

March 22, 2022

Law Society of Ontario
130 Queen Street West
Toronto, Ontario
M5H 2N5

Dear Professional Development and Competence Committee:

RE: CONSULTATION FOR MANDATORY MINIMUM COMPENSATION FOR EXPERIENTIAL TRAINING FOR LICENSING CANDIDATES

Since 1919, the Women's Law Association of Ontario ("WLAO") has dedicated itself to advancing the interests of women in the legal profession and society through advocacy, mentorship, and professional development. The WLAO welcomes the opportunity to contribute its understanding of inequality and discrimination to the Law Society of Ontario's ("LSO") consultation concerning mandatory minimum wages for licensing candidates.¹ The question has critical importance from an equity perspective, given that racialized and diverse candidates are disproportionately among those who struggle to find placements and who take on unpaid placements.

The WLAO recommends that the LSO adopt and enforce standards of minimum wage remuneration for articling and Law Practice Program ("LPP")/Programme de Pratique du droit ("PPD") students at least to the province's minimum wage. The WLAO submits that fairness demands that the licensing process should not impose onerous financial burdens on the most vulnerable in the profession. In addition, mandatory minimum compensation assists the LSO in fulfilling its mandate to regulate Ontario's legal profession in the public interest. It allows the LSO to provide equal access to the profession and eliminates practices that reinforce the systemic discrimination that diverse candidates experience in society.

¹ <https://lso.ca/about-lso/initiatives/lawyer-experiential-training-program-enhancements>



The WLAO's response in this consultation includes recommendations to bolster the financial ability of sole practitioners and small firms to provide paid placements. Support for sole practitioners and small firms is vital because these firms provide the greatest number of placements and provide experiential training in areas of law not serviced by the large firms. In addition, the work that these firms conduct promotes social justice and access to justice principles.

The WLAO interviewed current licensing candidates and recent calls for their input on this matter. As one recently admitted racialized female lawyer stated:

I had to article for free because I could not find other work. I was hired by a sole practitioner who worked with three lawyers in shared chambers. I worked full-time. The lawyers that I worked for could afford to pay me but chose not to. I had to work because I had already invested a lot of money and time into my education. It was my dream to become a lawyer.

Other licensing candidates in unpaid positions reported that they felt exploited. Some noted that while they saw their labour contributing directly to revenue generation, they received no financial compensation, not even a stipend. One candidate remarked that it was "mind-boggling" that they are not paid when the minimum wage in Ontario is \$15.00 per hour.

BACKGROUND OF 2018 REPORT AND 2021 AMENDMENTS

In November 2021, Convocation made decisions on experiential training that deviated from the recommendations reached in its 2018 *Report Professional Development & Competence Committee Options for Lawyer Licensing: A Consultation Paper*.² This derogation from the 2018 recommendations occurred notwithstanding that the 2018 Report was a product of extensive consultations and a detailed examination of the licensing process. The LSO's 2018 Report included measures such as the education of principals and oversight of placements. It also recommended a mandatory minimum wage for licensing candidates. The pandemic delayed the implementation of the recommendations. However, when Convocation addressed the 2018 Report on November 26,

² <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-november-2021-professional-development-and-competence-report.pdf>



2021, the LSO altered several aspects of the recommendations and opted to modify the mandatory aspect of the compensation in favour of a "best practices" approach, which merely "encourages" that all experiential training placements be paid, subject to further consultation.

The WLAO favours enforced mandatory minimum compensation. The WLAO is not satisfied that the best practices approach will sufficiently curtail the reliance on unpaid labour. In addition, a justification for deviating from the mandatory minimum recommendation arose over concerns of the availability of placements during the pandemic. These concerns are less pressing because the data show that the number of articling placements has rebounded to pre-pandemic levels.

FACTORS SUPPORTING MANDATORY MINIMUM COMPENSATION

Several factors support mandatory minimum compensation for licensing candidates. First, many law students graduate with a substantial debt load. Tuition for law schools across Ontario ranges between \$19,000 and \$37,000 per year. Most law students graduate with exorbitant student loans. According to the 2019 report published by the Law Students' Society of Ontario ("LSSO"), students acquire approximately \$83,000 in debt by their third year of law school.³ Approximately 75% of students fund their legal education with a secured line of credit. In addition to the student debt, licensing candidates face significant licensing fees of nearly \$5000.00. In December 2021, the LSSO called on the LSO to implement the previously approved mandatory minimum wage.⁴

Second, those candidates who take on unpaid positions and participate in the LPP disproportionately arise from racialized and diverse communities. Racialized and diverse candidates are also over-represented amongst candidates who currently do not have a placement. The LSO has long recognized the barriers that racialized and diverse candidates experience in licensing. According to the 2016 Report *Working Together for Change; Strategies to Address Issues of Systemic Racism in the Legal Professions* 40 % of racialized licensees identified race as barrier to entry into the profession:

³ Just or Bust? Results of the 2018 Survey of Ontario Law Students' Tuition, Debt, & Student Financial Aid Experiences <https://s3.amazonaws.com/tld-documents.llnassets.com/0010000/10102/law%20students'%20society%20of%20ontario%20-%20just%20or%20bust%20report.pdf>

⁴ <https://www.lssso.ca/post/lssso-s-mandatory-minimum-wage-submission-soumission-obligatoire-du-salaire-minimum>



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.

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 ⁵

Third, the power imbalance between licensing candidates and their employers creates an environment for mistreatment. Almost one in five candidates reported harassment, discrimination or mistreatment during articles. The power imbalance between the principal and the candidate is exacerbated in the context of unpaid licensing candidates. Mistreatment of licensing candidates, especially those under a financial strain, erodes their mental health. Licensing candidates do not receive *Employment Standards Act* protections. Given the lack of protection, the LSO must take the necessary steps to ensure that the most vulnerable in the profession are protected rather than enabling or creating opportunities for their exploitation.

Fourth, the LSO has a leadership role in delineating the scope of the conduct for lawyers. Lawyers are directly responsible for applying constitutional rights, human rights, employment and labour laws. As officers of the court, the public expects that lawyers adhere to prevailing legal principles and norms. The LSO should not allow its structures to circumvent basic legal protections accepted in society. Moreover, unpaid placements perpetuate within the LSO the inequality and systemic barriers that racialized and diverse candidates experience. It would harm the reputation of the LSO

⁵ *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* at paras 50 and 51.



and the legal profession were the public to see that the LSO countenances or ignores the differential treatment of racialized and diverse licensing candidates based on immutable factors.

Furthermore, the LSO has a statutory duty to protect the public interest.⁶ The LSO has argued that it is in the public interest to have equal access to the profession and to have a profession that is diverse and reflective of the population of Ontario.⁷ Mandating minimum compensation will ensure entry into the profession of those candidates who allow the LSO membership to better reflect society.

SUPPORT FOR SOLE PRACTITIONERS AND SMALL FIRMS

As a corollary to a mandatory minimum compensation of licensing candidates, the WLAO asks that the LSO provide financial support for sole practitioners and small firms to assist them in delivering paid placements. Sole practitioners and small firms play an integral role in training licensing candidates, creating the bulk of placements. They also provide legal services to segments of society who otherwise would not have access to justice, including to low-income, rural, racialized and vulnerable communities. Therefore, the benefits of assisting sole practitioners and small firms go beyond the direct remuneration of the licensing candidates

Sole practitioners and small firms form the backbone of the licensing process. According to the data, sole practitioners and small firms provide the majority of the licensing placements, accounting for approximately 500- 600 placements. In contrast, large firms provide only 310 placements and the government 214 placements. The LSO estimates that 130 – 150 placements are paid at less than \$20,000 or were unpaid. The majority of these placements were with sole practitioners or law firms of two to ten lawyers.⁸

Over the last five years, the LSO has seen an 18% increase in the number of licensing candidates without a commensurate increase in the number of placements. Consequently, 500 candidates have entered the licensing process within the last three years but have yet to secure a placement.⁹ The

⁶ *Law Society Act*, R.S.O. 1990, c. L.8 s. 4.2

⁷ See *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518 Factum of the LSUC paras 18 – 19.

⁸ Professional Development and Competence Committee, “Experiential Training Enhancements”, available at <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-november-2021-professional-development-and-competence-report.pdf>, pages 12, 13 and 18.

⁹ *Ibid.*, p. 11



pandemic resulted in approximately 170 fewer articling placements in 2020 than in 2019. However, the number of placements in 2021 appears to be returning to 2019 levels.¹⁰

At the November 2021 meeting, Convocation based its decision to move away from the 2018 Report recommendations for mandatory minimum compensation based on two concerns. First is the adverse impact of the pandemic on the number of placements. Second is the concern that mandating compensation would lead to a decrease in placement opportunities. The concern over the pandemic's adverse impact has decreased as the number of placements has rebounded to pre-pandemic levels. Second, the LSO has provided no reliable data expressing the number of placements that would be lost in the face of mandatory minimum compensation. However, given that the minimum wage costs \$600 per week, the imposition of a minimum wage standard will likely result in a marginal number of placement losses. In any event, the WLAO offers recommendations to increase the overall number of placements through support mechanisms directed at sole and small firms.

RECOMMENDATIONS

The WLAO recommends that the LSO adopt and enforce standards of minimum wage remuneration for articling and LPP students and suggests the following as mechanisms to attain this objective:

- a) The WLAO urges the LSO to consult with stakeholders to develop direct investment into qualifying sole and small firms to assist in compensating licensing candidates. This would address the issue of unpaid placements and would promote access to justice. The LSO's and the Law Foundation of Ontario's ("LFO") mandate is access to justice. WLAO asks the LSO to consult with the LFO to directly fund access to justice by assisting the main individuals who deliver that service, sole practitioners and small firms who work with marginalized communities and services in areas not covered by the large firms.
- b) The WLAO proposes other adjustments to assist qualifying sole practitioners and small firms such as that:
 - i) The LSO consult with LAWPRO to create LAWPRO credits for qualifying principals;
 - ii) The LSO defer licensing fees for qualifying students;

¹⁰ *Ibid.*, p. 10



- iii) The LSO reduce annual membership fees for qualifying principals; and
 - iv) The LSO create CPD credits for qualifying principals.
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- c) The LSO works with Legal Aid Ontario to increase the availability of candidate billing and second-chair counsel billing for qualifying sole practitioners and small firms who take on a licensing candidate. This step would increase access to justice and build a strong qualified bar in the areas served by sole practitioners and small firms;
 - d) The LSO works with the LFO to increase the number of fellowships funded through the LFO's Public Interest Articling Fellowship (PIAF) and other related LFO projects such as the Small Firm and Sole Practitioner Fellowship¹¹;
 - e) The LSO works with government and large firms to increase the number of placement opportunities;
 - f) The LSO provides licensing principals with training to recognize the value of a diverse workforce and provide employers with the tools to recruit diverse candidates; and
 - g) The LSO extend or make permanent the eight-month minimum term for the articling program.

COMMENT ON THE FUTURE OF THE LICENSING PROCESS

The fundamental focus of the WLAO's submission is to call for the adoption and enforcement of mandatory minimum compensation for licensing candidates. However, in this section, the WLAO offers additional remarks related to the licensing program for further consideration.

The WLAO acknowledges that the experiential training component of the licensing process serves an important function in training lawyers. It provides the licensing candidate with the opportunity to apply theoretical legal knowledge in a supervised practice setting. It also allows candidates to meet and build networks with established lawyers. This facilitates the candidate's ability to find remunerative work as a licensed lawyer. However, despite its value, the articling program has been

¹¹ <https://commonlaw.uottawa.ca/en/students/career-and-professional-development-office/employers/fellowships>



under chronic stress as it lacks the number of placements required to accommodate the number of licensing candidates yearly.

The WLAO's recommendations articulated above offer solutions to the current problem of unpaid work. However, a more expansive approach may be required to address challenges in the licensing process. Therefore, the WLAO urges the LSO to conduct consultations to reshape the licensing process.

Law Schools

Given the direct role that the law schools play in determining the number of law graduates, the WLAO recommends that the LSO engage in consultations with the law schools, the profession and other stakeholders to work towards solutions in this area.

- i) Law schools should consider linking admissions numbers to the conditions of the legal market;
- ii) The LSO should consult with law schools to create a practical skills-based training program in the third year of law school. There is inherent practicality built into this recommendation. The articling recruitment process means that students know by the end of their second year whether they have secured an articling placement upon graduation. Students without an articling position can opt into practical skills training courses to gain experiential training. Producing skilled candidates lowers the pressure on the legal market to absorb candidates;
- iii) Law schools are capable of offering such skills training. The Bora Laskin Faculty of Law at Lakehead offers a model of this experiential training. Moreover, law schools provide clinic programs. The clinic programs can act as a model for the proposed experiential training within the law school. This would assist in lowering the number of months required in an articling position - and alleviate concerns that students have not received adequate experiential training for the practice of law.



A Single Stream Licensing Process LPP

Furthermore, the WLAO asks the LSO to engage in consultations to review the viability of a single stream LPP/PPD licensing process. This would eliminate the perception of a two-tier licensing process and ensure consistent and reliable experiential training. The difficulty in a single stream is the reticence by some in the legal community to move away from the traditional articling process and the program's cost. However, member contributions could offset the costs. The LSO should consult with all stakeholders to assess the viability of increasing the LSO member contributions to support a single-stream experiential training LPP program.

The LPP offers key benefits for licensing candidates, including the following:

- i) During the experiential training program in the LPP, candidates receive consistent experiential training in a variety of areas of law;
- ii) The LPP has a mentorship program that provides opportunities for candidates to liaise with other lawyers; and
- iii) The LPP provides an option for foreign-trained candidates who are disproportionately excluded from the articling hiring process.

The main benefit to employers is that they receive a licensing candidate who has drafted over 100 legal deliverables in the LPP, four months prior to commencing in their workforce. The top employers in the LPP include Dentons, the Ministry of the Attorney General, Wood Gold LLP, Samsung, Rogers, and Legal Clinics.

The WLAO's comments in this section highlight the systemic problems in the licensing process to prompt reform in the licensing process. However, these suggestions should not distract from the WLAO's primary position that the LSO adopt and enforce mandatory minimum compensation for licensing candidates.



Conclusion

The reliance on unpaid labour harms the individual candidate and damages the reputation of the LSO and the legal profession. Accordingly, the WLAO asks that the LSO answer the urgent call for mandatory minimum compensation for licensing candidates without delay.

Thank you for the opportunity to engage in these important consultations.

Sincerely,

A black rectangular box containing a white, handwritten signature that reads "Jennifer Gold".

Jennifer Gold, President of the WLAO

Advocacy Committee Task Force Members

Yanique Russell
Ayesha Khanna
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