



Topic 2: Market Dynamics and the Lawyer Profession

Discussion Group Summary Report

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Dialogue on Licensing

What: Comprehensive analysis of the lawyer licensing process

Goal: To formulate long-term recommendations for an appropriate and sustainable licensing system for lawyers

When: Spring 2017

Where: Held in seven cities across Ontario

Purpose of the Dialogue on Licensing: Engage directly with the legal profession and other stakeholders (lead by a professional facilitator who is not a lawyer with no vested interest in the outcome of the discussions).

Reference Materials: To facilitate a more robust and fact-based dialogue, reference materials were provided on a microsite, accessible to all attendees and individuals wishing to contribute to the dialogue: <https://lsucdialogue.ca/>

Topics: The topics of the four dialogue sessions are as follows:

Topic 1: The Need For Change

Topic 2: Market Dynamics and the Lawyer Profession

Topic 3: Licensing Examinations: Assessment of Entry-level Competence (webcast)

Topic 4: Transitional Training

Topic 2 Discussion Groups: Four, two-hour discussion groups about Market Dynamics and the Lawyer Profession were held in May and June.

1. May 23 in Toronto
2. May 25 in Ottawa
3. May 30 in Thunder Bay
4. June 1 in Windsor

Objectives for discussion about Topic 2: Market Dynamics and the Lawyer Profession

- To discuss the ability of the current licensing process for lawyers to fairly and validly support entrants into the system while assuring competence in the public interest
- To consider the future of legal services provision – for example, how to ensure that the licensing process adequately assesses ability to practice in this new world at the time of entry to the profession
- To consider developments in licensing processes in other jurisdictions and professions that may offer potential opportunities to address supply and demand in the long term

Registrations and Attendance by Discussion Group Location

Discussion Group	Registered	Walked-In	No Show	Attended	Attended versus Registered
Toronto	164	4	108	60	- 104 (37%)
Ottawa	53	0	27	26	- 27 (49%)
Thunder Bay	18	1	6	12	- 6 (67%)
Windsor	25	0	14	11	- 14 (44%)
Total	264	5	155	109 ¹	- 151 (41%)

¹ Sum of participants at the discussion groups, including repeat attendance of four lawyers who attended two of the four discussion groups and one lawyer who attended all four discussion groups.

Discussion Group Participants

102² individuals attended one or more of the five discussion groups.

- 79 lawyers (77%)
- 4 paralegal (4%)
- 15 neither lawyer nor paralegal (15%)
- 1 licensing candidate (1%)
- 3 law students (3%)

Organizations and Associations Represented at Discussion Groups

Of those who participated in a discussion group, 31 indicated that they were representing one of the following 17 organizations and associations:

- A2Justice (A2J)
- Association des juristes d'expression française de l'Ontario (AJEFO) (2)
- Carleton County Law Association (5)
- Community Legal Aid
- Law Commission of Ontario
- Legal & Literary Society of Osgoode Hall Law School of York University
- Ministry of the Attorney General of Ontario
- Ontario Bar Association
- Osgoode Hall Law School (3)
- Osgoode Professional Development
- Ryerson Law Practice Program (3)
- The Advocates' Society (3)
- Thunder Bay Law Association, FOLA

² Number of *unique* participants at the discussion groups; excluding repeat attendance of four lawyers who attended two of the four discussion groups and one lawyer who attended all four discussion groups.

- Toronto Lawyers Association
- University of Ottawa, Faculty of Law (2)
- University of Toronto Faculty of Law (2)
- University of Windsor, Faculty of Law (2)

Discussion Group Participants by License Date

Time-frame	Participants (%)
Licensed pre-1990	26 (27%)
Licensed 1990-1999	11 (11%)
Licensed 2000-2009	20 (21%)
Licensed 2010-2017	24 (25%)
Not licensed	16 (16%)
Total	97 ³ (100%)

³ License date for 5 participant is unknown

Discussion Group Participants by Work Setting

Work Setting	Participants (%)
Education	28 (30%)
Medium law firm (6 – 199 lawyers)	22 (24%)
Sole practice	14 (15%)
Large law firm (200+ lawyers)	10 (11%)
Small law firm (2- 5 lawyers)	5 (5%)
Government or public agency	5 (5%)
In-house counsel for a private corporation	2 (2%)
Legal clinic	2 (2%)
Other	2 (2%)
Non-governmental organization (NGO)	2 (2%)
Crown's office	0
Tribunal	0
Total	92 ⁴ (100%)

⁴ Work setting for 10 participants is unknown.

Discussion Group Participants by Region

Region	Participants (%)
<i>Toronto (GTA)</i>	54 (56%)
<i>East, including Prescott/Russell (L'Orignal/Hawkesbury), Ottawa-Carleton (Ottawa), Renfrew (Pembroke), Stormont/Dundas/Glengarry (Cornwall), Lanark (Perth), Lennox & Addington (Napanee), Frontenac (Kingston), Leeds & Grenville (Brockville), Hastings (Belleville)</i>	23 (24%)
<i>Northwest, including Kenora (Kenora), Thunder Bay (Thunder Bay), Rainy River (Fort Frances)</i>	10 (10%)
<i>Southwest, including Huron (Goderich), Perth (Stratford), Oxford (Woodstock), Middlesex (London), Lambton (Sarnia), Elgin (St. Thomas), Kent (Chatham), Essex (Windsor)</i>	8 (8%)
<i>Central South, including Waterloo (Kitchener), Burlington/Hamilton (Hamilton), Lincoln/Niagara North (St. Catharines), Welland (Welland), Brant (Brantford), Norfolk (Simcoe), Haldimand (Cayuga)</i>	1 (1%)
<i>Central East, including Muskoka (Bracebridge), Victoria & Haliburton (Lindsay), Simcoe (Barrie), Durham (Whitby), Peterborough (Peterborough), Northumberland (Cobourg)</i>	1 (1%)
<i>Northeast, including Cochrane (Timmins), Algoma (Sault Ste. Marie), Sudbury (Sudbury), Temiskaming (Haileybury), Nipissing (North Bay), Parry Sound (Parry Sound)</i>	0
<i>Central West, including Bruce (Walkerton), Grey (Owen Sound), Dufferin (Orangeville), Wellington (Guelph), Peel (Brampton), Halton (Milton)</i>	0
Total	97⁵ (100%)

⁵ Region information for 5 participants is unknown.

Discussion Group Polling

A poll was conducted at each discussion group; below is the question and the results.

Question: Which of the following models from other regulators could be considered to address the objectives of lawyer licensing in today's market?

Option	Toronto	Ottawa	Thunder Bay	Windsor	Total	Ranking
A. Streamlined licensing requirements by practice focus (e.g., barrister, solicitor)	4	0	0	0	4	3
B. Limited Licences in specific areas of law to facilitate targeted service provision (e.g., family law, real estate law, etc.)	1	0	0	0	1	4
C. A shift of some requirements to the post-licensing period (e.g., supervised practice in first few years)	8	3	6	4	21	2
D. Additional pathways to experiential training	15	16	3	4	38	1

Topic 2: Market Dynamics and the Lawyer Profession

Dialogue Themes

Theme	Positive/Observations	Critique/Questions	Recommendations
Market Study	Perhaps there is no problem at all; currently 38% don't practice anyway.	Concerned that only 38% of women are practicing but 52% are graduating; female lawyers make less money.	Study should have more demographic information (racialized/gender).
		Market study incomplete re: regional imbalances (too many lawyers in GTA/hard to find articling candidates or lawyers in smaller communities.	Revise study to demonstrate regional need.
		Futility of going to GTA to recruit— candidates do not want to article outside of GTA and lawyers do not want to practice outside of GTA.	
		Market study incomplete re: areas of service focus—family law vs. corporate law.	Revise study to reflect A2J and gaps re: area of service focus.
		Study views the market from the profession's perspective rather than the stakeholder perspective.	Study should relate numbers to population and economic activity.
		Study does not acknowledge vibrant legal market on Bay Street but large need for legal services below it.	
		Don't support the estimate of 1.6 lawyers to 1 lawyer job by 2025.	

Theme	Positive/Observations	Critique/Questions	Recommendations
Changes in the Lawyer Profession		Technology will reduce lawyer jobs (e.g., e-discovery, artificial intelligence, 'do-it-yourself, etc.).	Lawyers should be forced to innovate and deal with market forces.
		What can the profession do to increase demand for lawyers?	Let market forces sort out market imbalance.
		People are representing themselves in growing numbers.	Lawyers will have to reduce the cost of providing legal services.
		Worried about encroachment on the legal profession by other professions leading to shortage of jobs.	
			Given the increase in sole practitioners, Law Society must produce practice-ready grads.
Role of Law Society given Market Dynamics	Even with communication, students will still go to law school.	Law Society has not done enough to communicate market imbalance to law students.	Law Society should provide information / statistics on their website about limited availability of articling positions and jobs, and predictions for the future of the profession (1.6 to 1 lawyers to jobs by 2025).
		Lawyers in all sized firms in small communities find it futile to recruit for articling candidates and lawyers from GTA.	Law Society should help communicate and provide incentives to candidates and lawyers the advantages of practicing outside of GTA or in underserved areas of law.

Theme	Positive/Observations	Critique/Questions	Recommendations
		What can the Law Society do to reduce the number of lawyer candidates?	Law Society should not be concerned with market dynamics; only on assessing competence.
		Law Society is a barrier to entry to the profession.	Not the role of the Law Society to restrict supply to the profession but only with assessing entry level competence.
	Not the role of the Law Society to promise jobs to all law school graduates—by doing so they are feeding the problem.	What is the Law Society doing to satisfy lawyer demand in Ontario?	It is the responsibility of the Law Society to ensure access to the profession across the province and not just in GTA.
		Need more research regarding competencies needed in lawyers.	Law Society should fund a research study on what competencies are required for future lawyers.
		Law Society trains students to serve the rich.	Law Society should ensure new lawyers can support needs of public (A2J) vs. interest of the profession or self-regulation is at risk.
Role of Law Schools given Market Dynamics	Lakehead IPC is a good program.	Need professionals to teach programs like Lakehead IPC.	More law schools in smaller communities should develop and IPC.
		Law schools are motivated by money.	Law schools should be responsible for finding training opportunities for all graduates This will force them to restrict enrolments. (Like IPC).

Theme	Positive/Observations	Critique/Questions	Recommendations
			Law schools should encourage graduates to pursue other career paths after graduation.
		Law schools have not done enough to communicate market imbalance to students.	Law schools should clearly articulate the market for lawyers when students apply to law school.
		Students have unrealistic expectations about getting a job as a lawyer.	Do not limit entry to law school.
		Clinical training and co-op programs are expensive for law schools to operate. Significant work to track student progress. Who is going to pay?	Practical skills training should not be downloaded to the law schools.
			Offer co-op programs at law schools (beyond the Lakehead integrated program); experience should be recognized by law society.
			Limit entry to law schools from other provinces and/or outside of Canada.
		Law school is too expensive.	Law schools should reduce tuition.
			Law schools should offer internship programs for course credit.
	Law schools should have academic freedom.		Law Society cannot dictate what law schools teach.

Theme	Positive/Observations	Critique/Questions	Recommendations
			Lack of articling positions should not prevent students from going to law school.
			More clinics should be provided in law schools.
			There should be mandatory practice simulation in law school.
Barrister & Solicitor Examinations	Bar Ads were better—8 substantive courses taught by practitioners; Law Society could control content.	Current exams do not examine competencies required to be practice ready.	Require a practical examination (like Ohio).
			Allow barrister or solicitor path or both.
	Law schools emphasize those courses that are examined on bar exams.	MCQ exams are horrible.	Law Society could influence law schools by examining practical skills on the bar exams.
Licensing in Other Professions	The regulator of the medical professions plays a key role in getting pre-profession experience for medical students.		
	Other professions have Canada-wide licensing requirements.	People are using mobility laws to avoid the Ontario licensure process and then move to Ontario.	Develop Canada-wide licensing path / requirements.
			Use paralegal field placement model for pre-professional lawyer experience training.

Theme	Positive/Observations	Critique/Questions	Recommendations
	College of Teachers and Regulator worked together to get education and experience in 4 years.		Law Society to work with law schools to follow the College of Teachers model.
	Other professions offer co-op programs in university.		
	In the medical profession, specialty designations are awarded.	It would be difficult for the Law Society to police specialty designations; how would you educate the public?	Offer specialty designation like medical profession.
			Follow Ontario College of Teachers communication protocols (statistics) regarding job availability in the professions.
Licensing in Other Jurisdictions	US New York has a pro bono experiential requirement.		Require a practical examination (like Ohio).
	Western Australia has 12 months of articling with LPP-type content.		
	B.C. does not allow candidates to write their exams unless they have an articling position.	The B.C. model does not address low representation of racialized candidates in articling.	Candidates should be required to pass exams before articling.

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	<p>New York requires 32 hours of CPD as a new lawyer with more hours in ethics and practice management (e.g., Bridging the Gap program http://www.wvyounglawyers.com/members/bridge-the-gap/)</p>		
	<p>Government provides loans for law process training in Quebec. Exam is very practical; there is a high failure rate.</p>		
		<p>US have mandated clinical learning with huge financial implications for law schools.</p>	
		<p>Only 50% of licensed lawyers in the US are practicing.</p>	
	<p>B.C. does not have 100% MCQ exam.</p>		
<p>Licensing Requirements by Practice Focus (e.g., barrister vs. solicitor) or Limited Licenses by Area of Law (family, real estate, etc.)</p>	<p>Good idea to focus on both barrister and solicitor competencies. Allows for flexibility in future and broader perspective even in a focused practice.</p>	<p>Current licensing is too broad.</p>	<p>In the interests of protecting the public, training and licensing should be provided by practice area.</p>

Theme	Positive/Observations	Critique/Questions	Recommendations
		Limited licensing is not a good idea as lawyers must understand the breadth of the lawyer profession/want to produce well-rounded lawyers.	Do not offer limited licensing.
		Limited licenses or narrow scope does not help lawyers when the market changes; limits future options.	
Shift Requirements to Post-Licensing (e.g., supervised practice, CPD)	Lawyers don't know where their careers will take them; education must support lawyers post-licensing.		Law Society should implement higher level of CPD for new lawyers (like New York—32 hours with requirement in practice management).
			Supervised learning is appealing—real world mentorship of licensed lawyers.
Pathways for Transitional Experience: LPP	All licensure candidates need broad practical training and LPP is a viable / high quality program teaching these skills.	Candidates cannot get financing for taking the LPP.	LPP type of practical skills training should be provided to all candidates pursuing licensure, including articling candidates.
	LPP creates exposure to real situations in 7 areas of law.	Law Society wants to cancel the LPP program.	Law Society should not scrap LLP without a fair/equitable alternative.
	Law Society has done a good job of providing access to the professions by offering the LPP/PPD.	There is a stigma associated with the LPP.	Market the LPP appropriately to erase stigma.
			Law Society must ensure there is fair/open access.

Theme	Positive/Observations	Critique/Questions	Recommendations
		The LPP is a very high cost to operate.	The high cost of the LPP must be addressed / raise fees for all licensees, not just new licensees.
		4 months of placement is too short.	Require LPP training as part of longer articling placement.
			LPP should only allow paid work placements.
		LPP does not address the longer term issue of employment; graduates still face barriers (racialized/age/gender).	
Pathways for Transitional Experience: Articling	There have been articling shortages in the past; lawyers need to be able to respond to market changes.	It is unlikely that articling would be the chosen method of training lawyers if we were designing a licensing program today.	Law Society should not cancel articling.
	Articling is mainly in private practice.	Articling experience is too narrow to properly prepare a candidate to practice.	Shorter articling placements in different settings would address narrow focus of articling.
		Articling is inconsistent. The experience can be good but it can also be very bad.	Law Society should have more oversight of articling principals.
		Outside of the GTA, articling opportunities went down when fees for licensing candidates went up (from \$2500 to \$5000).	Articling candidates should not have to subsidize LPP.

Theme	Positive/Observations	Critique/Questions	Recommendations
	Firms hire articling candidates to give back to the profession.		Follow US system and license candidates after they pass the exams and let lawyers practice (let market forces take over).
	Licensing candidates require practice skills.	It is expensive to hire an articling candidate (especially small firms).	Lawyers not offering articling should pay more to support such training.
	Programs such as Lakehead help new lawyers commit to staying small communities.	It is expensive to hire articling candidates in small communities when the retention is so low. They only stay to get their articling then leave.	Articling should not be a bottleneck—need another experience path.
	Licensing candidates need exposure to practice.	A lower percentage of firms are providing articling positions.	Law Society should be more involved in creating a sustainable and centralized structure for placing articling candidates.
	The majority of candidates still get articling positions.	Law Society places deadline for candidates to obtain an articling placement but then does not help candidates get those placements.	If articling is a requirement, Law Society must ensure articling positions, including requiring firms to hire articling candidates, incentives to articling (e.g., CPD credits or reduced member fees).
		Diversity is not addressed by articling and is intrinsic in fairness and equity in the profession (access and lawyering services).	LPP-type training should be incorporated into articling for all candidates.

Theme	Positive/Observations	Critique/Questions	Recommendations
		Employers are taking advantage of the oversupply of candidates by offering free articling positions.	Law Society should not allow articling positions that do not pay.
Length of Transitional Experience	Shorter articling time=more jobs.	Articling is too short.	Extend articling beyond 10 months.
	The current 10 months is sufficient.	Articling is too short for candidates in small communities to establish bonds and stay.	Longer articling placements (beyond 10 months) will motivate more candidates to stay in the smaller community.
High Cost to Become a Lawyer		High cost to become a lawyer is driving licensing candidates' decisions (going to Lakehead to save tuition; going to GTA to repay education loans).	Previous law-related experience should be recognized towards transitional training.
Training to Become a Lawyer	It is important that new lawyers learn how to operate a practice.	The licensure process does not prepare candidates to deal with a variety of clients.	Candidates should be trained in cultural awareness.
			Use legal aid system to train candidates.
		There is no corporate or commercial law in the program – how can grads get this training given that many grads end up in sole practice?	

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