

Consultation on Standards for Articled Students' Remuneration and Hours of Work

Law Society of British Columbia

May 2022



Introduction

The Law Society is seeking input that will inform the development of standards for compensation and hours of work for licensing candidates during the period of practical training and work experience known as “articling.”

Until additional pathways to licensure are adopted and implemented, all licensing candidates must complete articling in order to obtain a license to practice law. Law firms and lawyers overseeing licensing candidates have considerable influence over a candidate’s professional future. This dynamic has the potential for power imbalances that could result in underpaid or unpaid articling positions.

Following a survey that received nearly 900 responses from licensing candidates, lawyers and law firms, the governing board of the Law Society endorsed in principle establishing minimum levels of financial compensation and maximum hours of work for licensing candidates, with limited exemptions. These exemptions, along with alternative pathways to licensure that are under development, are aimed at avoiding a potential reduction in the availability of articling positions.

Now, as we explore options for determining standards for minimum compensation and maximum hours of work that treats licensing candidates fairly, we are asking respondents to provide comments on:

- ❖ Factors and criteria to consider in setting a minimum level of financial compensation, as well as what might justify exemptions from the application of that standard.
- ❖ Factors and criteria to consider in setting a limit on hours of work, as well as exemptions from that limit.
- ❖ Measures to mitigate any adverse impacts resulting from the introduction of new standards.
- ❖ Additional options for fulfilling the experiential learning requirement of the lawyer licensing process.

Respondents are also welcome to offer feedback related to this consultation that may not be captured by the consultation questions.

The Issues

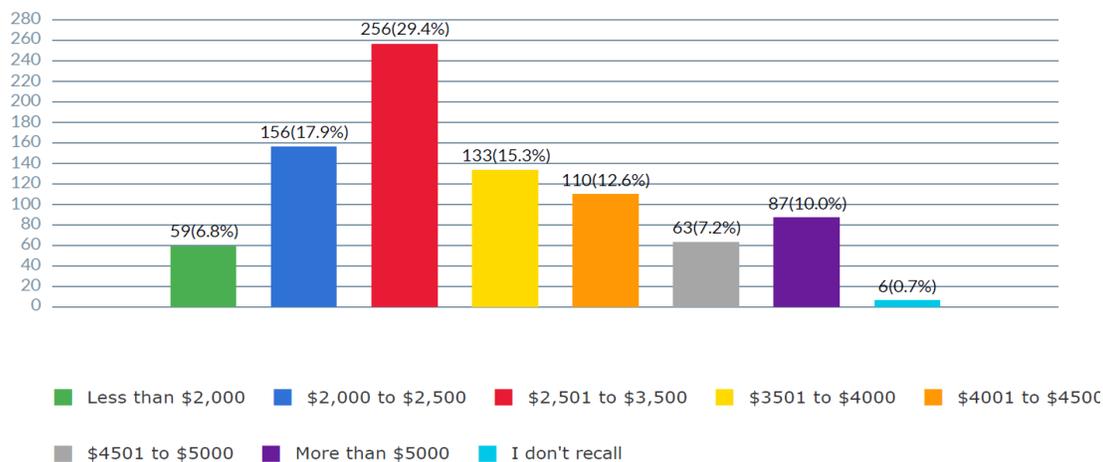
A: Minimum financial compensation for licensing candidates during articling

Key questions

- ❖ What factors or criteria should be considered in setting a minimum standard of financial compensation?
- ❖ What factors or criteria should be considered in developing exemptions from the standard for minimum financial compensation?
- ❖ What adverse impacts, if any, do you foresee in setting a standard for minimum financial compensation, and how could we mitigate those impacts?
- ❖ If you currently offer or are considering offering articling positions to licensing candidates, would a minimum financial compensation requirement affect your decision? How?

Background

Survey data collected by the Law Society indicates that 97% of licensing candidates in BC receive a monthly salary during their articling period, but also that there is a wide variation in salary levels:



This data reveals that twenty-five percent of licensing candidates receive \$2,500 or less per month, which, when coupled with the number of hours of work they perform, amounts to compensation that is at or below minimum wage. The data also reveals a small number of positions are unpaid and, in a few cases, some candidates are paying for costs associated with their articles.

The introduction of a standard for minimum financial compensation for licensing candidates during articling aims to address concerns about fairness and prevent exploitation within the licensing process, including licensing candidates accepting positions for limited or no pay, or agreeing to work excessive hours without compensation. In some jurisdictions, such as Alberta, provincial employment standards regulation apply. This is not the case in British Columbia, where licensing candidates are among a group of professions and occupations whose employees are excluded from the *Employment Standards Act*.

Insufficient compensation may also create barriers for some economically disadvantaged individuals to enter the legal profession, including those from equity-seeking groups who are simply unable to accept articling positions that do not provide basic levels of pay.

Exemptions

As a high percentage of positions are already paid at or above the equivalent of minimum wage levels for a forty hour week, the introduction of a minimum financial compensation standard is not expected to impact all law firms that offer them. However, the new requirement may result in some employers — for example, sole practitioners or smaller legal employers, or those providing legal services to underrepresented or marginalized clients for minimal or no profit — deciding that they can no longer afford to offer licensing candidates a position or to reduce the number of positions that are offered.

In order to mitigate the potential loss of positions, some have suggested the possibility of a discretionary exemption from minimum financial compensation requirements for some legal employers, such as those in the non-profit, legal aid and other public interest sectors. This approach is similar to that adopted by Australian regulators, where workplaces that provide certain types of legal services are exempt from minimum standards of pay for licensure candidates.

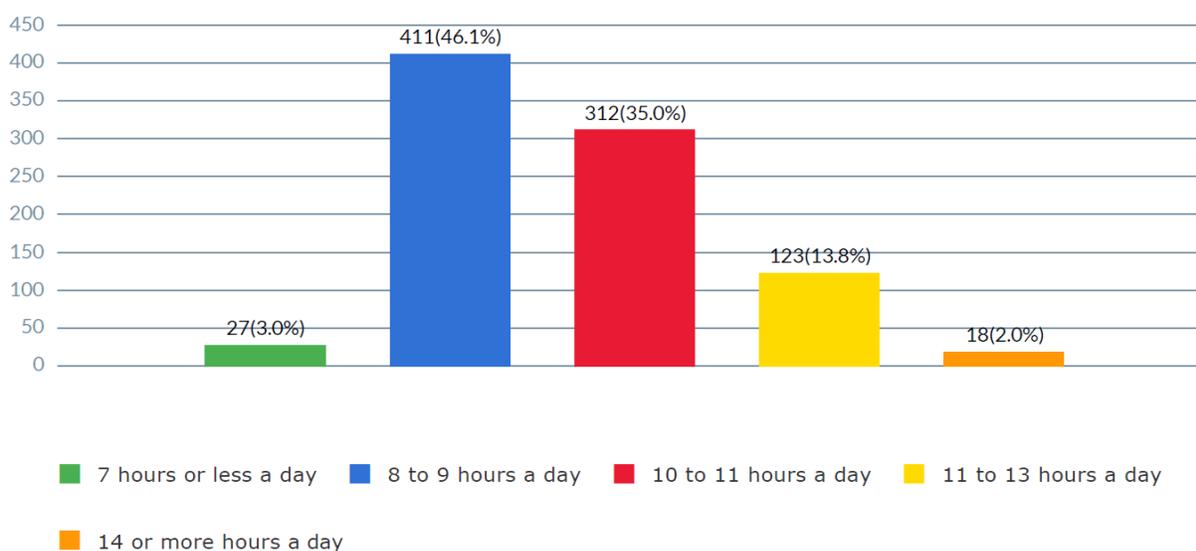
B: Limits on hours of work during articles

Key questions

- ❖ What factors or criteria should be considered in establishing a maximum limit on hours of work?
- ❖ What factors or criteria should be considered in developing exemptions from the standard for a maximum limit on hours work?
- ❖ What adverse impacts, if any, do you foresee in setting a standard for a maximum limit on hours or work, and how could we mitigate those impacts?
- ❖ If you currently offer or are considering offering articling opportunities, would a standard for hours of work affect your decision? How?

Background

Survey data collected by the Law Society indicates that most licensing candidates work long days.



In addition, 44% of licensing candidates reported that they typically performed work six days or more each week during their articling period, and 56% worked on statutory holidays.

To address concerns that some licensing candidates are being required to work an excessive number of hours during their articling period, the Law Society's governing board endorsed introducing limits on the number of hours that candidates are required to work.

Regulating hours of work is not straightforward. Some areas of legal practice involve performing work at times that fall outside ordinary business hours. For example, a residential property or business deal closing may require additional hours over a short period of time. Some areas of law may involve being available afterhours to respond to client emergencies. There may also be instances where law firms ask licensing candidates to accompany a lawyer attending court or mediation, in order to observe and learn from the experience, but then may also require them to perform additional hours of work.

One way to strike a balance may be to follow Australia's example and define standard hours throughout the week or month but allow the standard hours of work to be exceeded by a "reasonable" number of additional hours, based on a series of factors. Overtime, or time-off in lieu, are also contemplated under the scheme. This option may provide sufficient flexibility around hours of work while maintaining protection for licensing candidates overall.

Other options may also be available which ensure licensing candidates are adequately prepared for entry-level practice and the work that is required at certain points in time to fulfill their professional duties. Consideration should also be given to mitigating the potential loss of experiences that are of low economic value for legal employers, but high educational value for students.

Exemptions

Some licensing candidates and law firms have provided examples of circumstances where training or professional development opportunities would be unavailable if a strict limit on hours were to be introduced. The Law Society is interested in considering how to avoid the loss of these opportunities.

It is not anticipated that legal employers would be permitted to unilaterally seek an exemption from the limits on hours of work. However, in some articling arrangements,

students may, for example, express a desire to exceed these limits in order to maximize their involvement in experiential training opportunities.

C: Alternative pathways to licensure

Key questions

- ❖ What suggestions do you have for options in addition to articling for fulfilling the experiential learning requirement of the lawyer licensing process?

Background

Currently, articling is the only means for licensing candidates to complete the experiential training requirement of the lawyer licensing process in BC. The governing board of the Law Society has committed to developing alternatives that would increase the number of opportunities and ways for licensing candidates to fulfill this requirement.

In other jurisdictions, the experiential training requirement can be fulfilled through a clinical program that is part of the law school degree, such as at Lakehead University. Licensing candidates in Ontario also may fulfil the requirement through Toronto Metropolitan University's Law Practice Program, an eight-month program that offers law school graduates a combination of simulated training and a hands-on work term in place of articling. You may be know of other effective options that you would wish to recommend we consider.

We want to hear from you!

To send us your views on the key questions set out in this consultation paper, email Consultation@lsbc.org on or before **5 p.m. on Tuesday, June 28, 2022**.

We recognize that these questions may not address all the issues on which respondents may wish to provide input, and we welcome feedback you may wish to provide that may be relevant to establishing the new standards.

The Law Society of British Columbia may make public some or all of the comments received or may provide summaries in its public documents. When providing comments on the consultation paper, we ask that you indicate clearly the name of the individual or the organization that should be identified as having made the submission. Should you express an intention that your comments, or any portions thereof, be considered confidential, the Law Society of British Columbia will make all reasonable efforts to protect this information.

Personal information received through this comment process is collected pursuant to section 26(c) of the Freedom of Information and Protection of Privacy Act and will be used for the purpose of conducting policy analysis, the development of recommendations and decision-making relating to standards for hours of work and minimum financial compensation levels for articulated students. Questions about the collection of this information may be directed to the Law Society at consultations@lsbc.org.

Additional Reading

Lawyer Development Task Force, [“Recommendations Concerning Remuneration and Hours of Work for Articled Students”](#) (September 24, 2021).