



2016: as at June 30, 2016

**Graph 2.6C: Inventory of Discipline Matters<sup>11</sup>**



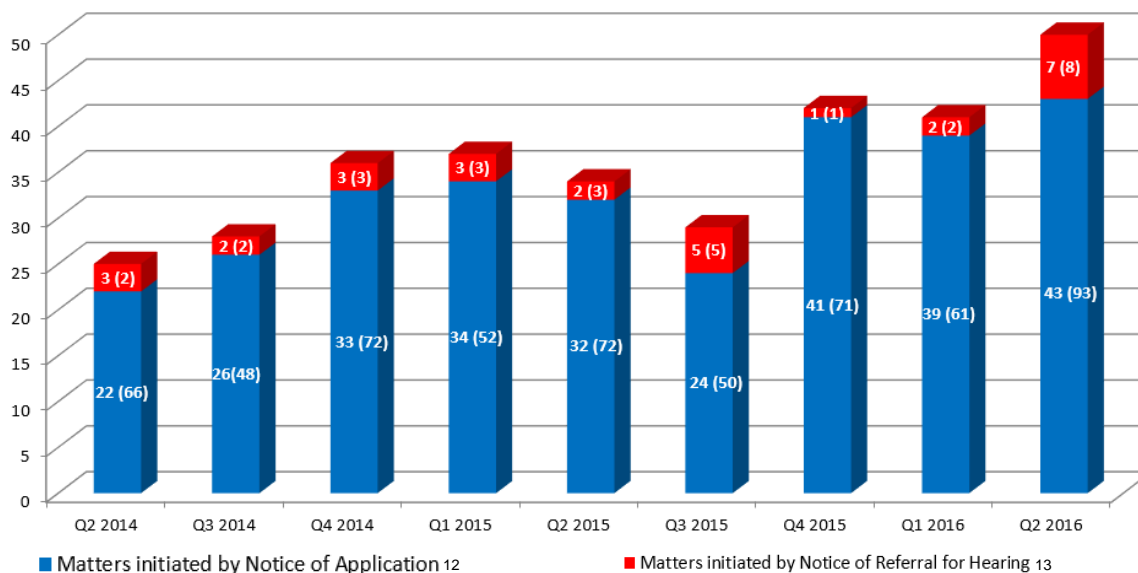
<sup>10</sup> Consists primarily of complaints and lawyers/applicants that are in scheduling and are with the Law Society Tribunal – Hearing Division or on appeal.

<sup>11</sup> A licensee may have more than one matter ongoing at a time (e.g. a licensee may have an ongoing hearing before the Hearing Division and a judicial review in Divisional Court).

## 2.6 – Discipline (cont'd)

**Graph 2.6D: Notices Issued in the Hearing Division**

**a) By Quarters**



The numbers in each bar indicate the number of notices issued and, in brackets, the number of complaint cases relating to those notices. One notice may relate to more than one case. For example, in Q2 2016, 43 Notices of Application were issued (relating to 93 cases) and 7 Notices of Referral for Hearing were issued (relating to 8 cases).

The National Discipline Standards require that 75% of Notices be issued within 60 days of authorization and 95% of Notices be issued within 90 days of authorization. In Q2, 2016, with respect to the 43 Notices of Application/Notices of Motion for Interim Suspension Order and 7 Notice of Referral for Hearing (licensing matters) which were issued:

- 92% were issued within 60 days of PAC Authorization;
- 92% were issued within 90 days of PAC Authorization.

<sup>12</sup> Matters which are initiated by Notice of Application include conduct, capacity, non-compliance and competency matters. Also included in this category are interlocutory suspension/restriction motions.

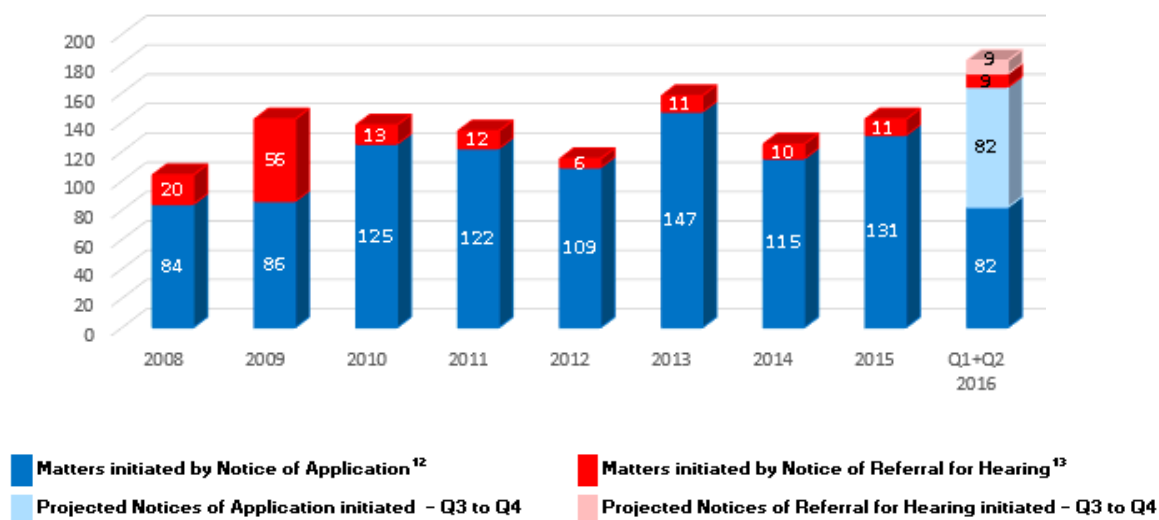
<sup>13</sup> Matters which are initiated by Notice of Referral for Hearing include licensing (including readmission matters), reinstatement and restoration matters.

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## 2.6 – Discipline (cont'd)

### b) By Years

	2008	2009	2010	2011	2012	2013	2014	2015	Q1 + Q2 2016
Notices of Application issued	84	86	125	122	109	147	115	131	82
Notices of Application	79	79	117	118	104	142	101	117	71
Interlocutory Suspension/Restriction motions	5	7	8	4	3	5	14	14	11
Notices of Referral for Hearing issued	20	56	13	12	6	11	10	11	9
<b>Total Notices Issued</b>	<b>104</b>	<b>142</b>	<b>138</b>	<b>134</b>	<b>115</b>	<b>158</b>	<b>125</b>	<b>142</b>	<b>91</b>



For 2016, the graph displays the actual number of Notices of Application and Notices of Referral for Hearing issued in Q1 + Q2 and a projected value for Notices to be issued in Q3 + Q4. As at the end of Q2, the projected number of all Notices to be issued in 2016 is 182 (164 Notices of Application and 18 Notices of Referral for Hearing).

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## 2.6 – Discipline (cont'd)

**Graph 2.6E: Discipline – Completed Matters in the Hearing Division<sup>14</sup>**

		<b>Total 2010</b>	<b>Total 2011</b>	<b>Total 2012</b>	<b>Total 2013</b>	<b>Total 2014</b>	<b>Total 2015</b>	<b>Q1 + Q2 2016</b>
<b>Conduct Hearings</b>	Lawyers	85	84	82	94	101*	77	56
	Paralegal Licensees	3	17	20	18	23	21	10
<b>Interlocutory Suspension Hearings/Orders</b>	Lawyers	10	5	4	3	11	7	11
	Paralegal Licensees	-	-	1	-	3	3	2
<b>Capacity Hearings</b>	Lawyers	-	-	5	2	3	5	-
	Paralegal Licensees	-	-	-	-	-	-	-
<b>Competency Hearings</b>	Lawyers	-	-	-	-	-	-	-
	Paralegal Licensees	-	-	-	-	-	-	-
<b>Non-Compliance Hearings</b>	Lawyers	-	-	1	-	1*	1	-
	Paralegal Licensees	-	-	-	-	-	-	-
<b>Reinstatement Hearings</b>	Lawyers	3	5	3	1	3	2	2
	Paralegal Licensees	-	-	-	1	1	1	-
<b>Restoration</b>	Lawyers	-	-	-	-	-	-	-
	Paralegal Licensees	-	-	-	-	-	-	-
<b>Licensing Hearings (including Readmission)</b>	Lawyer Applicants	7	4	4	4	2	4	1
	Paralegal Applicants	33	7	5	3	4	7	2
<b>TOTAL NUMBER OF HEARINGS</b>	Lawyers*	105	98	101	104	120	96	70
	Paralegals*	36	24	26	22	31	32	14
	<b>TOTAL</b>	<b>141</b>	<b>122</b>	<b>125</b>	<b>126</b>	<b>151</b>	<b>128</b>	<b>84</b>

\*In Q2 2014, there was one hearing in which a conduct application and a non-compliance application were heard together. Both are included in the totals for lawyer conduct and lawyer non-compliance categories. However, it is only counted once in the total numbers for the quarter and for the year.

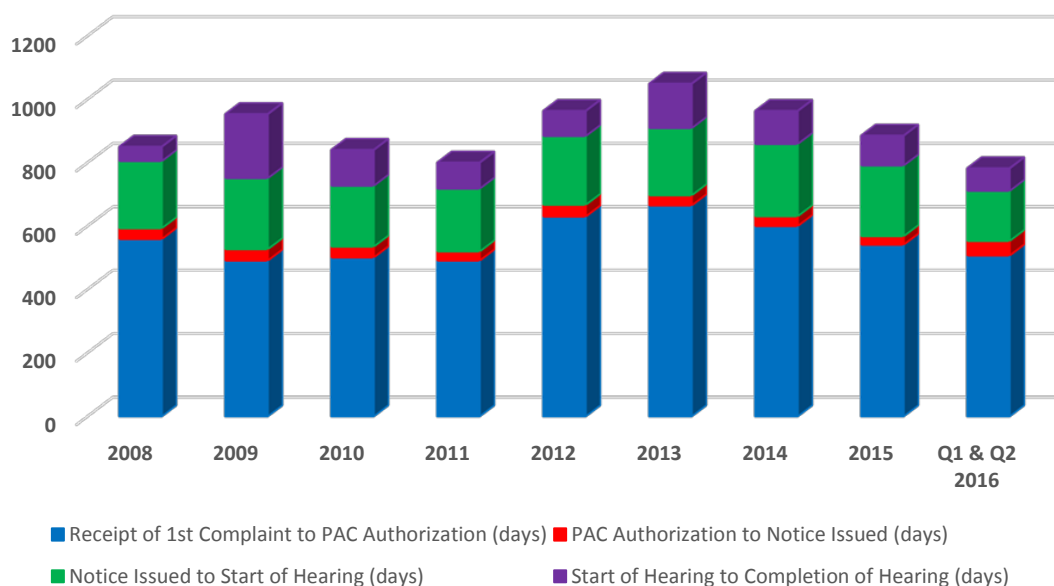
<sup>14</sup> A “completed matter in the Hearing Division” for Professional Regulation is defined as one in which the Law Society Tribunal – Hearing Division has rendered a final order.

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## 2.6 – Discipline (cont'd)

**Graph 2.6F: Age of Completed Matters in the Hearing Division<sup>15</sup>**

	Total Completed Hearings	Date 1 <sup>st</sup> Complaint Received to Date Hearing Completed	Total Completed Hearings less Completed Mortgage Fraud Hearings	Date 1 <sup>st</sup> Complaint Received to Date Hearing Completed
2008	108	847 days	100	770 days
2009	102	841 days	98	813 days
2010	131	833 days	117	727 days
2011	114	770 days	102	652 days
2012	110	940 days	92	693 days
2013	123	1031 days	103	805 days
2014	135	896 days	126	797 days
2015	128	861 days	116	789 days
Q1 & Q2 2016	84	750 days	79	685 days



	2008	2009	2010	2011	2012	2013	2014	2015	Q1 & Q2 2016
Receipt of 1st Complaint to PAC Authorization (days)	559	491	501	491	630	665	600	541	507
PAC Authorization to Notice Issued (days)	34	36	34	29	37	32	31	27	41
Notice Issued to Start of Hearing (days)	212	224	192	198	217	212	228	223	158
Start of Hearing to Completion of Hearing (days)	45	202	113	82	79	140	104	104	71

<sup>15</sup> See footnote 14.

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## 2.6 – Discipline (cont'd)

### Graph 2.6G: Appeals and Judicial Reviews

The following chart sets out the number of appeals filed with the Appeal Division, the Divisional Court or the Court of Appeal in the calendar years 2010 to Q2 2016.

Quarter/Year	Appeal Division	Divisional Court	Court of Appeal	Supreme Court of Canada
2010	27	3 appeals; 2 judicial reviews	4 motions for leave	
2011	18	6 appeals; 2 judicial reviews	2 motions for leave	
2012	23	4 appeals; 5 judicial reviews	2 motions for leave	
2013	20	3 appeals; 3 judicial reviews		
2014	23	14 appeals; 5 judicial reviews	4 motions for leave	
2015	16	6 appeals; 1 judicial review	5 motions for leave; 1 appeal; 2 other motions <sup>16</sup>	
Q1 2016	3	2 appeals; 1 judicial review	2 motions for leave	
Q2 2016	4	1 appeal	1 motion for leave 1 appeal	1 motion for leave

As of June 30, 2016, there are 13 appeals pending before the Appeal Division and 4 appeals in which costs or penalty decisions remain outstanding.

With respect to matters before the Divisional Court, there are 4 appeals and 3 judicial review matters pending.

In the Court of Appeal, there are 2 motions for leave to appeal, 1 motion for a review of the Court's dismissal of a leave application, 1 appeal pending and 1 appeal on reserve.

There is one motion for leave to appeal to the Supreme Court of Canada.

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<sup>16</sup> 1 motion to extend time for leave to appeal; 1 motion for review of denial of leave application

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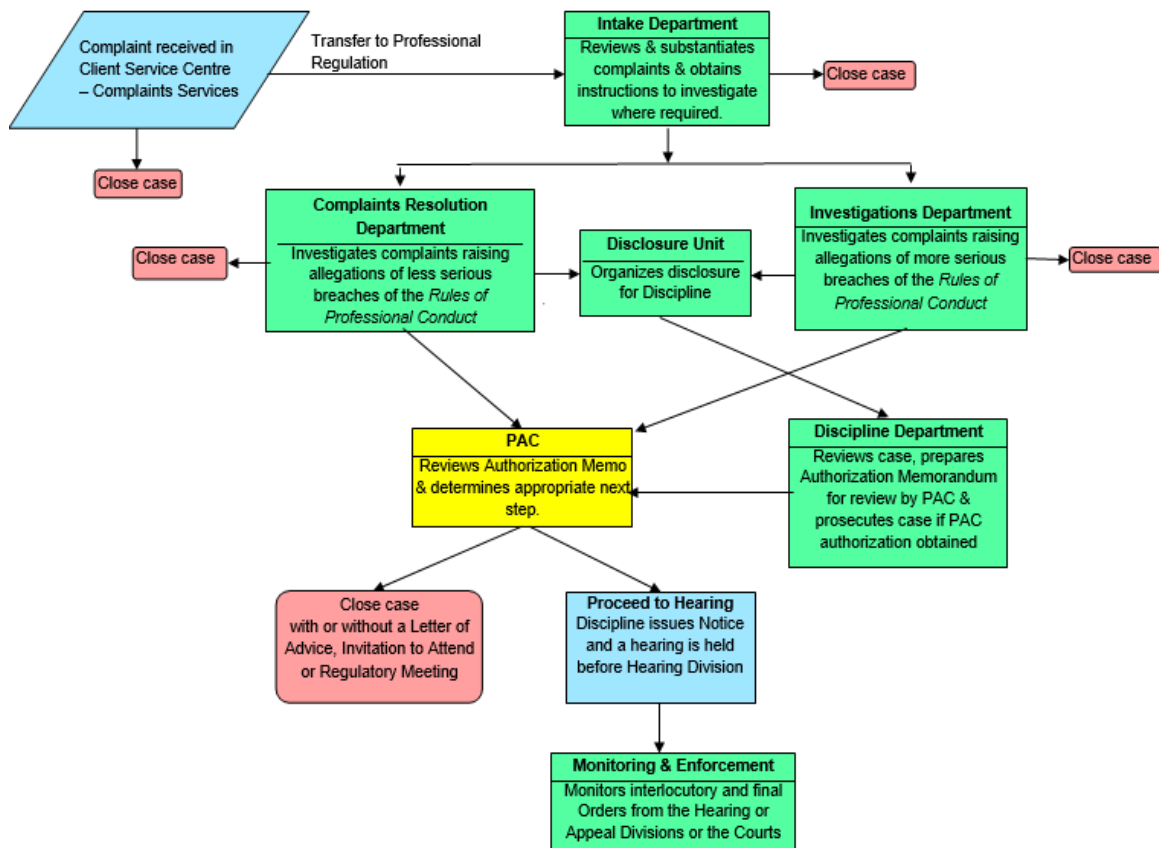
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## **SECTION 3**

## **APPENDICES**

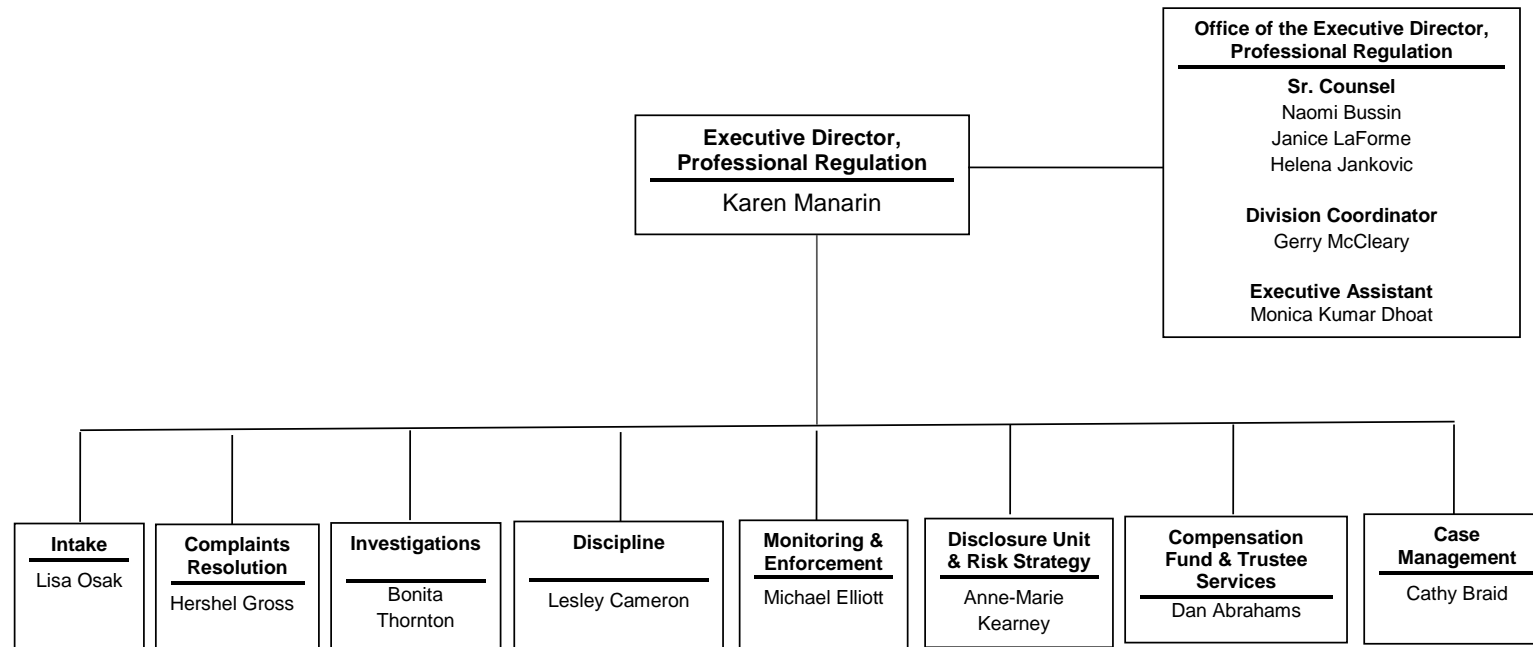
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## Appendix A: The Professional Regulation Complaint Process



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## Appendix B: Professional Regulation Organizational Chart



**Tab 9.4**

**FOR INFORMATION**  
**2016 LAWYER ANNUAL REPORT**

49. The amended 2016 Lawyer Annual Report (LAR) is shown at **TAB 9.4.1** for Convocation's information.

**Rationale**

50. Subsection 5(1) of By-Law 8 requires that every licensee file a report with the Law Society by March 31 of each year, in respect of the licensee's professional business during the preceding year; and the licensee's other activities during the preceding year related to the licensee's practice of law or the provision of legal services.
51. The sections and questions of the 2016 LAR have been rearranged and renumbered to improve the appearance of the Report, and to ensure consistency with Law Society of Upper Canada Portal systems.

**Questions Regarding Condominium Deposits**

52. Following review by the Committee earlier this year, a new mandatory question about lawyers holding deposits under the Condominium Act has been added to Section 2 – Individual Practice Activities of the 2016 Lawyer Annual Report. The text of the question is reproduced below.

**Condominium Deposits**

A "Condominium Deposit" under section 81 of the *Condominium Act, 1998* includes all money together with interest earned on it as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;
- (b) on account of an agreement of purchase and sale of a proposed unit; or
- (c) on account of a sale of a proposed unit

but does not include money received on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or as an occupancy fee under section 80(4) of the *Condominium Act, 1998*.

- a) In 2016, did you receive\*, hold\* or disburse\* Condominium Deposits under section 81 of the *Condominium Act, 1998*?

☐ Yes ☐ No

If "Yes" to a), answer b), c) and d).

- b) I declare that I complied with my obligations for the receipt, holding, and release of Condominium Deposits as set out in Section 81 of the *Condominium Act, 1998*.

☐ Yes ☐ No

- c) Total Condominium Deposits held in trust as at December 31, 2016:

\$ \_\_\_\_\_ ☐ N/A

- d) Was the total dollar value indicated in c) recorded in the firm's accounting records?

☐ Yes ☐ No ☐ N/A

### Reasons for the Change

53. Lawyers who represent condominium developers are permitted by the *Condominium Act, 1998* to hold deposit money in trust. Circumstances have arisen where lawyers have released deposit money in ways that are contrary to the Act.
54. This can be a significant issue not only because the amount of deposit money released can be large, but also because members of the public who purchase condominiums may be adversely affected and may suffer financial harm. Information about who or how many lawyers are holding condominium deposits, or the amounts held is currently unavailable.
55. Requiring lawyers to notify the Law Society that they hold deposits for condominium developments through the Lawyer Annual Report will assist in protecting the public, as information from the answers to this question will enable the Law Society to understand the nature and scope of this risk and to consider how it may be addressed. Further, the declaration of compliance will bring the requirements relating to the Act directly to the attention of lawyers who practise in this area, which should assist in reducing the risk.



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## 2016 Lawyer Annual Report

### Introduction Page

#### **YOUR 2016 LAWYER ANNUAL REPORT IS DUE MARCH 31, 2017.**

This report is based on the calendar year ending December 31, 2016, and is due by March 31, 2017. Failure to complete and file the report within 60 days of the due date will result in a late filing fee and a summary order suspending your licence until such time as this report is filed and the late filing fee is paid.

Your responses to Sections 1 and 4 will be shared with the Lawyers' Professional Indemnity Company (LAWPRO), which may rely on this information for the purposes of your professional indemnity insurance.

Your responses to Section 3, relating to mixed trust accounts, will be shared with the Law Foundation of Ontario (LFO).

**GUIDE:** For definitions or assistance in completing this report, please review the enclosed Guide or visit the Law Society's website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

**FINANCIAL FILING DECLARATION (FFD):** Only the Designated Financial Filing Licensee for each firm needs to complete the Financial Filing Declaration. A single Financial Filing Declaration is required from each firm. The Financial Filing Declaration is found within Section 3.

If you require filing assistance, contact By-Law Administration Services at (416) 947-3315 or at (800) 668-7380 ext. 3315 or by email at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca).



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## 2016 Lawyer Annual Report

### Section 1 – LICENSEE IDENTIFICATION AND STATUS

#### 1. Licensee Status as at December 31, 2016

The Law Society's records show your status on December 31, 2016 as follows:

Status: \_\_\_\_\_

Is this status for December 31 correct? ☐ Yes ☐ No

If "No", select the correct status from the options below. Choose only one status (your status on December 31, 2016) regardless of changes during the 2016 calendar year. Your response to this question will not be used to change your status. To review or update your current status, you must use the Change of Information portlet in the LSUC Portal. By-Law 8 requires licensees to notify the Law Society immediately after any change in status or contact information.

#### Practising Law/Providing Legal Services

- ☐ Sole Practitioner in Ontario
- ☐ Partner in a Law Firm/Professional Business in Ontario
- ☐ Employee in a Law Firm/Professional Business in Ontario
- ☐ Associate in a Law Firm/Professional Business in Ontario
- ☐ Employed in Education in Ontario
- ☐ Employed in Government in Ontario
- ☐ In-House
- ☐ Legal Aid or Clinic Lawyer
- ☐ Not in Ontario

#### Not Practising Law/Not Providing Legal Services

- ☐ Employed in Education in Ontario
- ☐ Employed in Government in Ontario
- ☐ Otherwise Employed in Ontario
- ☐ Not in Ontario

#### Not Working

- ☐ Retired or Not Working
- ☐ Temporary Leave of Absence
- ☐ Parental Leave
- ☐ Not in Ontario



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### 2. Benchers Election Privacy Option (non-mandatory response)

During the benchers election, many candidates want to communicate with voters by email.

Check the box if you give the Law Society permission to provide your email address for benchers election campaigning purposes:

☐

### 3. Provision of Legal Services in French (non-mandatory response)

a) Can you communicate with your clients and provide legal advice to them in French?

☐ Yes ☐ No

b) Can you communicate with your clients, provide legal advice to them, and represent them in French?

☐ Yes ☐ No

### 4. Other Languages (non-mandatory response)

☐ ASL or LSQ (Sign Language)

☐ Albanian

☐ Arabic

☐ Bulgarian

☐ Cantonese

☐ Croatian

☐ Czech

☐ Danish

☐ Dutch

☐ English

☐ Estonian

☐ Finnish

☐ French

☐ German

☐ Greek

☐ Gujarati

☐ Hebrew

☐ Hindi

☐ Hungarian

☐ Italian

☐ Japanese

☐ Korean

☐ Latvian

☐ Lithuanian

☐ Macedonian

☐ Mandarin

☐ Norwegian

☐ Persian

☐ Polish

☐ Portuguese

☐ Punjabi

☐ Romanian

☐ Russian

☐ Serbian

☐ Slovak

☐ Slovene

☐ Spanish

☐ Swedish

☐ Ukrainian

☐ Urdu

☐ Yiddish

☐ Other – Please specify: \_\_\_\_\_



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### Section 2 – INDIVIDUAL PRACTICE ACTIVITIES

To be completed by all lawyers.

#### NOTES ABOUT THIS SECTION:

- For further assistance in completing this section, refer to The Bookkeeping Guide for Lawyers available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca).
- \* Refer to the LAR Guide for definitions.

#### 1. Cash Transactions

**All lawyers must report on large cash transactions regardless of jurisdiction of practice.**

- a) Did you receive cash\* in an aggregate amount equivalent to \$7,500 CDN or more in respect of any one client file in 2016?

☐ Yes ☐ No

**If “Yes” to a):**

- b) Was the cash solely for legal fees and/or client disbursements\*?

☐ Yes ☐ No

**If “No” to b):**

- c) Provide full particulars below with respect to compliance with Part III of By-Law 9 (Cash Transactions).

#### 2. Trust Funds/Property – 2a), 2b) and 2c) must be answered.

- a) In 2016, did you receive\* trust funds\* and/or trust property\* on behalf of your firm in connection with the practice of law in Ontario?

☐ Yes ☐ No

- b) In 2016, did you disburse\* (payout), or did you have signing authority to disburse, trust funds\* or trust property\* on behalf of your firm in connection with the practice of law in Ontario?

☐ Yes ☐ No



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- c) In 2016, did you hold\* trust funds\* or trust property\* on behalf of your firm in connection with the practice of law in Ontario?

☐ Yes ☐ No

### 3. Estates and Power(s) of Attorney – 3a), 3b) and 3c) must be answered.

- a) i) In 2016, did you act as an estate trustee\* in Ontario?

☐ Yes ☐ No

If “Yes” to i), answer ii), iii) and iv).

- ii) Were you an estate trustee\* only for related\* persons in Ontario?

☐ Yes ☐ No

- iii) In 2016, the total number of estates in which you were an estate trustee\* was:

\_\_\_\_\_ ☐ N/A

- iv) As estate trustee\* for any estate, did you receive\*, hold\*, or disburse\* estate funds or estate property?

☐ Yes ☐ No

If “Yes” to iv), answer v), vi) and vii).

- v) The total dollar value as at December 31, 2016 of all separate\* bank accounts and investments\* for the estates referred to in iv) was:

\$ \_\_\_\_\_ ☐ N/A

- vi) Were books and records maintained in accordance with By-Law 9, or other applicable rules/statutes?

☐ Yes ☐ No ☐ N/A

- vii) Was the total dollar value indicated in v) recorded in the firm’s accounting records?

☐ Yes ☐ No ☐ N/A

If “No” to vii):

- viii) Provide an explanation below.



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b) i) In 2016, did you exercise a power of attorney\* for property in Ontario?

☐ Yes ☐ No

**If “Yes” to i), answer ii), iii) and iv).**

ii) Did you exercise the power(s) of attorney\* for property only for related\* persons in Ontario?

☐ Yes ☐ No

iii) In 2016, the total number of persons for whom you exercised a power of attorney\* was:

\_\_\_\_\_ ☐ N/A

iv) In exercising the power(s) of attorney\* for any person, did you receive\*, hold\*, or disburse\* the donors' funds or property?

☐ Yes ☐ No

**If “Yes” to iv), answer v), vi) and vii).**

v) The total dollar value as at December 31, 2016 of all separate\* bank accounts and investments\* for the power(s) of attorney\* referred to in iv) was:

\$\_\_\_\_\_ ☐ N/A

vi) Were books and records maintained in accordance with By-Law 9, or other applicable rules/statutes?

☐ Yes ☐ No ☐ N/A

vii) Was the total dollar value indicated in v) recorded in the firm's accounting records?

☐ Yes ☐ No ☐ N/A

**If “No” to vii):**

viii) Provide an explanation below.

c) i) In 2016, did you control\* estate assets (exclude estates where you acted solely on the sale of real property and paid the net proceeds to the estate trustee(s)), as a solicitor, and not as an estate trustee, in Ontario?

☐ Yes ☐ No



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If “Yes” to i), answer ii) and iii).

ii) Total number of estate files identified in i) is:

\_\_\_\_\_

iii) As a solicitor, did you receive\*, hold\*, or disburse\* estate funds or estate property?

☐ Yes ☐ No

If “Yes” to iii), answer iv), v) and vi).

iv) The total dollar value as at December 31, 2016 of all separate\* bank accounts and investments\* for the estate files referred to in iii) was:

\$ \_\_\_\_\_ ☐ N/A

v) Were books and records maintained in accordance with By-Law 9?

☐ Yes ☐ No ☐ N/A

vi) Was the total dollar value indicated in iv) recorded in the firm’s accounting records?

☐ Yes ☐ No ☐ N/A

If “No” to vi):

vii) Provide a written explanation below.

#### 4. Borrowing from Clients – 4a) and 4b) must be answered.

**Note:** If your borrowing was/is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer “No” to a)i) and “N/A” to a)ii).

See Rules 3.4-31 to 3.4-33 of the *Rules of Professional Conduct*.

a) i) At any time in 2016, were you personally indebted to a person or organization who, at the time of borrowing, was a current or former client of you or the firm through which you practised law?

☐ Yes ☐ No



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If “Yes” to i), answer ii) and iii).

ii) Was the client or person a related\* person as defined in the *Income Tax Act* (Canada)?

☐ Yes ☐ No ☐ N/A

iii) Provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.

b) i) At any time in 2016, was your spouse or a corporation, syndicate or partnership in which either you or your spouse has, or both of you have, directly or indirectly, a substantial interest, indebted to a person or organization who, at the time of borrowing, was a current or former client of you or the firm through which you practised law?

☐ Yes ☐ No

If “Yes” to i):

ii) Provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.

### 5. Mortgage Transactions

In 2016, did you either directly or indirectly through a related person\* or corporation\*, hold\* mortgages or other charges on real property in trust for clients or other persons?

☐ Yes ☐ No



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### 6. Private Mortgages – 6a) and 6b) must be answered.

**Refer to the Guide for Private Mortgage reporting information.**

- a) In 2016, did you act for a lender, lending money through a mortgage broker?

☐ Yes ☐ No

- b) i) In 2016, did you act for, or receive money from, a lender who was lending money secured by a charge, or charges, on real property, except for transactions listed in subsection 24(2) of By-Law 9? (Note: For the exception in subsection 24(2)(a)(i), funds loaned through RRSPs and RSPs belong to the plan holder, not the financial institution.)

☐ Yes ☐ No

**If “Yes” to i):**

- ii) In 2016, approximately how many private mortgage\* loans were advanced?

\_\_\_\_\_

- iii) In 2016, the approximate total dollar value of private mortgage\* loans advanced was:

\$ \_\_\_\_\_

### 7. Client Identification – All lawyers must answer questions 7a) and 7b).

- a) i) In 2016, when you provided professional services to clients, did you obtain and record identification information for every (each) client and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

**If “No” to i), answer ii).**

- ii) In 2016, when you provided professional services to clients, were you exempt from the requirement to obtain and record identification information for every (each) client and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

**If “No” to ii), answer iii).**

- iii) Provide an explanation below.



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- b) i) In 2016, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, did you obtain and record information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

If “No” to i), answer ii).

- ii) In 2016, when you engaged in or gave instructions in respect of the receiving, paying or transferring of funds, were you exempt from the requirement to obtain and record information to verify the identity of each client, and additional identification information for a client that is an organization, and any third party, in accordance with Part III of By-Law 7.1?

☐ Yes ☐ No ☐ N/A

If “No” to ii), answer iii).

- iii) Provide an explanation below.

### 8. Pro Bono Legal Services

**(Pro bono legal services means the provision of legal services to persons of limited means or to charitable or not-for-profit organizations without the expectation of a fee from the client.)**

- a) Did you provide pro bono legal services in Ontario in 2016?

☐ Yes ☐ No

If “Yes” to a), answer b) and c).

- b) How many hours did you devote to pro bono legal services in Ontario in 2016?

\_\_\_\_\_

- c) Did you provide pro bono legal services for Pro Bono Law Ontario (PBLO) sponsored programs?

☐ Yes ☐ No

### 9. Membership in other Regulatory Bodies

- a) Are you now a member of another professional/regulatory/governing body in any jurisdiction?

☐ Yes ☐ No



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If “Yes” to a), answer b).

- b) Please identify the professional/regulatory/governing body.

### 10. Condominium Deposits

A “Condominium Deposit” under section 81 of the *Condominium Act, 1998* includes all money together with interest earned on it as soon as a person makes a payment,

(a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;

(b) on account of an agreement of purchase and sale of a proposed unit; or

(c) on account of a sale of a proposed unit

but does not include money received on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or as an occupancy fee under section 80(4) of the *Condominium Act, 1998*.

- a) In 2016, did you receive\*, hold\* or disburse\* Condominium Deposits under section 81 of the *Condominium Act, 1998*?

☐ Yes ☐ No

If “Yes” to a), answer b), c) and d).

- b) I declare that I complied with my obligations for the receipt, holding, and release of Condominium Deposits as set out in Section 81 of the *Condominium Act, 1998*.

☐ Yes ☐ No

- c) Total Condominium Deposits held in trust as at December 31, 2016:

\$\_\_\_\_\_ ☐ N/A

- d) Was the total dollar value indicated in c) recorded in the firm’s accounting records?

☐ Yes ☐ No ☐ N/A

### 11. Self Study

The annual minimum expectation is 50 hours of self-study. For the purposes of this section, self-study means self-directed reading or research using print materials, electronic or otherwise. CPD hours must be reported in the CPD section of the LSUC Portal by December 31<sup>st</sup> of each calendar year.

- a) Did you undertake any self-study during 2016?

☐ Yes ☐ No



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If **“Yes” to a)**, answer b) to d).

If **“No” to a)**, you may provide an explanation in the area at the end of this section.

b) Approximate total number of self-study hours spent on **file specific** reading or research: \_\_\_\_\_

c) Approximate total number of self-study hours spent on **general** reading or research: \_\_\_\_\_

d) Indicate below the tools used, overall, for all types of self-study. Check all that apply:

☐ Printed Material

☐ Internet

☐ Other

### 12. Additional Information

If required, use the area below to provide further information or comments about your Individual Practice Activities



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### Section 3 – FINANCIAL REPORTING

To be completed by all lawyers who:

- As at December 31<sup>st</sup>, were sole practitioners;
- As at December 31<sup>st</sup>, were partners, employees, associates and counsel of law firms;
- As at December 31<sup>st</sup>, were employed by Legal Aid Ontario and were responsible for general\*, trust\* and/or mixed trust accounts; and
- Throughout the filing year, held client monies or property from a former legal practice in Ontario.
- The term “employee” means employed in a practising status, for which professional liability insurance coverage is required. This section does not apply to a lawyer working at a law firm in a non-legal capacity (e.g. chief operating officer, continuing professional development coordinator, etc.).

#### NOTES ABOUT THIS SECTION:

1. For further assistance in completing this section, refer to The Bookkeeping Guide for Lawyers available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca).
2. \* Refer to the LAR Guide for definitions.

#### 1. Trust and General (Non-Trust) Accounts – 1a) and 1b) must be answered.

a) During the filing year, did either you or your firm operate a trust\* or mixed trust\* account in Ontario?

☐ Yes ☐ No

b) During the filing year, did either you or your firm operate a general\* (non-trust) account in Ontario?

☐ Yes ☐ No

If “Yes” to a), proceed to question 2.

If “No” to a) and “Yes” to b), proceed to question 4, and then proceed to Section 4.

If “No” to both a) and b), proceed to Section 4.

#### 2. Trust Account Information

During the filing year, were you a sole practitioner, or were you the lawyer responsible for filing the trust\* account information on behalf of other licensees in Ontario?

☐ Yes ☐ No

If “Yes” to 2, proceed to questions 4 through 11.

**NOTE about Financial Filing Declaration (FFD):** If you are reporting financial information on behalf of other licensees, you must also submit a Financial Filing Declaration. Your report is not considered complete without submitting the Financial Filing Declaration.

If “No” to 2, complete the Designated Financial Filing Option (question 3) below.

#### 3. Designated Financial Filing Option

This option is available to you if you are not responsible for filing trust account information.



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Indicate on lines a) and b) below who will be reporting the firm's financial information on your behalf, then proceed to Section 4.

### ENTER DESIGNATED FINANCIAL FILING LICENSEE'S NAME & LAW SOCIETY NUMBER

a) **FINANCIAL FILING LICENSEE'S NAME:** \_\_\_\_\_

b) **Law Society Number:** \_\_\_\_\_  
(e.g. 12345A or P12345)

The Designated Financial Filing Licensee that you have named is responsible for submitting the Financial Filing Declaration to report the firm's financial information on your behalf. Your Lawyer Annual Report will not be considered complete without the submission of the **Financial Filing Declaration by the licensee you have named. If you are unable to obtain the Financial Filing Licensee's Law Society Number, as you are no longer employed by the firm, please enter "unknown" in question b).**

#### 4. Firm Records

Were financial records for all your firm's trust\* accounts (mixed\*, separate\*, estates, power(s) of attorney\* and other interest generating investments\*) and/or general\* (non-trust) bank accounts maintained throughout the filing year, on a current basis, in accordance with all applicable sections in By-Law 9?

☐ Yes ☐ No

If "No" to 4, indicate below which areas were deficient and provide an explanation for each.

#### COMPLETE THIS CHART ONLY IF YOU ANSWERED "NO" ABOVE COMPLETE ONLY THOSE AREAS WHERE YOU WERE DEFICIENT

By-Law 9: Financial Transactions and Records	By-Law 9 Sections 18, 19 & 20 (Maintain)	By-Law 9 Section 22 (Current)	Explanation for Deficiency
1. <b>Trust Receipts Journal</b> <i>Subsection 18(1)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
2. <b>Trust Disbursements Journal</b> <i>Subsection 18(2)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
3. <b>Client's Trust Ledger</b> <i>Subsection 18(3)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
4. <b>Trust Transfer Journal</b> <i>Subsection 18(4)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
5. <b>General Receipts Journal</b> <i>Subsection 18(5)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
6. <b>General Disbursements Journal</b> <i>Subsection 18(6)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
7. <b>Fees Book or Chronological Billing File</b> <i>Subsection 18(7)</i>	<input type="checkbox"/>	<input type="checkbox"/>	



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<b>8. Trust Bank Comparison **</b> <i>Subsection 18(8)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>9. Valuable Property Record</b> <i>Subsection 18(9)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>10. Source documents including deposit slips, bank statements and cashed cheques</b> <i>Subsection 18(10)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>11. Electronic Trust Transfer Requisitions and Confirmations</b> <i>Subsection 18(11) and Section 12 (Form 9A)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>12. Teranet Authorizations and Confirmations</b> <i>Subsection 18(12) and Section 15 (Form 9B)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>13. Duplicate Cash Receipts Book for all cash received</b> <i>Section 19</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>14. Records for mortgages held in trust</b> <i>Section 20</i>	<input type="checkbox"/>	<input type="checkbox"/>	

\*\* Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.

### 5. Comparison of Trust Bank Reconciliations and Trust Listing of Client Liabilities as at December 31, 2016.

Trust Reconciliation and Comparison	December 31, 2016 Balances
i) The total dollar value of mixed* trust bank accounts	\$
ii) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*	+\$
iii) The total dollar value of separate* estate and/or power of attorney* accounts and investments* Include the total dollar value indicated in Section 2, questions 3a)v, 3b)v) and/or 3c)iv) (if any)	+\$
iv) <b>TOTAL</b> of i) to iii)	=
v) Total outstanding deposits (if any)	+
vi) Total bank/posting errors (if any)	+/-
vii) Total outstanding cheques (if any)	-



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viii) Reconciled Bank Balance	=
ix) Total Client Trust Liabilities (Client Trust Listing)	-
x) Difference between Reconciled Bank Balance and Total Client Trust Liabilities	=

If there is a difference between the Reconciled Bank Balance **viii)** and the Total Client Trust Liabilities **ix)**, provide a written explanation below.

### 6. Mixed Trust Accounts

- This question must be answered if you operated a mixed trust account at any time during the filing year (2016 calendar year).
- A licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or registered trust corporations, to be kept in the name of the licensee, or the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.
- A mixed trust account is a trust account holding, or intended to hold, trust funds for more than one client. Mixed trust accounts are governed by subsection 57(1) of the *Law Society Act*, which requires any interest payable on a mixed trust account to be paid to the Law Foundation of Ontario.
- A mixed trust account may include a special mixed trust account designated as the lawyer's Electronic Registration Bank Account (ERBA) for the purposes of Teraview.

Financial Institution Name	Transit Number	Account Number	Branch Address	Account Holder Name
<i>SAMPLE</i>				
<i>Royal Bank of Canada</i>	<i>0652</i>	<i>1234567</i>	<i>123 Main Street Oakville, ON L6J 7M4</i>	<i>Smith Jones LLP</i>



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i)	Has this financial institution (at any time) been directed to pay interest on this account to the Law Foundation of Ontario?	<input type="radio"/> Yes <input type="radio"/> No
ii)	Was this account opened during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
	<b>If "Yes" to ii):</b>  Date account was opened:	  MM / DD
iii)	Was this account closed during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
	<b>If "Yes" to iii):</b>  Date account was closed:	  MM / DD
iv)	If the account was closed, was the balance of the closed account transferred to the Law Society of Upper Canada's Unclaimed Trust Fund?	<input type="radio"/> Yes <input type="radio"/> No
v)	Was there at least one transaction in this account during the filing year?	<input type="radio"/> Yes <input type="radio"/> No

If you are filing your Lawyer Annual Report by paper and if you have multiple mixed trust accounts, please contact By-Law Administration Services at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca) or (416) 947-3315 for an additional form, or enter the information in the space provided at the end of this Section.

### 7. Trust Accounts

- This question must be answered if you operated a trust account at any time during the filing year (2016 calendar year)
- A licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or registered trust corporations, to be kept in the name of the licensee, or the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

Financial Institution Name	Transit Number	Account Number	Branch Address	Account Holder Name
<i>SAMPLE</i> <i>Royal Bank of Canada</i>	<i>0652</i>	<i>1234567</i>	<i>123 Main Street</i> <i>Oakville, ON L6J 7M4</i>	<i>Smith Jones LLP</i>



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i)	Was this account opened during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
	<b>If "Yes" to ii):</b>  Date account was opened:	  MM / DD
ii)	Was this account closed during the filing year?	<input type="radio"/> Yes <input type="radio"/> No
	<b>If "Yes" to iii):</b>  Date account was closed:	  MM / DD
iii)	If the account was closed, was the balance of the closed account transferred to the Law Society of Upper Canada's Unclaimed Trust Fund?	<input type="radio"/> Yes <input type="radio"/> No
iv)	Was there at least one transaction in this account during the filing year?	<input type="radio"/> Yes <input type="radio"/> No

If you are filing your Lawyer Annual Report by paper and if you have multiple trust accounts, please contact By-Law Administration Services at [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca) or (416) 947-3315 for an additional form, or enter the information in the space provided at the end of this Section.

### 8. Answer all questions as at December 31, 2016.

- a) i) What is the total number of mixed\* trust bank accounts referred to in 5(i)?

\_\_\_\_\_

- ii) Of the total mixed\* trust bank account balance recorded in 5(i), what is the estimated value of estate assets?

\$ \_\_\_\_\_

- b) What is the total number of separate\* interest bearing trust accounts or income generating trust accounts/investments\* referred to in 5(ii)?

\_\_\_\_\_

- c) What is the total number of separate\* estate and/or power of attorney\* accounts and investments\* referred to in 5(iii)?

\_\_\_\_\_

### 9. Overdrawn Accounts

- a) During 2016, did your records at any month end disclose overdrawn clients' trust ledger account(s)?

☐ Yes ☐ No

**If "Yes" to a):**



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b) Were the account(s) corrected by December 31, 2016?

☐ Yes ☐ No

**If “No” to b):**

c) The total dollar value of overdrawn clients’ trust ledger account(s) as at December 31, 2016 was:

\$ \_\_\_\_\_

d) The total number of overdrawn clients’ trust ledger account(s) as at December 31, 2016 was:

\_\_\_\_\_

### 10. Outstanding Deposits

a) During 2016, did your records at any month end disclose outstanding trust account deposits, not deposited the following business day?

☐ Yes ☐ No

**If “Yes” to a):**

b) Were the account(s) corrected by December 31, 2016?

☐ Yes ☐ No

**If “No” to b):**

c) The total dollar value of outstanding trust account deposits as at December 31, 2016 was:

\$ \_\_\_\_\_

d) The total number of outstanding trust account deposits as at December 31, 2016 was:

\_\_\_\_\_

### 11. Unchanged Client Trust Ledger Account Balances

a) Were there client trust ledger account balances that were unchanged\* (i.e. had no activity) for the entire year?

☐ Yes ☐ No

**If “Yes” to a):**

b) The total dollar value of these account balances as at December 31, 2016 was:

\$ \_\_\_\_\_



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- c) The total number of client trust ledger accounts that remained unchanged\* for the entire year as at December 31, 2016 was:

\_\_\_\_\_

- d) Were any of the unchanged\* client trust ledger account balances for the registration of mortgage discharges?

☐ Yes

☐ No

**If “Yes” to d):**

- e) The total number of unchanged\* client trust ledger account balances held for the registration of mortgage discharges was:

\_\_\_\_\_

### 12. Unclaimed Client Trust Ledger Account Balances

- a) Of the amounts identified in question 11, were any unclaimed\* for two years or more? (Refer to Section 59.6 of the *Law Society Act*)

☐ Yes

☐ No

☐ N/A

**If “Yes” to a):**

- b) The total dollar value of the unclaimed\* client trust ledger account balances was:

\$ \_\_\_\_\_

- c) The total number of unclaimed\* client trust ledger accounts was:

\_\_\_\_\_

### 13. Financial Filing Declaration (FFD)

Will you be filing the above financial information on behalf of any other lawyers and/or paralegals?

☐ Yes

☐ No

Sole practitioners practising alone in Ontario do not need to file the FFD.

### 14. Additional Information

**If required, use the area below to provide further information about your Financial Reporting (Section 3), including details of any additional trust or mixed trust accounts.**

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### Section 4 – AREAS OF PRACTICE

#### NOTES ABOUT THIS SECTION:

- Questions 1 through 4 in this section relate only to your law practice while resident in Ontario in 2016. “Resident” as used in this section has the same meaning given to it for the purposes of the *Income Tax Act* (Canada), R.S.C., 1985, c.1.
- Where exact information is not available to respond to the questions under this heading, provide your best approximation.
- In estimating the approximate percentage of time in each question, your response should include:
  - time spent by non-lawyer staff on your behalf, and
  - your docketed and undocketed time, combined.
- If you were engaged in the practice of law\* other than in private practice, unless otherwise noted, your responses should be based upon the whole of your practice, whether for your employer or others.
- Do not include ADR or litigation activities in the categories of “Corporate/Commercial Law” and “Real Estate Law” for the first two questions in this section. ADR and litigation activities should be reflected under “ADR/Mediation Services” and “Civil Litigation” respectively for these noted categories.
- In the category of “ADR/Mediation Services” for the first two questions in this section, indicate the percentage of time spent as a mediator or other role as an intermediary.
- \* Refer to the LAR Guide for definitions.

#### 1. Canadian Law Practice – Ontario

- a) Did you practise law relating to Ontario in 2016?

☐ Yes ☐ No

If “Yes” to a):

- b) Describe that portion of your law practice most directly relating to Ontario, by indicating the approximate percentage of time devoted by you while resident in Ontario in 2016 to each area of law listed below:

Aboriginal Law	_____ %	ADR/Mediation Services (see Notes 5 & 6 above)	_____ %
Administrative Law	_____ %	Bankruptcy & Insolvency Law	_____ %
Civil Litigation – Plaintiff	_____ %	Civil Litigation – Defendant	_____ %
Construction Law	_____ %	Corporate/Commercial Law (see Note 5 above)	_____ %
Criminal/Quasi Criminal Law	_____ %	Employment/Labour Law	_____ %
Environmental Law	_____ %	Family/Matrimonial Law	_____ %
Franchise Law	_____ %	Immigration Law	_____ %
Intellectual Property Law	_____ %	Real Estate Law (see Note 5 above)	_____ %
Securities Law	_____ %	Tax Law	_____ %
Wills, Estates, Trusts Law	_____ %	Workplace Safety & Insurance Law	_____ %



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Other \_\_\_\_\_ %

**Total:** \_\_\_\_\_ %

Question 1b) must total 100%.

### 2. Canadian Law Practice – Other than Ontario

a) Did you practise law relating to Canadian jurisdictions other than Ontario in 2016?

☐ Yes ☐ No

If “Yes” to a):

b) Describe that portion of your law practice most directly relating to Canadian jurisdictions other than Ontario, by indicating the approximate percentage of time devoted by you while resident in Ontario in 2016 to each area of law listed below.

Aboriginal Law \_\_\_\_\_ % ADR/Mediation Services (see Notes 5 & 6 above) \_\_\_\_\_ %

Administrative Law \_\_\_\_\_ % Bankruptcy & Insolvency Law \_\_\_\_\_ %

Civil Litigation – Plaintiff \_\_\_\_\_ % Civil Litigation – Defendant \_\_\_\_\_ %

Construction Law \_\_\_\_\_ % Corporate/Commercial Law (see Note 5 above) \_\_\_\_\_ %

Criminal/Quasi Criminal Law \_\_\_\_\_ % Employment/Labour Law \_\_\_\_\_ %

Environmental Law \_\_\_\_\_ % Family/Matrimonial Law \_\_\_\_\_ %

Franchise Law \_\_\_\_\_ % Immigration Law \_\_\_\_\_ %

Intellectual Property Law \_\_\_\_\_ % Real Estate Law (see Note 5 above) \_\_\_\_\_ %

Securities Law \_\_\_\_\_ % Tax Law \_\_\_\_\_ %

Wills, Estates, Trusts Law \_\_\_\_\_ % Workplace Safety & Insurance Law \_\_\_\_\_ %

Other \_\_\_\_\_ %

**Total:** \_\_\_\_\_ %

Question 2b) must total 100%.

### 3. Canadian Law Practice – Other than Ontario

What percentage of your total Canadian law practice relates most directly to Canadian jurisdictions other than Ontario?

\_\_\_\_\_ %



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### 4. Details of Real Estate Practice

- a) Did you act on a real estate transaction in 2016?

☐ Yes ☐ No

If “Yes” to a):

- b) Of the time you devoted to your overall real estate practice in 2016, what approximate percentage of the time related to:

Purchases and mortgages \_\_\_\_\_% Sales \_\_\_\_\_%

Development/land use \_\_\_\_\_% Residential landlord/tenant \_\_\_\_\_%

Commercial leasing \_\_\_\_\_% Mortgage remedies work \_\_\_\_\_%

Other \_\_\_\_\_%

**Total:** \_\_\_\_\_%

The total for the 7 rows should be 100%.

- c) Of the time you devoted to conveyancing-related work, including mortgage work in 2016, what approximate percentage of the time related to:

Residential urban (i.e. within town/ city limits) \_\_\_\_\_% Residential non-urban \_\_\_\_\_%

Commercial \_\_\_\_\_% Industrial \_\_\_\_\_%

Other \_\_\_\_\_%

**Total:** \_\_\_\_\_%

The total for the 5 rows should be 100%.

- d) Real Estate Declaration – To be completed by all lawyers who acted on a real estate transaction in 2016.

- i) I declare that I complied in 2016 with my professional obligations to not permit anyone to use my lawyer’s e-reg™ diskette/key and to not disclose to anyone my personalized e-reg™ pass phrase, as set out at Rule 6.1-5 of the *Rules of Professional Conduct* (“Rules”) and at subsection 6(2) of By-Law 7.1.

☐ Yes ☐ No

- ii) I declare that I complied in 2016 with my professional obligations to directly supervise non-lawyers to whom I assign permissible tasks and functions and to not assign to non-lawyers tasks requiring a lawyer’s skill or judgment, as set out at Section 6.1 of the *Rules* and in Part I of By-Law 7.1.

☐ Yes ☐ No



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iii) I declare that I complied in 2016 with my professional obligation to not act for both a transferor and a transferee in the transfer of title to real property, as set out at Rule 3.4-16.7 of the *Rules*, except in the limited circumstances set out at Rule 3.4-16.9.

☐ Yes ☐ No

iv) I declare that I complied in 2016 with my professional obligation, when acting in permissible circumstances for both a borrower and a lender in a mortgage or loan transaction, to disclose in writing to the borrower and lender, before the advance or release of mortgage or loan funds, all material information that is relevant to the transaction, as set out at Rule 3.4-15 of the *Rules* and discussed further in the Commentary to the rule.

☐ Yes ☐ No

v) I acknowledge my professional obligation, in the practice of real estate law, to not act or do anything or omit to do anything to assist a client, a person associated with a client or any other person to facilitate dishonesty, fraud, crime, or illegal conduct, as set out at Rules 3.2-7 and 3.2-7.1 of the *Rules*, and discussed further in the Commentary to the rules, which I have read. I am aware that the Law Society and LawPRO offer many resources about real estate fraud, including the Law Society's Update on Mortgage Fraud and webpage entitled Fighting Real Estate Fraud, and LawPRO's Fraud Fact Sheet and webpage entitled Avoid a Claim.

☐ Yes ☐ No

vi) I declare that I complied with my obligation under the Electronic Land Registration Agreement to obtain evidence of proper authorization from the owner of the land or holder of an interest in the land that has directed the registration, prior to the submission of the document for registration in the electronic land registration system.

☐ Yes ☐ No

### 5. What approximate percentage of the time spent practising law was devoted to:

**This question is to be completed by all lawyers resident in Ontario in 2016, who engaged in the practice of law whether in private practice or otherwise. Other lawyers, including those resident and practising in Canada, but outside of Ontario throughout 2016, and those resident and practising outside of Canada throughout 2016, should omit this question.**

The practice of law for outside third parties on your employer's behalf (e.g. employer's clients, customers, etc.)

\_\_\_\_\_

The practice of law for outside third parties not on your employer's behalf

\_\_\_\_\_

The practice of law directly for your employer

\_\_\_\_\_



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**Total:**

\_\_\_\_\_

The total for the 3 rows should be 100%.



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### Section 5 – CERTIFICATION AND SUBMISSION

---

I am the lawyer filing this 2016 Lawyer Annual Report. I have reviewed the matters reported and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to the Law Society of Upper Canada.

Signature \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
DD MM YYYY

**TAB 10**



## **Report to Convocation September 22, 2016**

---

### **Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones**

**Committee Members**  
**Dianne Corbiere, Co-Chair**  
**Julian Falconer, Co-Chair**  
**Sandra Nishikawa, Vice-Chair**  
**Gina Papageorgiou, Vice-Chair**  
**Marion Boyd**  
**Suzanne Clément**  
**Robert Evans**  
**Avvy Go**  
**Howard Goldblatt**  
**Marian Lippa**  
**Isfahan Merali**  
**Sidney Troister**  
**Tanya Walker**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Ekua Quansah – 416-947-3425)**

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### **For Information .....TAB 10.2**

Human Rights Monitoring Group – Information about July 2016 and August 2016 Interventions

Human Rights Monitoring Group – Responses to Interventions

Equity Legal Education and Rule of Law Calendar 2016 .....**TAB 10.3**

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on September 8, 2016. Committee members, benchers Julian Falconer, Co-Chair, Sandra Nishikawa, Vice-Chair, Gina Papageourgiou, Vice-Chair, Marion Boyd, Suzanne Clément, Robert Evans, Avvy Go, Howard Goldblatt, Marian Lippa, Isfahan Merali and Sidney Troister attended. Elder Myeengun Henry and Kathleen Lickers, representative of the Indigenous Advisory Group, Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, also participated. Staff members Darcy Belisle, Hyacinth Khin, Marian MacGregor, Ekua Quansah, Susan Tonkin and Grant Wedge were present.

**TAB 10.1**

**FOR DECISION**

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION**

2. **That Convocation approve the letters and public statements in the case of Yessika Hoyos and other members of the José Alvear Restrepo Lawyers' Collective (CAJAR), Colombia – letters of intervention and public statement presented at [TAB 10.1.1](#).**

**Rationale**

3. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the "Monitoring Group") to,
  - a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. determine if the matter is one that requires a response from the Law Society; and,
  - c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

4. The Monitoring Group considered the following factors when making a decision about the harassment and intimidation of lawyer Yessika Hoyos and other members of CAJAR in Colombia:
  - a. there are no concerns about the quality of sources used for this report;
  - b. the harassment and intimidate of lawyer Yessika Hoyos and other members of CAJAR falls within the mandate of the Monitoring Group; and
  - c. the Law Society has intervened previously in the cases of a lawyers and judges in Colombia – most recently in May 2012.

**Key Background**

**COLOMBIA – HARASSMENT AND INTIMIDATION OF LAWYER YESSIKA HOYOS AND MEMBERS OF THE JOSÉ ALVEAR RESTREPO LAWYERS' COLLECTIVE (CAJAR)**

**Sources of Information**

5. The background information for this report was taken from the following sources:
  - a. Bertha Justice Initiative Network;
  - b. Colombia Caravana UK Lawyers Group;
  - c. The Law Society of England & Wales.

## Background

6. On Wednesday, August 3, 2016, Ekua Quansah, Policy Counsel, met with human rights lawyer Yessika Hoyos at the Law Society during her visit to Toronto, who provided the Law Society with the information referenced below.
7. Yessika Hoyos is a member of the José Alvear Restrepo Lawyers' Collective (CAJAR). Yessika Hoyos' work "...includes seeking accountability and reparations for crimes committed against the trade union movement. She also represents victims of other grave human rights violations, including massacres...and the so-called 'false positives'".<sup>1</sup>
8. Yessika Hoyos' father, a key union figure and educator, was murdered in 2001 by military intelligence. Agents of the National Police, army and paramilitary are implicated in the murder.<sup>2</sup> Yessika Hoyos' work at CAJAR also involves pushing for accountability in the case of her father's murder.<sup>3</sup>
9. Reports indicate that Yessika Hoyos and other members of CAJAR have faced increasing harassment and intimidation as a result of their human rights work. According to the Colombia Caravana UK Lawyers Group, Yessika Hoyos and other members of CAJAR have experienced the following incidents of harassment and intimidation:
  - *On 10th September this year, outside Ms. Hoyos's residence, a woman and two men, travelling in a grey Sedan vehicle, approached the person who cares for Ms Hoyos's baby, asking about the sale of a house by Ms Hoyos, when she would arrive home and who was looking after her child. It is understood that Ms Hoyos is not selling a house, and there are concerns that the questions regarding the whereabouts of her and her child may have been for surveillance purposes.*
  - *On the night of 17th September this year, in Suba, Bogota, when Ms Hoyos's assistant arrived home, men in a Ford pick-up truck with blacked-out windows approached him in an intimidating manner and told him to "look after himself".*
  - *On 6th February 2015, Mrs Soraya Gutierrez, Cajar lawyer, was threatened by a witness during their oral declaration in the trial of assassinated trade unionist Jorge Darío Hoyos Franco, Ms Hoyos's father. In this case, charges are brought against active Colombian Army intelligence official Freddy Francisco Espitia Espinosa, of the "Cahrry Solano" Battalion. Both Mrs. Gutierrez and Ms Hoyos were subject to harassment inside the Paloquemao court building following the hearing.*
  - *On 12th February 2015, in Villavicencio, Meta, Mr. Luis Guillermo Pérez Casas, President of Cajar, is reported to have been subject to surveillance by three unidentified men whilst carrying out a meeting in a public space, with family members of victims of the Mapiripan Masacre. On 17th February 2015, in Neiva, Mr Reinaldo Villalba, Cajar lawyer, was reported to have been subject to illegal*

<sup>1</sup> "Bertha Network Organizations Appeal to President of the Republic of Colombia Juan Santos to Protect Lawyer Yessika Hoyos," online: Bertha Justice Initiative < <http://berthafoundation.org/bejust/?tag=bertha-fellows>>

<sup>2</sup> "Repeated intimidation towards Ms Hoyos and the Jose Alvear Restrepo Lawyers' Collecting (Cajar)", online: Colombia Caravana UK Lawyers group < <http://www.colombiancaravana.org.uk/wp-content/uploads/2015/10/Yessika-Hoyos-02102015-Cajar-Eng-FINAL-.pdf>>

<sup>3</sup> Be Just Fellow Alumna Profile – Yessika Hoyos – Security Concerns for Women Human Rights Defenders in Colombia, online: Bertha Foundation < <http://berthafoundation.org/bejust/?p=1424>>

*surveillance by two unknown men whilst holding a meeting with victims in a case considered to be an extrajudicial execution. On the same day, in Villavicencio, Meta, Cajar lawyer Carolina Daza Rincón, was located at her regular place of accommodation by an unknown woman.<sup>4</sup>*

10. Human rights organization have condemned the harassment and intimidation of Yessika Hoyos and her CAJAR colleagues. These organizations have asked the Colombian government to protect Yessika Hoyos and her colleagues and to carry out an investigation to identify who is responsible for the harassment.

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<sup>4</sup> Taken from: "Repeated intimidation towards Ms Hoyos and the Jose Alvear Restrepo Lawyers' Collecting (Cajar)", online: Colombia Caravana UK Lawyers group < <http://www.colombiancaravana.org.uk/wp-content/uploads/2015/10/Yessika-Hoyos-02102015-Cajar-Eng-FINAL-.pdf>>

TAB 10.1.1

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**YESSIKA HOYOS AND MEMBERS OF THE JOSÉ ALVEAR RESTREPO LAWYERS'  
COLLECTIVE (CAJAR)**

Juan Manuel Santos Calderón  
President of the Republic of Colombia  
Carrera 8 No. 7 – 26  
Palacio de Nariño  
Bogotá Colombia

President Santos:

**Re: Harassment and intimidation of Yessika Hoyos and members of the José Alvear Restrepo Lawyers' Collective (CAJAR)**

I write on behalf of the Law Society of Upper Canada to voice our grave concern in the matter of Yessika Hoyos and other members of José Alvear Restrepo Lawyers' Collective (CAJAR). When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Yessika Hoyos is a human rights lawyer whose work focuses on seeking accountability and reparations for crimes committed against the trade union movement and representing victims of other grave human rights violations. Her father, a key union figure and educator, was murdered in 2001 by military intelligence. Agents of the National Police, army and paramilitary are implicated in the murder. Yessika Hoyos' work at CAJAR also involves pushing for accountability in the case of her father's murder.

It has come to our attention that Yessika Hoyos and other members of CAJAR have faced increasing harassment and intimidation as a result of their human rights work. Reports indicate that Yessika Hoyos and her colleagues at CAJAR have experienced a number of incidents of harassment and intimidation, including threats and surveillance by unknown individuals.

The Law Society is deeply concerned about these reports. We believe strongly that lawyers should be able to exercise their legitimate duties without fear for their lives, for their liberty and for their security.

The Law Society of Upper Canada urges Your Excellency to comply with Colombia's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or

improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

The Law Society urges the government of Colombia to:

- a. conduct an immediate and impartial investigation into the harassment and intimidation of Yessika Hoyos and members of CAJAR and bring those responsible to justice;
- b. put an end to the harassment of lawyers and human rights defenders in Colombia;
- c. ensure that all lawyers can carry out their legitimate activities without fear of physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms is in accordance with international human rights standards and international instruments.

Yours very truly,

Paul Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc: H.E. Mr. Nicolás Lloreda  
Ambassador of Colombia to Canada  
Colombian Embassy in Ottawa, Canada

360 Albert Street, Suite 1002  
Ottawa, ON K1R 7X7

The Honourable Stéphane Dion  
Minister of Foreign Affairs  
Global Affairs Canada  
125 Sussex Drive  
Ottawa, ON K1A 0G2

President, Colegio Nacional de Abogados de Colombia, Conalbos

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

**Re: Harassment and intimidation of Yessika Hoyos and members of the José Alvear Restrepo Lawyers' Collective (CAJAR)**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to Juan Manuel Santos Calderón, President of Colombia, expressing our deep concerns over reports of harassment and intimidation of lawyer Yessika Hoyos and other members of the José Alvear Restrepo Lawyers' Collective (CAJAR).

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- President, Colegio Nacional de Abogados de Colombia, Conalbos
- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Sarah Smith, Human Rights and Rule of Law Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concerns over the harassment and intimidation of Yessika Hoyos and members of the José Alvear Restrepo Lawyers' Collective (CAJAR)**

Yessika Hoyos is a human rights lawyer whose work focuses on seeking accountability and reparations for crimes committed against the trade union movement and representing victims of other grave human rights violations. Her father, a key union figure and educator, was murdered in 2001 by military intelligence. Agents of the National Police, army and paramilitary are implicated in the murder. Yessika Hoyos' work at CAJAR also involves pushing for accountability in the case of her father's murder.

It has come to our attention that Yessika Hoyos and other members of CAJAR have faced increasing harassment and intimidation as a result of their human rights work. Reports indicate that Yessika Hoyos and her colleagues at CAJAR have experienced a number of incidents of harassment and intimidation, including threats and surveillance by unknown individuals.

The Law Society is deeply concerned about these reports. We believe strongly that lawyers should be able to exercise their legitimate duties without fear for their lives, for their liberty and for their security.

The Law Society of Upper Canada urges the government of Colombia to comply with Articles 16 and 17 of the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

The Law Society urges the government of Colombia to:

- a. conduct an immediate and impartial investigation into the harassment and intimidation of Yessika Hoyos and members of CAJAR and bring those responsible to justice;
- b. put an end to the harassment of lawyers and human rights defenders in Colombia;
- c. ensure that all lawyers can carry out their legitimate activities without fear of physical violence or other human rights violations; and
- d. ensure in all circumstances respect for human rights and fundamental freedoms is in accordance with international human rights standards and international instruments.

**TAB 10.2**

**FOR INFORMATION**

**HUMAN RIGHTS MONITORING GROUP  
INFORMATION ABOUT JULY 2016 AND AUGUST 2016  
INTERVENTIONS**

11. Over the summer, the Human Rights Monitoring Group and the Treasurer approved the following cases. The letters of intervention and public statements are available online at <http://www.lsuc.on.ca/with.aspx?id=622>:
  - a. Lawyer and Judges in Turkey;
  - b. Lawyer Willie Kimani in Kenya;
  - c. Lawyer Bilal Anwar Kasi and Lawyers in Pakistan; and
  - d. Lawyer N. Surendran in Malaysia.

**Rationale**

12. The mandate of the Human Rights Monitoring Group is,
  - a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. to determine if the matter is one that requires a response from the Law Society; and,
  - c. to prepare a response for review and approval by Convocation.
13. The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Human Rights Monitoring Group shall report on the matters at the next meeting of Convocation.
14. The above-mentioned cases were urgent and Convocation's meeting schedule made the review and approval of these cases by Convocation impractical.

**HUMAN RIGHTS MONITORING GROUP  
RESPONSES TO INTERVENTIONS**

15. The Human Rights Monitoring Group ("the Monitoring Group") monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation's approval. Intervention letters are sent to heads of state and are copied,

for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.

16. In July 2016 and August 2016, the Monitoring Group received four responses to the Law Society's recent intervention letters:
- Bar Council of India, July 24, 2016 – regarding the case of [Shalini Gera and Isha Khandelwal](#) (India). The Law Society intervened in these cases in February 2016.
  - Turkish Embassy in Ottawa, July 22, 2016, Human Rights Watch, August 5, 2016, and the Istanbul Bar Association, August 8, 2016, regarding the case of [Lawyers and Judges in Turkey](#). The Law Society intervened in this case in July 2016.

**Tab 10.3**

**EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR  
FALL 2016**

17. The following is the Equity Legal Education and Rule of Law Series calendar.

**September 21, 2016**

***Through the Door and at the Table: Women and Racial Diversity***

**Description:** The Women's Law Association of Ontario and the Law Society of Upper Canada are pleased to present a panel of diverse women who will speak about their extensive experience in the legal profession. They are in a variety of careers including private practice, government, in-house and the judiciary. The women will touch on issues of gender, race, diversity and inclusion and speak to the ideas of access and power in the legal profession. Please join us to hear interesting insights from our panel and to be inspired.

**Moderator:** Deepa Jacob, Senior Counsel, Ministry of the Attorney General, Civil Law Division – Government and Consumer Services Branch

**Panelists:**

- The Honourable Justice Sandra Bacchus, Ontario Court of Justice
- Christa Big Canoe, Legal Advocacy Director, Aboriginal Legal Services
- May M. Cheng, Certified Specialist in IP (Trademark/Copyright), Partner of Fasken Martineau
- Marsha M. Lindsay, Vice-President, General Counsel & Corporate Secretary, Purolator Inc.
- Isfahan Merali, Law Society Benchers and Tribunal Counsel, Consent and Capacity Board

Panel Discussion: 5:00 – 6:30\* p.m. in the Donald Lamont Learning Centre  
Reception: 6:30 – 7:30 p.m. in Convocation Hall

\*The panel discussion will also be available as a live webcast.

**For additional information, please visit the following link:**

[www.lawsocietygazette.ca/event/women-and-racial-diversity](http://www.lawsocietygazette.ca/event/women-and-racial-diversity)

**September 28, 2016**

***Celebration of Franco-Ontarian Day***

**Description:** The Law Society of Upper Canada, The Association of French Speaking Jurists of Ontario (AJEFO) and the Ontario Bar Association invite you to a celebration of Franco-Ontarian Day. This event will feature a Keynote Address and reception. The event will take place in French.

Keynote Address and Reception: 5:30 -7:30 p.m. in Convocation Hall

**For additional information, please visit the following link:**

[www.lawsocietygazette.ca/event/franco-ontariens-2016](http://www.lawsocietygazette.ca/event/franco-ontariens-2016)

**October 13, 2016**

***Hispanic Heritage Month Celebration***

**Description:** October is Hispanic Heritage Month in Ontario. Join the Law Society of Upper Canada and the Canadian Hispanic Bar Association to mark this special occasion.

Presentation: 5:30 – 6:30 p.m.\* in Donald Lamont Learning

Reception: 6:30 – 7:30 p.m. in Convocation Hall

\*The presentation will also be available as a live webcast.

*Note: exact timing is subject to change*

**For additional information, please visit the following link:**

**[www.lawsocietygazette.ca/event/hispanic-heritage-month-2016](http://www.lawsocietygazette.ca/event/hispanic-heritage-month-2016)**

**November 17, 2016**

***Louis Riel Day Event***

**Description:** Join the Law Society of Upper Canada and the Métis Nation of Ontario for their annual Louis Riel Day event.

**Additional information about this event will be posted at the following link once available:**

**<http://www.lawsocietygazette.ca/events/>**



**TAB 11**

## **Report to Convocation September 22, 2016**

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### **Tribunal Committee**

#### **Committee Members**

Barbara Murchie (Chair)  
Isfahan Merali (Vice-Chair)  
Raj Anand  
Larry Banack  
Peter Beach  
Christopher Bredt  
Robert Burd  
Paul Cooper  
Janis Criger  
Rocco Galati  
Baljit Sikand  
Peter Wardle

**Purpose of Report: Information**

**Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)**

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**TAB 11.1**

## **COMMITTEE PROCESS**

1. The Committee met on September 8, 2016. Committee members Barbara Murchie (Chair), Isfahan Merali (Vice-Chair) Raj Anand, Larry Banack, Peter Beach, Christopher Bredt, Robert Burd, Paul Cooper, Janis Criger and Peter Wardle attended. Tribunal Chair, David Wright, and staff members Lisa Mallia and Joe Zaffino attended part of the meeting. Policy Counsel Sophia Spurdakos also attended.

**TAB 11.1**

**FOR INFORMATION**

**TRIBUNAL 2016 SECOND QUARTER STATISTICS**

2. The Tribunal's quarterly statistical report for the second quarter of 2016 is set out at [\*\*TAB 11.1.1: 2016 Q2 Final\*\*](#) for information.
3. Ongoing collection and reporting of Tribunal operational statistics assist the Tribunal to monitor issues, needs and implementation of the new model and enable the Committee and Convocation to track certain processes. One of the Committee's priorities for the coming months is the development of a new set of relevant statistics.



Law Society Tribunal  
Tribunal du Barreau

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# 2016 LAW SOCIETY TRIBUNAL STATISTICS

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Second Quarter Report: April 1, 2016 to June 30, 2016

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## Files Opened

The Tribunal opens a file when it is issued upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, referral for hearing, motion for interlocutory suspension or practice restriction, and appeal.

Files related to the same lawyer or paralegal that are heard concurrently are counted as separate files.

NOTE – In all tables in this document, numbers in parentheses are 2015 figures.

**Table 1 Number of lawyer and paralegal files opened in the Hearing and Appeal Divisions for each quarter.**

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	44 (42)	<b>54 (37)</b>			<b>98 (79)</b>
Lawyer	37	43			80
Paralegal	7	11			18
<b>Hearing Files</b>	41 (36)	<b>50 (34)</b>			<b>91 (70)</b>
Lawyer	34	39			73
Paralegal	7	11			18
<b>Appeal Files</b>	3 (6)	<b>4 (3)</b>			<b>7 (9)</b>
Lawyer	3	4			7
Paralegal	0	0			0

## Files Closed

The Tribunal closes a file after the final decision and order, and reasons if any, have been delivered or published. A file that is closed in a quarter may have been opened in that same quarter or any time prior.

**Table 2 Number of lawyer and paralegal files closed in the Hearing and Appeal Divisions for each quarter.**

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Files</b>	65 (51)	<b>38 (38)</b>			<b>103 (89)</b>
Lawyer	52	32			84
Paralegal	13	6			19
<b>Hearing Files</b>	63 (45)	<b>34 (34)</b>			<b>97 (79)</b>
Lawyer	50	29			79
Paralegal	13	5			18
<b>Appeal Files</b>	2 (6)	<b>4 (4)</b>			<b>6 (10)</b>
Lawyer	2	3			5
Paralegal	0	1			1

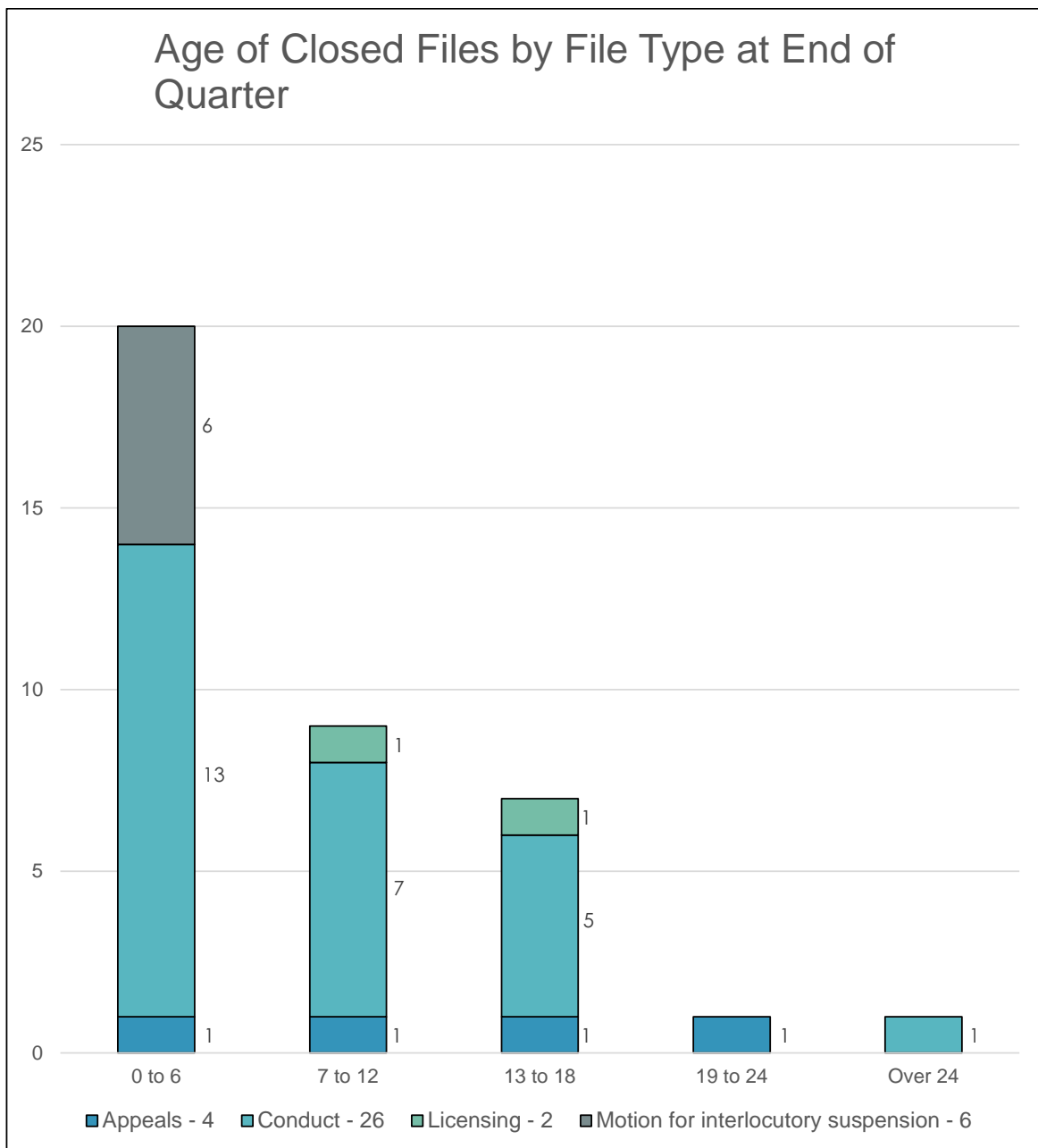


Figure 1 Number and age of files closed in each file type.

## Open Files at the End of Each Quarter

Table 3 Number of lawyer and paralegal files that were open at the end of each quarter.

	Q1	Q2	Q3	Q4
<b>Total Files</b>	142 (145)	<b>163 (145)</b>		
Lawyer	118	134		
Paralegal	24	29		
<b>Hearing Files</b>	125 (127)	<b>146 (126)</b>		
Lawyer	104	119		
Paralegal	21	27		
<b>Appeal Files</b>	17 (18)	<b>17 (19)</b>		
Lawyer	14	15		
Paralegal	3	2		

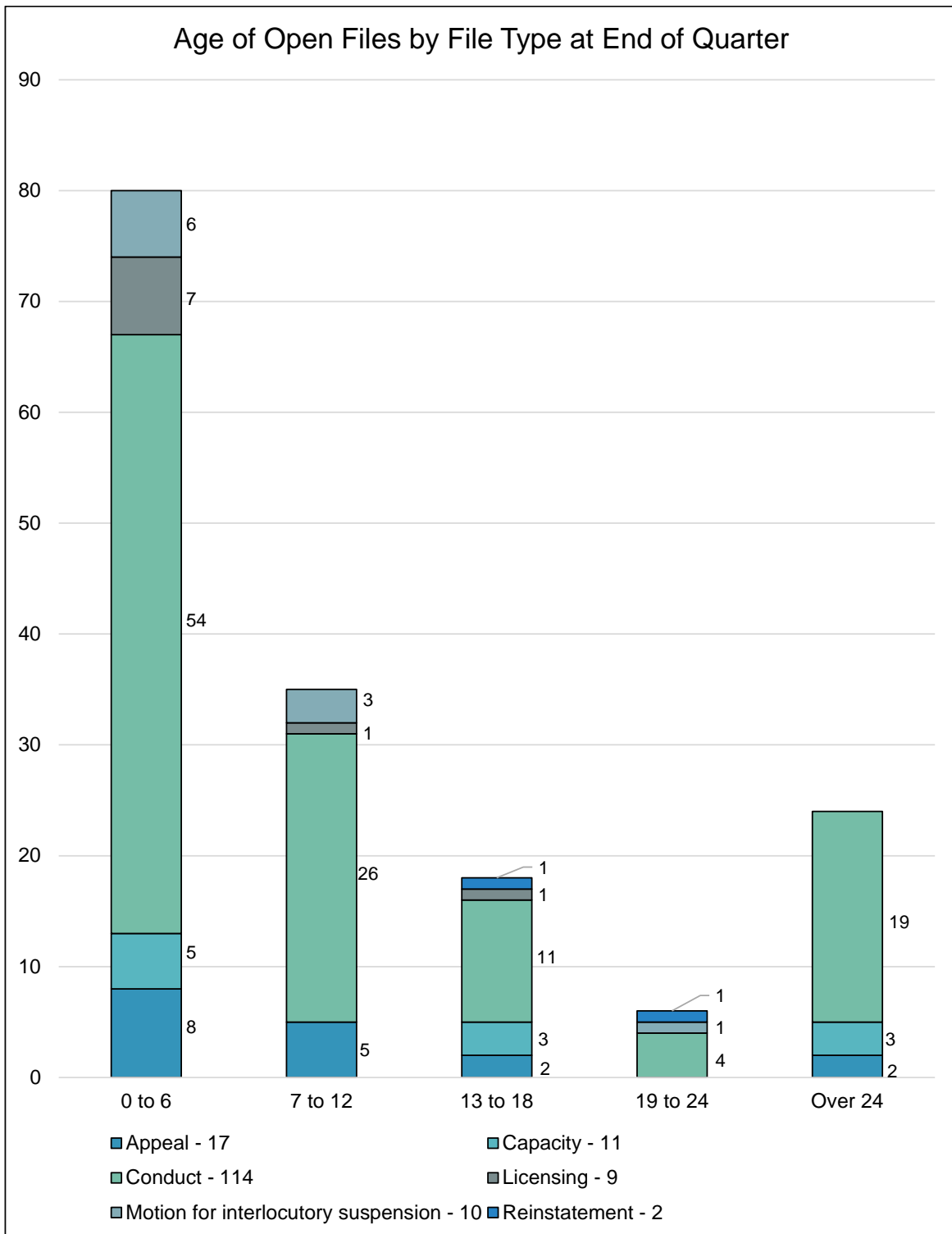


Figure 2 Number and age of open files in each file type.

## Summary Files Opened and Closed

A summary file is a proceeding that is first returnable to a hearing panel and bypasses the PMC in accordance with s.2(1) of O. Reg. 167/07. These files are typically heard by a single adjudicator. This data is a subset of the information in Table 1 and Table 2.

**Table 4 Number of lawyer and paralegal summary files that were opened and closed in each quarter.**

	Q1	Q2	Q3	Q4	Cumulative
<b>Total Summary Files Opened</b>	10 (10)	<b>13 (10)</b>			<b>23 (20)</b>
Lawyer	8	12			20
Paralegal	2	1			3
<b>Total Summary Files Closed</b>	16 (9)	<b>14 (11)</b>			<b>30 (20)</b>
Lawyer	11	13			24
Paralegal	5	1			6

## Open Summary Files at End of Quarter

**Table 5 Number of lawyer and paralegal summary files that were open at the end of each quarter.**

	Q1	Q2	Q3	Q4
<b>Total Summary Files</b>	13 (18)	<b>13 (18)</b>		
Lawyer	12	12		
Paralegal	1	1		

## Number of Lawyers and Paralegals Before the Tribunal

Table 6 Number of lawyers and paralegals before the Tribunal at various proceeding stages.

Stage	Q1	Q2	Q3	Q4	Yearly Total
<b>Proceeding Management Conference (PMC)</b>	58 (48)	<b>52 (52)</b>			<b>92 (82)</b>
Lawyers	49	37			74
Paralegals	9	15			18
<b>Hearing</b>	43 (40)	<b>49 (47)</b>			<b>81 (75)</b>
Lawyers	31	44			64
Paralegals	12	5			17
<b>Appeal Management Conference (AMC)</b>	(5) 5	<b>6 (3)</b>			<b>10 (7)</b>
Lawyers	4	6			8
Paralegals	1	0			2
<b>Appeal</b>	4 (6)	<b>8 (4)</b>			<b>10 (9)</b>
Lawyers	4	6			8
Paralegals	0	2			2

## Number of Files and Frequency Before the Tribunal

Files heard on more than one occasion by the Tribunal within a quarter are counted each time the file proceeds before the Tribunal.

**Table 7 Number of files before the Tribunal and number of times files were considered by the Tribunal.**

<b>Stage</b>	<b>Q1 Files</b>	<b>Q1 Times Considered</b>	<b>Q2 Files</b>	<b>Q2 Times Considered</b>	<b>Q3 Files</b>	<b>Q3 Times Considered</b>	<b>Q4 Files</b>	<b>Q4 Times Considered</b>	<b>Total Files</b>	<b>Total Times Considered</b>
<b>PMC</b>	58 (50)	95 (73)	55 (58)	72 (97)					102 (89)	167 (170)
Lawyer	49	76	39	52					80	128
Paralegal	9	19	16	20					22	39
<b>Hearing</b>	43 (46)	58 (61)	53 (55)	64 (77)					92 (87)	122 (138)
Lawyer	31	45	47	58					74	103
Paralegal	12	13	6	6					18	19
<b>AMC</b>	5 (5)	9 (6)	6 (4)	11 (4)					10 (7)	20 (10)
Lawyer	4	8	6	11					8	19
Paralegal	1	1	0	0					2	1
<b>Appeal</b>	4 (6)	5 (7)	6 (4)	6 (4)					10 (9)	11 (11)
Lawyer	4	5	4	4					8	9
Paralegal	0	0	2	2					2	2

## Total Hearings Scheduled and Vacated

The number of hearings scheduled in each quarter is listed below. Files scheduled on more than one occasion within a quarter are counted each time the file is scheduled. A hearing is counted as scheduled when the date the hearing is to proceed falls within the quarter. A hearing is counted as vacated when it does not proceed on the scheduled date. A multi-day hearing is partially vacated if it proceeded on only some of the scheduled days. Reasons for vacated hearings are noted in Table 9. The number of hearing calendar days is noted in Table 11.

Table 8 Total hearings scheduled and vacated per quarter.

	Q1	Q2	Q3	Q4	Cumulative
<b>Number of hearings scheduled<sup>1</sup></b>	86 (75)	<b>81</b> <b>(86)</b>			<b>167</b> <b>(161)</b>
Lawyer	69	73			142
Paralegal	17	8			25
<b>Number of hearings completely vacated</b>	25 (21)	<b>19</b> <b>(21)</b>			<b>44</b> <b>(42)</b>
<b>Percentage of hearings completely vacated</b>	29% (28%)	<b>23%</b> <b>(24%)</b>			<b>26%</b> <b>(26%)</b>
Lawyer	23	17			40
Paralegal	2	2			4
<b>Number of hearings partially vacated</b>	4 (14)	<b>13</b> <b>(9)</b>			<b>17</b> <b>(23)</b>
<b>Percentage of hearings partially vacated</b>	5% (19%)	<b>16%</b> <b>(10%)</b>			<b>10%</b> <b>(14%)</b>
Lawyer	2	12			14
Paralegal	2	1			3
<b>Number of appeal hearings scheduled<sup>2</sup></b>	8 (11)	<b>7</b> <b>(5)</b>			<b>15</b> <b>(16)</b>
Lawyer	7	5			12
Paralegal	1	2			3
<b>Number of appeal hearings completely vacated</b>	2 (3)	<b>1</b> <b>(1)</b>			<b>3</b> <b>(4)</b>
<b>Percentage of appeal hearings completely vacated</b>	25% (27%)	<b>14%</b> <b>(20%)</b>			<b>20%</b> <b>(25%)</b>
Lawyer	2	1			3
Paralegal	0	0			0

<sup>1</sup> This includes PMC motion hearings.

<sup>2</sup> This includes AMC motion hearings.

## Reasons for Vacated Hearings

A hearing may be vacated for more than one reason. These tables show the number of times each reason resulted in a vacated hearing. In these tables, L represents lawyers and P represents paralegals.

**Table 9 Reasons hearings were vacated per quarter.**

<b>Reasons Hearings Were Vacated</b>	<b>Q1 (L)</b>	<b>Q1 (P)</b>	<b>Q2 (L)</b>	<b>Q2 (P)</b>	<b>Q3 (L)</b>	<b>Q3 (P)</b>	<b>Q4 (L)</b>	<b>Q4 (P)</b>
Agreed Statement of Facts (ASF) concluded / expected		1	2					
Cross-examination of witness rescheduled			1					
Evidence	1							
Hearing proceeded in writing		1						
Matter abandoned	2		1					
Matter finished	2							
Matter stayed	2							
Motion heard instead	1							
New representative	2		3					
Panel ill / unavailable	1		1					
Party / representative / key witness ill / unavailable	5		7	2				
Party / representative unprepared	6		1					
Party subject of other proceeding	1		1					
Returned to PAC	1							
Submissions to be made	1							
Party to review disclosure			1					

**Table 10 Reasons that portions of hearings were vacated per quarter.**

<b>Reasons Portions Of Hearings Were Vacated</b>	<b>Q1 (L)</b>	<b>Q1 (P)</b>	<b>Q2 (L)</b>	<b>Q2 (P)</b>	<b>Q3 (L)</b>	<b>Q3 (P)</b>	<b>Q4 (L)</b>	<b>Q4 (P)</b>
ASF concluded / expected		1	6	1				
Hearing completed ahead of time estimated		1	1					
Panel ill / unavailable			1					
Party / representative / key witness unavailable / ill	1		1					
Matter finished			4					

## Calendar Days Scheduled and Vacated

The number of hearing calendar days scheduled is listed below. Multiple hearings are often scheduled on each calendar day. A vacated calendar day is a day on which no scheduled hearings or appearances before the PMC or AMC proceeded. The day an adjournment request is heard is not counted as a vacated calendar day. For example, if a request to adjourn a three-day hearing was granted on the first day, only the remaining days are counted as vacated. Or, if one hearing was vacated, but other hearings proceeded on the same day, that day is not counted as vacated. Some hearings and appeals were heard on the same calendar day.

Reasons for vacated calendar days are noted in Table 12.

**Table 11 Number of calendar days that were scheduled and vacated in the Hearing and Appeal Divisions**

	Q1	Q2	Q3	Q4	Cumulative
Number of available calendar days	62 (62)	63 (63)			125 (125)
<b>Number of Hearing Division calendar days scheduled</b>	51 (59)	<b>57 (61)</b>			<b>108 (120)</b>
Number of Hearing Division calendar days vacated	5 (5)	5 (2)			10 (7)
Percentage of Hearing Division calendar days vacated	10% (9%)	9% (3%)			9% (6%)
<b>Number of Appeal Division calendar days scheduled</b>	12 (13)	<b>7 (6)</b>			<b>19 (19)</b>
Number of Appeal Division calendar days vacated	1 (3)	1 (2)			2 (5)
Percentage of Appeal Division calendar days vacated	8% (23%)	14% (33%)			11% (26%)

## Reasons For and Number of Resulting Vacated Calendar Days

The first figure in each quarter's column represents the number of times a panel accepted this reason. The second figure represents the number of resulting vacated calendar days. The number of calendar days vacated shown on this page may be greater than the calendar days vacated as reported in Table 11 because more than one matter may have been scheduled to be heard on the same day and all were vacated; so one calendar day may have been vacated for more than one reason and for more than one matter.

**Table 12 Reasons and the number of times each was accepted and resulted in vacated calendar days.**

<b>Reasons For Vacated Calendar Days</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
ASF concluded / expected	3-3	<b>4-4</b>		
Counsel unprepared	3-3	<b>1-1</b>		
New representative	2-2	<b>1-1</b>		
Cross-examination of witness rescheduled		<b>1-1</b>		
Panel ill / unavailable		<b>2-2</b>		
Party or representative unavailable / ill		<b>1-1</b>		

## Parties' Adjournment Requests

The following table lists the number of adjournment requests made to the Law Society Tribunal in each quarter. Adjournment requests reported below may relate to matters scheduled to be heard during this quarter or in a subsequent quarter. In this table, L represents lawyers and P represents paralegals.

**Table 13 Number of adjournment requests granted and denied per quarter by the Hearing and Appeal Divisions**

<b>Adjournment Requests</b>	<b>Q1 (L)</b>	<b>Q1 (P)</b>	<b>Q2 (L)</b>	<b>Q2 (P)</b>	<b>Q3 (L)</b>	<b>Q3 (P)</b>	<b>Q4 (L)</b>	<b>Q4 (P)</b>	<b>Cumulative</b>
Granted by PMC	8 (9)	1 (0)	<b>1 (7)</b>	<b>2 (0)</b>					<b>12 (16)</b>
Denied by PMC	3 (0)	0 (0)	<b>1 (3)</b>	<b>0 (0)</b>					<b>4 (3)</b>
Granted by Hearing Division	4 (10)	0 (3)	<b>11 (10)</b>	<b>0 (0)</b>					<b>15 (23)</b>
Denied by Hearing Division	1 (0)	0 (1)	<b>3 (1)</b>	<b>1 (0)</b>					<b>5 (2)</b>
Granted by AMC	0 (0)	0 (0)	<b>0 (0)</b>	<b>0 (0)</b>					<b>0 (0)</b>
Denied by AMC	0 (0)	0 (0)	<b>0 (0)</b>	<b>0 (0)</b>					<b>0 (0)</b>
Granted by Appeal Division	0 (0)	0 (0)	<b>0 (0)</b>	<b>0 (0)</b>					<b>0 (0)</b>
Denied by Appeal Division	0 (0)	0 (0)	<b>0 (0)</b>	<b>0 (0)</b>					<b>0 (0)</b>

## Parties' Position on Adjournment Requests

### Lawyer Matters

Table 14 Parties position on adjournment requests in lawyer matters for Q1.

Adjournment Requests	On Consent	Opposed	Unopposed	Total
Granted by PMC	0	1	0	1
Denied by PMC	0	1	0	1
Granted by the Hearing Division	2	4	5	11
Denied by the Hearing Division	0	3	0	3

### Paralegal Matters

Table 15 Parties position on adjournment requests in paralegal matters for Q1.

Adjournment Requests	On Consent	Opposed	Unopposed	Total
Granted by PMC	0	2	0	2
Denied by PMC	0	0	0	0
Granted by the Hearing Division	0	0	0	0
Denied by the Hearing Division	0	1	0	1

## Tribunal Reasons Produced and Published

The number of reasons produced does not equal the number of reasons published because some reasons produced in a quarter may not be published or will be published in a subsequent quarter.

**Table 16 Number of oral and written reasons produced and published per quarter.**

	Q1	Q2	Q3	Q4	Cumulative
<b>Number of written reasons produced</b>	47 (42)	<b>57 (36)</b>			<b>104 (78)</b>
Lawyer	40	49			89
Paralegal	7	8			15
<b>Number of written reasons published</b>	47 (47)	<b>57 (41)</b>			<b>104 (88)</b>
Lawyer	40	49			89
Paralegal	7	8			15
<b>Number of oral reasons produced</b>	16 (13)	<b>15 (22)</b>			<b>31 (35)</b>
Lawyer	12	13			25
Paralegal	4	.2			6
<b>Number of oral reasons published</b>	18 (10)	<b>11 (8)</b>			<b>29 (18)</b>
Lawyer	12	10			22
Paralegal	6	1			7

Tab 12



September 22, 2016

**Update Report****TAG – The Action Group on Access to Justice****Access to Justice Week**

TAG is coordinating Ontario's first Access to Justice Week with a wide range of partners from October 17 to 21. The week will be an opportunity to engage the public and explore current access to justice issues such as technology, public legal education and child welfare.

This week will also feature the launch of [Steps to Justice](#), a digital initiative led by CLEO that provides plain language information about common legal problems. The content is available from CLEO's website and can also be embedded by other organizations on to their websites. TAG played a key role in facilitating collaboration among key justice stakeholders to develop the Steps to Justice.

Learn more about Access to Justice Week events and related registration details on the [TAG website](#).

**Architects of Justice**

Architects of Justice is TAG's initiative that increases public participation in the development of access to justice solutions. Last spring law and paralegal students were recruited to join the Architects of Justice project through on-campus and online promotion. They were tasked with sharing public legal education materials and inviting people to imagine the justice system of the future at summer events in Toronto, Kingston and Windsor. The students also surveyed the public about access to justice using iPads. Over 1200 people completed the survey and data is currently being reviewed.

Evaluations from the students are positive with much of the feedback stressing that engaging with the public provided a valuable experiential education opportunity. Student reflections will be shared publicly in the coming weeks. TAG's counterpart in Saskatchewan, the Deans Forum has adopted the Architects of Justice program, they will be launching their efforts this fall.

**Imprisoning the Innocent**

We are pleased to partner with Innocence Canada and the Canadian Civil Liberties Association on a Continuing Professional Development session that brings together a variety of speakers with a wide range of perspectives on Canada's bail system. The event takes place on October 11 in the Donald Lamont Learning Centre at the Law Society of Upper Canada and will also be webcast. Register on the [TAG website](#).

This program will:

- Highlight recent academic research findings on bail in Canada
- Provide an overview of recent policy recommendations for reforming the bail system
- Introduce initiatives from the Ministry of the Attorney General and Legal Aid Ontario aimed at addressing systemic issues in the bail system
- Provide concrete, practical guidance, from both defence and Crown perspectives, on best practices that individual lawyers and adjudicators should implement to improve the bail system
- Review suggestions for practical implementation of Gladue principles and ameliorate systemic discrimination at the bail stage

Speakers Include:

- Sukanya Pillay, Executive Director and General Counsel, Canadian Civil Liberties Association
- Dr. Jane Sprott, Department of Criminology, Ryerson University
- Abby Deshman, Director of Public Safety Program, Canadian Civil Liberties Association
- Danny Morton, Legal Counsel with the Aboriginal Justice Division, MAG
- Lori Montague, Deputy Crown Attorney and Former Co-Chair of the MAG Bail Experts Table
- Georgia Koulis, Duty Counsel Manager at 1000 Finch Ave West Court
- Susanne Hunter, Manager Duty Counsel Services (Criminal), GTA
- Jilliam Rogin, Review Counsel at Community Legal Aid, University of Windsor
- Elizabeth McIsaac, President, Maytree (moderator)
- Anil Kapoor, Lawyer, Kapoor Barristers (moderator)