

THE LAW PRACTICE PROGRAM: TACKLING RACIAL INEQUALITY IN THE LEGAL PROFESSION?

Michelle Flaherty and Alain Roussy*

In 2014, the Law Practice Program (LPP) was introduced in Ontario, creating an alternative to the traditional articling process. The authors consider the demographic make-up of the first cohort of the French LPP and its access to justice implications. Their survey showed that French LPP candidates were overwhelmingly racialized. Moreover, a high percentage of the candidates were 1) born outside of Canada, 2) older than the average law student and 3) male. While the statistical pool is small and although these are very early days for the LPP, the survey results suggest that the traditional articling avenue may not be fully accessible to candidates with certain personal characteristics, and that the LPP may play an important role in addressing some of those barriers. At the same time, however, the authors are concerned that unless special care is taken, the LPP could reinforce some of the existing challenges that racialized lawyers face within the legal profession.

En 2014, le Programme de pratique du droit (PPD) a été introduit en Ontario, mettant ainsi en place une solution de rechange au processus traditionnel des stages en droit. Les auteurs se penchent sur la composition démographique de la première cohorte du programme en français et son incidence sur l'accès à la justice. Un sondage effectué par les auteurs auprès des candidats au PPD révèle que la grande majorité de ceux-ci sont issus de minorités raciales. Qui plus est, un pourcentage élevé de ces candidats sont 1) nés à l'extérieur du Canada, 2) plus âgés que la moyenne des étudiants en droit et 3) de sexe masculin. Même si aux fins de l'analyse statistique l'échantillon était restreint et que le PPD n'est qu'à ses débuts, les résultats du sondage donnent à penser que les stages traditionnels en droit ne sont peut-être pas accessibles à des candidats présentant certaines caractéristiques, et que le PPD pourrait jouer un rôle important dans le cadre de l'élimination de certains de ces obstacles. Par contre, les auteurs se montrent néanmoins inquiets quant au fait que, faute d'une attention particulière, le PPD puisse servir à exacerber certains des défis qui existent au sein de la profession

* Faculty of Law, University of Ottawa. The authors thank University of Ottawa JD students Anna Lichty, Jason Mercier and Kristjan Surko for their very helpful research assistance, Joanne St Lewis for her time, support and thoughtful suggestions, the Law Foundation of Ontario for its financial support, and the anonymous reviewers for their comments and suggestions.

juridique et auxquels font déjà face les avocats et les avocates appartenant à certains groupes raciaux.

1. Introduction

Our decision to collaborate on research into the Law Society's Law Practice Program (LPP) arose out of a difference of opinion. One of us viewed the LPP with some skepticism, concerned that it would create a second class of student and, ultimately, a second class of lawyer.¹ The other saw real potential in the LPP, seeing it as a way of making the profession more accessible and ensuring that more litigants have access to counsel. In collaborating on this project, our objective was to move beyond our speculation, and learn more about the impact of this new alternative to articling. In particular, we were interested in how the LPP might affect the provision of legal services in French in Ontario and whether it would have any material impact on access to justice in French in the province.²

With these goals in mind, we designed a questionnaire, which we invited candidates of the French LPP at the University of Ottawa to complete. Our intention is to conduct a longitudinal study, and to look at how these LPP candidates fare in becoming members of the bar and in their subsequent practice of law. On October 17, 2014, we attended the French LPP program in person to present our questionnaire to the candidates. What we saw and the results of our survey have led us to look at the issues surrounding the LPP in a very different light.

¹ This concern has been expressed by others, notably by the Law Students' Society of Ontario in an open letter to the Treasurer of the Law Society of Upper Canada. See Law Students' Society of Ontario, "LSSO writes Law Society with Concerns about Law Practice Program" (12 January 2015), online: LSSO <lssocanada.ca/en/2015/01/lssowrites-law-society-with-concerns-about-law-practice-program> [LSSO, *Open Letter to the Treasurer*]. See also Law Society of Upper Canada, Articling Task Force, *Embracing Change in the Licensing Process: A Minority View* (25 October 2012) at paras 257-263, online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848> [LSUC, *Minority Report*].

² A recent report concluded that "accessing justice in French in Ontario can be more difficult, time consuming and expensive than accessing justice in English." See Justice Paul Rouleau and Paul Le Vay, French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, *Access to Justice in French* (25 June 2012) at 7, online: Attorney General of Ontario <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf>. At the same time, there is a dearth of available empirical data on the topic of access to justice in French, making the data collected as part of our study even more relevant.

The demographics of the University of Ottawa's French LPP were apparent at first glance and our initial impressions were confirmed by the survey results. The French LPP candidates were overwhelmingly racialized. Combined with this, a high percentage of the candidates were 1) born outside of Canada, 2) older and 3) male.³

Given some of the longstanding issues of race in the profession of law,⁴ we expected that racialized students would be overrepresented in the LPP. We did not, however, expect that fully 64.7 per cent would be racialized. Nor did we expect to find such a clear and common intersection of characteristics among the French LPP candidates. We also expected that LPP candidates would include some of the academically-weaker law students, based on an assumption that they generally have more difficulty securing traditional articling positions. We did not anticipate, however, that the average grade point average (as reported by LPP students) would be B, which approximates the average law school grade point average (GPA). Our initial expectation was that students with average results in law school would be in a position to secure articling positions. For many of the candidates in the French LPP, however, their inability to find a traditional articling position appears to have less to do with their relative success in law school and potentially more to do with other factors, including their personal characteristics.⁵ While the statistical pool is small and although

³ Our research focuses on the candidates of the French LPP program offered by the University of Ottawa. The larger English program is run by Ryerson University and, to our knowledge, has not been the subject of similar research, nor are statistics available regarding the demographics and characteristics of its student population. As part of our broader research, we have applied for approval to survey all LPP participants and to conduct interviews and focus groups.

⁴ See e.g. Constance Backhouse, "Gender And Race In The Construction Of 'Legal Professionalism': Historical Perspectives", Paper from the First Colloquium on the Legal Profession (October 2003), online: LSUC <www.lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf>; Canadian Bar Association, Working Group on Racial Equity in the Legal Profession, "Racial Equality in the Legal Profession" (Ottawa: Canadian Bar Association, 1999), online: CBA <www.cba.org/cba/pubs/pdf/racialequality.pdf> [CBA, "Racial Equality"]; Law Society of Upper Canada, Challenges Faced by Racialized Licensees Working Group, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper* (30 October 2014), online: LSUC <www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical%2812%29.pdf> [LSUC, *Challenges Consultation Paper*]

⁵ Our findings concerning GPA are consistent with other research. As Levin and Alkoby point out, grades are not an indicator of a student's ability to find articles; the distribution of unsuccessful articling applicants roughly correlates to the normal grade distribution or bell curve. See Avner Levin and Asher Alkoby, "Barriers to the Profession: Inaction in Ontario, Canada and its Consequences" (2013) 3:3 *Oñati Socio-legal Series* 580 at 584; Law Society of Upper Canada, Articling Task Force, *Consultation Report*,

these are very early days for the LPP, our survey results suggest that the traditional articling avenue may not be fully accessible to candidates with certain personal characteristics, and that the LPP may play an important role in addressing some of those barriers. At the same time, however, we are concerned that unless special care is taken, the LPP could reinforce some of the existing challenges that racialized lawyers face within the profession.

We recognize, of course, that the results of our research are specific to the small group of students enrolled in the French LPP. The results may not be representative of the total student body for the LPP. The French LPP has particular features; it draws from a relatively smaller pool of French-speaking law students who wish to be called to the Ontario bar. Most, but not all of those students studied law, in French, at the University of Ottawa.⁶ The racial and cultural composition of those students may be different from those who study in English, as the French program generally attracts students whose ethnic or place of origin is a French-speaking country, including France, Haiti, and many African countries.⁷

In this piece, we consider the demographic make-up of the first cohort of the French LPP, which we feel tells an access to justice story of its own. We intend to pursue our longitudinal study of the French LPP in the hopes of more broadly assessing its impact on access to justice in French in Ontario. However, our first survey results point to different and pressing issues: Why are French-speaking racialized students less likely to secure articling positions? Why does the intersection of certain characteristics appear to operate as a barrier to access? What does this say about our profession? Can the LPP offer at least a partial solution to these barriers to access?

(9 December 2011) at Appendix 6, online: LSUC <www.lsuc.on.ca/articling-task-force-consultation-report> [LSUC, *Consultation Report*]. These results suggest that factors other than academic merit may be at play in the selection of articling students.

⁶ Most are graduates of the University of Ottawa's French Common Law Program or National Program. It is worth noting that the University of Ottawa's French Common law program offers a "Programme de Formation Pré-droit," a four-week summer program for students who are immigrants and refugees and who have been admitted to law school but have had limited exposure to post-secondary education in Canada. The program is designed to remove some of the barriers these students may face in their legal education.

⁷ Of course, the English JD programs also attracts students with different ethnic backgrounds and places of origin. While our research has not yet explored the issue, we expect that the English LPP draws from a broader base of cultures and countries than its French-language counterpart.

This paper begins by describing the LPP, some of the policy reasons that led to its creation, and its potential impact on access to justice in the province of Ontario. Next, we describe our survey and set out our findings regarding this first group of French LPP candidates. Third, we consider what our findings suggest in terms of the role of the LPP and whether it makes entry into the legal profession more accessible or whether it creates its own set of barriers.

2. *The Law Practice Program: An Overview*

In Ontario, the path to admission to the bar has remained essentially the same for the last several decades.⁸ The process is comprised of three main components, each of which is mandatory. The first is an education component, under which students are generally required to complete an undergraduate degree,⁹ followed by a three year common law degree known as the Bachelor of Laws (LLB) or Juris Doctor (JD). The second component requires passing written competency examinations administered by the Law Society of Upper Canada (LSUC). In years past, the LSUC also offered courses as part of a preparatory program to write the competency examinations, but those courses have been replaced by a period of self-study. The third and final component is experiential and has recently bred more controversy. Known as articling, it is a ten-month period during which a candidate performs legal services under the supervision of a member of the profession.¹⁰ Once candidates complete these three steps and demonstrate to the LSUC that they are of good character,¹¹ they may be called to the bar. At this point, they become licensed to practice law in Ontario.

At least as far back as 2007, the LSUC recognized that finding articling placements posed a challenge for some law students. It

⁸ For a history of the licensing process and the role of articling, see Veronica H Ashenhurst, “Mentoring the Lawyer, Past and Present: Some Reflections” (2010) 42:1 *Ottawa L Rev* 125 at 136-38.

⁹ Some law programs permit admission after two or three years of undergraduate education. See e.g. University of Ottawa, “Common Law Section ‘Admission Criteria’”, online: University of Ottawa <www.commonlaw.uottawa.ca/en/index.php?option=com_content&task=view&id=704&Itemid=187&lang=en>; Ontario Universities’ Application Centre, “Law School Requirements – First Year”, online: OUAC <https://www.ouac.on.ca/docs/olsas/rc_olsas_e.pdf>.

¹⁰ The duration of articles varies somewhat from province to province.

¹¹ Being of good character is a statutory requirement; see *Law Society Act*, RSO 1990, c L-8 s 27(2).

commissioned a report,¹² which found that some groups in particular had difficulty finding articling positions. These groups (dubbed “communities of concern”) were: mature students, members of a racialized community, and National Committee on Accreditation (NCA)¹³ students.¹⁴ The concern regarding a generalized shortage of articling placements grew and became known as the “articling crisis.”¹⁵ This led, in 2011, to the LSUC commissioning a much wider-ranging consultation with many stakeholders about the future of articling itself.¹⁶ The LSUC’s goal for the 2011 consultation was to consider an approach to experiential learning that would both fulfill its regulatory purpose and have wide support from stakeholders. The idea was to think broadly about articling and to consider a range of options, rather than assuming that the current model was best. The consultation highlighted the need for a different approach to articles. Some of the issues that emerged include: a substantial non-recession-related doubling in the number of candidates emerging from law schools;¹⁷ difficulties experienced by equality-seeking candidates¹⁸ who were less likely to find articles even when they had good grades;¹⁹ the fact that placements are largely in big firms and government;²⁰ and concentrations of placements in larger, southern urban centers.²¹

In commissioning the consultation, the LSUC’s goal was to ensure that the experiential learning requirement would not continue to serve as a barrier to accessing the profession. The 2011 consultation solicited comments on five key proposed options: 1) maintaining the *status quo*; 2) maintaining the *status quo*, but adding set competency benchmarks to evaluate articling performance; 3) replacing pre-licensing training with

¹² Law Society of Upper Canada, Strategic Counsel, *Articling Consultation* (February 2007), online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487122> [LSUC, *Articling Consultation*].

¹³ The National Committee on Accreditation (NCA) of the Federation of Law Societies of Canada has the mandate of “assessing the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program.,” see Federation of Law Societies of Canada, “National Committee on Accreditation”, online: FLSC <www.flsc.ca/en/national-committee-on-accreditation>.

¹⁴ LSUC *Articling Consultation*, *supra* note 12 at 15.

¹⁵ The number of unplaced articling students was indeed on the rise, going from 5.8% for the 2007/2008 licensing group to 12.1% for the 2010/2011 licensing group; see LSUC, *Consultation Report*, *supra* note 5 at iii, 10.

¹⁶ LSUC, *Consultation Report*, *ibid*.

¹⁷ *Ibid* at 10.

¹⁸ *Ibid* at 11.

¹⁹ *Ibid*.

²⁰ *Ibid* at ii-iii, 9-10.

²¹ *Ibid*.

post-licensing training; 4) offering a choice of traditional articling or a practical legal training course, and 5) offering a mandatory practical legal training course, without an articling option.²²

The LSUC received varied and thoughtful responses to its 2011 consultation. Responding groups included stakeholders associated with the judicial sector,²³ law firms,²⁴ law schools,²⁵ other provincial law societies,²⁶ other legal organizations such as legal aid clinics, unions and other public employers, and law associations.²⁷

²² *Ibid* at 17-18.

²³ See Law Society of Upper Canada, Articling Task Force, *Summary of Submissions to the Articling Task Force Consultation* at 5, online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487639> [LSUC, *Summary of Submissions*]. The judiciary supported the continuation of the clerkship programs and favoured Options 2 and 4.

²⁴ *Ibid*.

²⁵ *Ibid* at 5-6. Most Ontario law schools were not interested in offering a practical legal training course, though some argued it may be beneficial in certain limited contexts.

²⁶ *Ibid* at 5. Canadian law societies indicated that they were monitoring the task force's work with great interest and some encouraged finding alternatives to articling.

²⁷ *Ibid* at 4. A wide range of other law-related organizations submitted responses to the articling task force. Although some suggested minor changes to articling, others suggested that articling be abandoned altogether. Although most equality-seeking groups rejected continuing with the status quo, they also generally rejected the idea of the creation of a two-tiered system in the form of parallel access to the profession. Some groups did seem to favour the idea of a single track for all candidates in the form of a Practical Legal Training Course; see e.g. African Canadian Legal Clinic, "Written Submission of the African Canadian Legal Clinic to the Law Society of Upper Canada Articling Task Force" (March 2012) at 3-10; ARCH Disability Law Centre "Articling Task Force Consultation" (13 March 2012) at 2-4; Canadian Association of Black Lawyers, "Submissions Responding to the Law Society of Upper Canada Articling Task Force Consultation" (15 March 2012) at 5-8; LSUC *Minority Report*, *supra* note 1 at 80-1. Compare Association des juristes d'expression française de l'Ontario, "Comments from l' Association des juristes d'expression française de l'Ontario" (8 March 2012) (which preferred parallel pathways to the profession, including articling and a practical legal training course at 1-2). The majority of the task force recognized the positions of equality-seeking groups, but argued that the LPP would be an "opportunity to challenge these types of views and stereotypes directly;" see Law Society of Upper Canada, Articling Task Force, *Final Report: Pathways to the Profession: A Roadmap For The Reform Of Lawyer Licensing In Ontario* (25 October 2012) at 35, online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848> [LSUC *Majority Report*]. See also David Wiseman, "The Law Society of Upper Canada and Access to Justice: Lessons from Lawyer-Licensing Reform" (2013) 31:2 Windsor YB Access Just 121 (for a discussion about articling, the LPP and access to justice); University of Ottawa, Faculty of Law, Ad Hoc Working Group on Articling and Access to Justice, *Articling and Access to Justice: submission to the Law Society of Upper Canada's Articling Task Force* (March 2012) (for a discussion about the Faculty's concern

The final report, *Pathways to the Profession*, was released in October, 2012.²⁸ It recommended that option four be piloted for three years with a possible two-year extension.²⁹ The majority of the articling task force reasoned that offering parallel pathways to the profession would “directly address the issue of access to the licensing process in an environment where there are insufficient articling positions.”³⁰

The recommendation was not unanimous, however. A minority of task force members recommended that articling be abolished altogether. In the view of the minority, the two-tier process favoured by the majority would be unfair and unworkable. Instead, the minority proposed a single, comprehensive transitional pre-licensing program lasting two to three months, which would be applicable to all. This would have been followed by formal mentoring and other regulatory oversight during the first years of practice.³¹ It is worth noting that a number of equality-seeking groups, including the Canadian Association of Black Lawyers (CABL) endorsed the minority’s proposal. In CABL’s view, the creation of two pathways “would result in a two-tiered system, with licensing candidates enrolled in the LPP being considered inferior.”³² Since black students are overrepresented in the group of candidates without articling positions, CABL was also worried that the creation of these two tiers would have a disproportionate negative impact on black candidates.³³ According to CABL, the financial burden on a candidate of having to pay licensing fees while completing a potentially unpaid work placement was also a concern.³⁴

about the Practical Legal Training Course option at 13-14), online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487551>.

²⁸ LSUC, *Majority Report*, *supra* note 27.

²⁹ The extension option was recommended in the event additional time is necessary to assess the feasibility of the program. The report initially called for a five year transitional pilot project, but after significant debate on the matter the LSUC opted for a shorter period; see *ibid.*, at 5-6.

³⁰ *Ibid.* at 2.

³¹ LSUC, *Minority Report*, *supra* note 1 at 70.

³² Law Society of Upper Canada, Articling Task Force, *Summary of Comments Received by the Articling Task Force Following October 25, 2012 Convocation* (14 November 2012) at 11, online: LSUC <www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147490030> [LSUC, *Comments*].

³³ *Ibid.*

³⁴ Similar submissions were made by the Federation of Asian Canadian Lawyers, which reiterated its preference for a single pathway to licensing for all candidates as well as its concerns regarding increased costs. The Student Caucus of Faculty Council of Osgoode Hall Law School, which preferred the minority proposal for its single pathway and cost effectiveness, opposed the majority proposal out of a fear for the creation of a two-tiered and inequitable system in addition to increased costs. According to the Student

It was in this rather divided environment that the LPP – and a second pathway to the profession – was born. The LPP is currently being offered in English at Ryerson University and in French at the University of Ottawa.³⁵ Both programs were offered for the first time in the fall of 2014 and are structurally similar. Candidates must complete a training course, covering topics such as criminal, family, and administrative law, that runs for approximately four months from September to December. The competencies that are taught and assessed are based on the standards of the Federation of Law Societies of Canada. The learning institutions, Ryerson and Ottawa, then developed their own curriculum based on these competencies.³⁶ There is a substantial difference between the two programs; the English training course is mostly an online program,³⁷ whereas the French training course is done in person with mandatory attendance for the duration of the four months. Candidates in the French LPP spend four months working in a simulated law firm and must work individually and collaboratively on a number of hands-on tasks in order to meet deliverable deadlines. The French program had 19 registered candidates in its first year whereas the English program had 225.

Each LPP candidate pays fees of \$2,800, which are the same as the fees paid by a candidate going through the traditional articling program.³⁸ For all LPP candidates, the training course is followed by a four-month work placement from approximately January to April. As with candidates from the traditional articling stream, LPP candidates normally write the bar

Caucus, the majority proposal failed to address the core cause of the articling crisis, namely the lack of articling positions and the influx of NCA candidates in Ontario. See LSUC, *Comments*, *supra* note 32 at 12-14.

³⁵ We note that the Faculty of Law at Lakehead University, which opened its doors in September 2013, is offering an “Integrated Practice Curriculum” which is akin to a JD and LPP rolled into one three-year program.

³⁶ See generally University of Ottawa, Faculty of Law, “Law Practice Program”, online: University of Ottawa <www.commonlaw.uottawa.ca/lawpractice/>; Ryerson University, “Law Practice Program”, online: Ryerson University <www.ryerson.ca/lpp/>. See also Law Society of Upper Canada, “Pathways Pilot Project”, online: LSUC <www.lsuc.on.ca/uploadedFiles/Pathways%20Fact%20Sheet%20-%20Final.pdf> [LSUC, *Pathways Fact Sheet*].

³⁷ Attendance is required in Toronto for only approximately 12 days. See LSUC, *Pathways Fact Sheet*, *ibid*.

³⁸ See Law Society of Upper Canada, “2015-16 Lawyer Licensing Process Fees Schedule” (Revised as of January 2015), online: LSUC <www.lsuc.on.ca/licensingprocess.aspx?id=2147489426>. Fees have, however, risen for all candidates since the adoption of the LPP in order to cover the additional costs associated with the English and French LPP programs. It should also be noted that the LSUC itself contributes \$1 million to the licensing program.

admission exams before the LPP or after the completion of the work placement.³⁹

3. Access to Justice and the LPP

As noted, our main research objective for this study is to inquire into the impact, if any, of the French LPP on access to justice in French in Ontario. Access to justice issues have garnered a great deal of attention of late. Reports like those emanating from the National Self-Represented Litigant Project have contributed a great deal to the discussion and have shone a spotlight on the issue.⁴⁰ While media outlets used to mainly report on the outcomes of legal cases, many have begun to also focus on access to these proceedings.⁴¹ As a result, we are increasingly aware that not only the poor and those from lower socio-economic tiers, but increasingly even middle class litigants, feel overwhelmed by the legal system and the procedural, financial, informational, and other obstacles it presents. Many find themselves with no other option but to navigate on their own through a system designed on the assumption that parties would be represented.⁴² The cost of legal representation, coupled with the challenges of self-representation, have raised serious questions about whether our legal system is in fact equipped to resolve the disputes of the average Canadian.

³⁹ Though the LSUC does not recommend it, candidates can write the bar exams during the LPP: see Law Society of Upper Canada, “Law Practice Program”, online: LSUC <www.lsuc.on.ca/licensingprocess.aspx?id=2147497057> [LSUC, LPP].

⁴⁰ Julie MacFarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (Beaconsfield, Quebec: Canadian Electronic Library, 2014) [MacFarlane Report]. See also Canadian Forum on Civil Justice, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013), online: CFCJ <www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>; Canadian Bar Association, Treasurer’s Advisory Group on Access to Justice Working Group, *Reaching Equal Justice Report: an Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013), online: CBA <www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/CBA_equal_justice.pdf>; Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: Canadian Bar Association, 2014), online: CBA <www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf?ext=.pdf>.

⁴¹ See e.g. “Zahra Abdille tried to leave domestic abuse but system failed”, Canadian Broadcasting Corporation, *The Current* (4 December 2014), online: CBC <www.cbc.ca/radio/thecurrent/failing-victims-of-domestic-abuse-isis-redrawing-the-middle-east-and-estranged-twins-1.2907114/zahra-abdille-tried-to-leave-domestic-abuse-but-system-failed-1.2907123>; Lorne Sossin and David Allgood, “Make the justice system accessible” *The Toronto Star* (25 February 2015), online: <www.thestar.com/opinion/commentary/2015/02/25/make-the-justice-system-accessible.html>.

⁴² MacFarlane Report, *supra* note 39.

Although most agree that access to justice is a problem, there is no clear consensus as to what “access to justice” means or how the problem of access, however defined, should be resolved. The debate about the meaning of “access to justice” has been longstanding. A range of possible meanings have been proposed, extending from the broader definitions advanced by some litigants and academics,⁴³ to the narrower and more cautious versions that have found some traction within the jurisprudence.⁴⁴ In this section, we consider how and to what extent the LPP might fall within these notions and whether the LPP can meaningfully contribute to access to justice in Ontario.

As Roderick Macdonald pointed out, prior to the 1970s, “access to justice” referred generally to access to counsel and to a court-based dispute resolution system.⁴⁵ Since then, however, the concept has evolved; “access to justice” is now viewed more broadly as a multi-faceted issue that touches upon many aspects of the legal system, from how laws are created, to their administration and application.⁴⁶

This evolution occurred in waves. Although concern about access to justice began as a discussion about access to lawyers and courts, it evolved into notions of institutional redesign and the emergence of administrative law bodies. From this, thinking turned to alternative dispute resolution models and extrajudicial solutions, both of which focused on addressing disputes before they crystalized into legal problems. Most recently, a more ambitious vision of access to justice has emerged, one that “requires that all people would have an equal right to participate in every institution where law is debated, created, administered and applied.”⁴⁷ This latest vision of access to justice calls for a consideration of broad elements, including geography, language, socio-demographic characteristics, and the

⁴³ See Constance Backhouse, “What is Access to Justice?” in William A Bogart, Frederick H Zemans and Julia Bass, eds, *Access to Justice for a New Century – The Way Forward* (Toronto: Law Society of Upper Canada, 2005) at 113-146 [Backhouse, “Access to Justice”]; Roderick Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Bogart, Zemans and Bass, *ibid*; Wiseman, *supra* note 27.

⁴⁴ See e.g. *Vilardell v Dunham* 2014 SCC 59, [2014] SCR 31; *British Columbia (Attorney General) v Christie*, 2007 SCC 21, [2007] 1 SCR 873; *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 216 NBR (2d) 25.

⁴⁵ Marc Galanter, “Access To Justice In A World Of Expanding Social Capability” in Bogart, Zemans and Bass, *supra* note 43 at 147.

⁴⁶ Macdonald, *supra* note 43 at 23.

⁴⁷ *Ibid* at 23. See also Backhouse, “Access to Justice,” *supra* note 43.

parties' conceptions of justice.⁴⁸ It also requires a more balanced representation of traditionally-excluded or disadvantaged groups within institutions of social, economic, and legal power.⁴⁹ Indeed, as Macdonald has explained, "Perhaps the most important lesson of past initiatives is that a lack of access to justice is a multifaceted phenomenon. Not all citizens are similarly situated, their legal needs can be quite different. More than this, the lack of access problem does not relate only to courts and judicial remedies: it cannot be solved with a broad-brush one-size-fits-all approach."⁵⁰

Our purpose is not so ambitious as to seek to exhaustively define "access to justice," nor is it to resolve disparities within the different visions of the concept. Rather, we are interested in identifying ways in which the LPP, and the French LPP in particular, might contribute to a more accessible legal system. To this end, we have looked to the broader, more ambitious visions of "access to justice" as a multi-faceted phenomenon and have considered what the LPP can bring to the mix. We believe the LPP contributes to access to justice in two principal ways: by increasing the number of qualified lawyers and by improving diversity within the legal profession.

In considering these issues, we are mindful that "access to justice" is often used to describe issues of diversity in the profession. In our view, the lack of diversity is both an access to justice issue and a concern in its own right. From a broader perspective, a lack of diversity within the profession raises access to justice issues and feelings of "otherness" because certain groups will be underrepresented within the legal profession or among members of the bench. If the LPP can mitigate barriers that have traditionally limited certain groups' access to the profession, it may help to make the profession more diverse. Improved diversity and better inclusion within the legal profession may mean that litigants have better access to lawyers who are more likely to understand and effectively respond to their needs.

A discussion of these issues must include at least a brief exploration of the premise that access to justice considerations *should* be a factor in the licensing process. To put it differently, is the licensing process merely about ensuring that qualified candidates are admitted to the profession or ought other considerations to be part of its design? Should the licensing

⁴⁸ Macdonald, *supra* note 43. For example, regarding language, real access requires that legal and other services be seamless and that they be available in the language of the litigant's choice: see Rouleau and Le Vay, *supra* note 2 at 24.

⁴⁹ Backhouse, "Access to Justice," *supra* note 43.

⁵⁰ Macdonald, *supra* note 43 at 24.

process itself help promote access to justice? Or is improving access to justice merely a possible corollary effect of licensing innovations, such as the LPP? Beyond this, should the licensing process ensure that legal services are available in the client's official language of choice? Should it actively raise awareness about language rights? Should it ensure that qualified candidates from racialized and other groups are not further marginalized? Does a more inclusive approach to licensing improve individuals' ability to access counsel and ensure that certain groups are more adequately represented within the bar and among judicial and administrative decision-makers?

As David Wiseman notes, since 2006, the *Law Society Act* has specific principles that the Law Society is to apply in performing its functions and powers, including a "duty to act so as to facilitate access to justice for the people of Ontario."⁵¹ Arguably, a lawyer's core function is to help litigants solve legal problems and, where necessary, to guide them through the legal system. At its most basic, the practice of law is about helping litigants address their disputes through access to the justice system. It follows that law societies should be acutely aware of access to justice issues and their licensing process should carefully avoid creating unnecessary barriers for qualified candidates. To put it differently, a lack of diversity and representativeness exists at every level of the legal profession,⁵² from lawmakers,⁵³ licensed lawyers,⁵⁴ and paralegals, to judges.⁵⁵ If we conceive of access to justice as meaningful participation in all stages of the law, from its creation to its implementation, the fact that the major players

⁵¹ *Law Society Act*, RSO 1990, c L-8 s 4.2; see also Wiseman, *supra* note 27 at 123.

⁵² Backhouse, "Access to Justice," *supra* note 43.

⁵³ Canada's Public Policy Forum, "Edging Towards Diversity: A Statistical Breakdown of Canada's MPs" (30 June 2000), online: CPPForum <www.pppforum.ca/publications/edging-towards-diversity>.

⁵⁴ See LSUC, *Challenges Consultation Paper*, *supra* note 4 at 5-10.

⁵⁵ Rosemary Cairns Way, "Deliberate Disregard: Judicial Appointments under the Harper Government" (2014) Ottawa Faculty of Law Working Paper No 2014-08, online: <facl.ca/wp-content/uploads/2015/02/SSRN-id2456792.pdf>; Sonia Lawrence, "Reflections: On Judicial Diversity and Judicial Independence" in Adam Dodek and Lorne Sossin, eds, *Judicial Independence in Context* (Toronto: Irwin Law, 2010); Errol Mendes, "Promoting Heterogeneity of the Judicial Mind: Minority and Gender Representation in the Canadian Judiciary" in Ontario Law Reform Commission, *Appointing Judges: Philosophy, Politics And Practice* (Toronto: Ontario Law Reform Commission, 1991) at 94; Jeremy Webber, "The Adjudication of Contested Social Values: Implications of Attitudinal Bias for the Appointment of Judges" in Ontario Law Reform Commission, *ibid* at 27.

in the legal system are not representative of the public raises some serious access questions.⁵⁶

The LPP is clearly not the complete answer to all access to justice issues. However, to the extent that 1) it addresses some of the barriers to the profession that exist within the licensing framework that have tended to disproportionately affect racialized candidates⁵⁷ or 2) it increases the number of capable lawyers available and willing to assist underserved Ontarians, it may be part of a multi-faceted solution. We intend to consider this latter possibility (accessibility to legal services in French) in our longer-term research, once we determine how the careers of French LPP alumni unfold. It may be that they contribute to improved access to justice because of the areas of law in which they practice, the populations they service, the geographical locations in which they work, their involvement in community service or *pro bono* legal work, or their ability to refer clients to relevant community organizations to find extrajudicial solutions to their legal issues. At this very early stage of the LPP, however, our observations are directed at the former issue, whether the LPP can facilitate access to the profession for qualified racialized students who face barriers under the traditional articling requirements.

4. Methodology and Key Findings

As noted, our study will gather empirical data about French LPP program candidates in two questionnaires. The first questionnaire collected data on the demographic make-up of the group of candidates. It also contained a number of other questions, including about candidates' current understanding of access to justice issues, the reason for their participation in the French LPP, their career goals, their law school grades, and their language skills. This questionnaire has been administered and the results are discussed below. The second questionnaire will be administered approximately three months after the end of the LPP, and will focus both on the candidates' experience in the LPP and on their new or prospective careers. We intend to repeat these surveys for each year's cohort of French LPP students.

The first questionnaire was administered to the French LPP candidates on October 17, 2014.⁵⁸ There were 19 candidates in the program and 17

⁵⁶ Rose Voyvodic, "Lawyers Meet the Social Context: Understanding Cultural Competence" (2006) 84 Can Bar Rev 563; see also Levin and Alkoby, *supra* note 5 at 589-91.

⁵⁷ Wiseman, *supra* note 27.

⁵⁸ Pre-approval for the conduct of this study was obtained from the University of Ottawa's Research Ethics Board.

participated in the survey.⁵⁹ Given that the pool of participants is small, care must be taken when drawing conclusions from our findings. As with any small pool, the answers of a few can have an important impact on the numbers derived from the whole group. Year-over-year variations can also be more pronounced. Importantly, however, the participation rate (17/19, or over 89%) is very high. Therefore, even though the pool is small, the very high participation rate gives us confidence in the information that we did obtain.

Our results show that the 2014-2015 French LPP candidates are recent graduates of an LLB or JD program. All of them obtained their law degree in the last four years (2011-2014) and the majority of those (70.6%), obtained their degree in the previous two years (2013 or 2014). Although these results are not surprising, it was thought that the first year of the LPP in particular would have attracted individuals who graduated some years ago, could not secure articles, and put their law careers on hold. Our survey results show this does not seem to be occurring.

The majority of candidates decided to enroll in the LPP because they did not find an articling position. Indeed, 58.8% tried to find an articling position but were unsuccessful. Almost a quarter (23.5%), however, enrolled in the LPP without having tried to find an articling position.⁶⁰ The remainder (17.6%) chose to enroll in the LPP despite having found an articling position. These numbers are significant; added up, the figures for those who did not try to find an articling position and those who secured one but still chose the LPP show that over 40% of the candidates opted for the LPP over a traditional articling position. These candidates do not seem troubled by the potential stigma and other concerns that have been raised about this second path to the practice of law.

As far as their law school grades are concerned, the average for the French LPP candidates who provided their GPA on a ten-point scale was 5.9. The average GPA of those who were graded on a 4.3-point scale in law school was 3.2. In both cases, these numbers are either slightly below or slightly above a B grade, depending on the university. Many law schools use some sort of mandatory bell curve or target grade system to ensure that their GPAs fall within an acceptable range. At the University of Ottawa, for example, the target grade for most courses is 6.0, which translates into a

⁵⁹ The missing two were not in attendance that day.

⁶⁰ This number may be in part due to the University of Ottawa's "National Program" students (students who have completed their civil law degree and who are enrolled in a one-year common law program to obtain their JD) because they have missed the majority of articling opportunities that are usually up for grabs in the penultimate year of the regular JD program.

B.⁶¹ The results of our survey show that the candidates, as a group, report GPA levels that can be characterized as average. This is noteworthy in that it suggests that factors other than grades may affect student placement outcomes.

With regard to gender, the majority of candidates in the French LPP were men (70.6%). This is in rather sharp contrast to the 2011-2014 cohort in the French Common Law Program at the University of Ottawa, in which 60% of students are women.⁶² This latter number is in line with 2006 statistics showing that although women accounted for only 38% of all lawyers in Ontario that year, they made up nearly 60% of lawyers who are less than 30 years old.⁶³

As for the age of the French LPP candidates, the average year of birth among the candidates was 1980 and the average age at the time of the questionnaire was approximately 34.⁶⁴ Taking away the two oldest and two youngest candidates, the average year of birth among the remaining candidates was 1982 and so the average age at the time of the questionnaire for those candidates was approximately 32.⁶⁵ This is somewhat older than the average student in the French Common Law Program. Students admitted into that program were, on average 25.74 years old at the time they were admitted for the 2011-2012 school year⁶⁶ and so would be, on average, less than 29 years old at the time they might participate in the LPP.

One of the key findings of our survey is that an important majority (64.7%) of candidates identified themselves as members of a visible minority.⁶⁷ While no data seems to exist from our closest comparators, the French Common Law Program and the National Program at the University of Ottawa's Faculty of Law, it is clear that this percentage is much higher than the number of racialized individuals enrolled in law school in French at the University of Ottawa.⁶⁸ Also, it is much higher than the percentage of Ontario law students who self-identify as being part of a visible minority

⁶¹ For most courses, the target is 6.0 plus or minus 0.8. There are a number of exceptions to this system.

⁶² Based on internal numbers of the University of Ottawa's Faculty of Law.

⁶³ See Micheal Ornstein, *Racialization and Gender of Lawyers in Ontario: A Report for the Law Society of Upper Canada* (Toronto: York University, 2010) at 17.

⁶⁴ One person did not answer this question.

⁶⁵ One person did not answer this question.

⁶⁶ Based on internal numbers of the University of Ottawa's Faculty of Law. More recent numbers, for the 2013-2014 academic year, indicate that students are now slightly younger upon admission, the average age being 23.13 years old.

⁶⁷ None of the candidates identified themselves as being a member of Canada's Aboriginal peoples, defined as First Nations, Inuit, Métis or other.

⁶⁸ Based on the authors' combined teaching experience.

(27.6%)⁶⁹ as well as the percentage of racialized individuals in the province of Ontario, which was 25.9% in 2011.⁷⁰ By comparison and despite a steady increase, racialized lawyers represented only 11.5% of the legal profession on 2006.⁷¹ Our survey results also show that 58.8% of the LPP candidates were born outside Canada and that 29.4% of candidates have a language other than French or English as their mother tongue.⁷²

5. *What our Findings Mean*

As mentioned above, over 40% of the French LPP candidates opted for the LPP over a traditional articling position, either because they enrolled in the LPP without having tried to find an articling position (23.5%) or because they chose to enroll in the French LPP even though they had secured an articling position (17.6%). While our survey did not explore the basis for this choice, it could be related to a number of advantages that the LPP is perceived to afford, including the fact that it ensures exposure to a broad base of practice areas, includes some qualitative standards, and is available in two large centers within the province. On the other hand, it could mean that those who didn't try to find an articling position felt that traditional articles didn't offer them a fair shot. For those who opted for the LPP despite having secured an articling position, the answer may very well be primarily financial; not all articling positions come with an enticing salary, and not all are located in the city or region in which a candidate resides. In any case, this choice by over 40% of the French LPP candidates could be interpreted as a vote of confidence in the new program. In future surveys, we will ask candidates why they opted not to look for traditional articling positions or why they chose the LPP despite having secured a traditional articling position.

Importantly, our survey results also show that compared to the average law school graduate, the average French LPP candidate is much more likely to be new Canadian, male, older, and racialized. This suggests that certain pockets of the law student population are resorting to the LPP to obtain their license to practice law, in part, because the traditional articling

⁶⁹ See Law Students' Society of Ontario, "Just or Bust? Results of the 2014 Survey of Ontario Law Students' Tuition, Debt, & Financial Aid Experiences" (17 September 2014) at 4, 32, online: LSSO <lso.ca/wp-content/uploads/2014/09/LSSO-Report-2014.pdf> [LSSO, *Report*].

⁷⁰ According to the National Household Survey. In the 2006 Canada Census, 23% of the Ontario population indicated that they were racialized. See LSUC, *Challenges Consultation Paper*, *supra* note 4 at 8.

⁷¹ *Ibid.*

⁷² Defined as the first language learned in childhood and still understood today. One person did not respond to this question. 47.1% of candidates identified French as their mother tongue and 17.6% identified English as their mother tongue.

avenue is not as open to them. Although law school grades are a factor, the data we have collected suggests that law students who share these characteristics are less likely to obtain articles than their colleagues.⁷³ This implies that, but for a program such as the LPP, qualified candidates are more likely to face barriers to entry to the profession under the traditional articling model because of their race, culture, or place of origin.⁷⁴ This, in turn, leads us to conclude that the LPP may play an important or even critical role in partially leveling the playing field between racialized and non-racialized law candidates, at least in the sense of allowing the former the opportunity to have access to the profession.

Our findings are in line with the LSUC's *Challenges Consultation Paper*⁷⁵ (and more particularly their interviews with focus groups) on challenges faced by racialized lawyers, which suggests that racialized students face recruitment barriers, both in attempting to obtain articles and at later stages of their careers.⁷⁶ There appear to be implicit biases at play, which may sometimes manifest as "fit" issues.⁷⁷ For example, the LSUC reports that almost half of racialized licensees surveyed believed that, compared to their non-racialized colleagues with similar qualifications, they faced additional challenges in trying to find an articling position.

⁷³ See Levin and Alkoby, *supra* note 5 at 584; LSUC, *Challenges Consultation Paper*, *supra* note 4.

⁷⁴ The survey that underlies the LSUC consultation paper shows that racialized candidates certainly feel that they face barriers to entry to the legal profession. Compared to their non-racialized counterparts, much higher numbers of racialized lawyers identified physical appearance, socio-economic status, place of birth and where one is raised, age (too young), the way one speaks English/ French, and gender identity as "important challenges" they face. The LSUC consultation paper and the underlying survey focused on the challenges faced by racialized lawyers after they have entered the profession. The survey found that racialized lawyers were less likely to find a suitable first job after being licensed, be hired back where they had articulated, or be able to work in their preferred area of practice. See LSUC, *Challenges Consultation Paper*, *supra* note 4 at 17. See also CBA, "Racial Equality," *supra* note 4 at 12, 17-19, 77; Lorne Foster, "Lawyers of Colour and Racialized Immigrants with Foreign Legal Degrees: An Examination of the Institutionalized Processes of Social Nullification" (2009) 2:1 *Int'l J of Crim and Soc Theory* 189 at 189-217; Ashenurst, *supra* note 8 at 141-43.

⁷⁵ *Supra* note 4.

⁷⁶ Law Society of Upper Canada, Challenges Faced by Racialized Licensees Working Group, *Results from Informal Engagement* (30 October 2014) at 3, online: LSUC <www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/results-from-informal-engagements-law-society-racialized-licensees-working-group.pdf>.

⁷⁷ Foster, *supra* note 74 at 199. The author argues that the language of "fitting in" and other euphemisms operate as stand in for racial discrimination. Ultimately, the background cultural experiences of racialized applicants prevent them from entering large firms.

Beyond articles, a majority of racialized licensees surveyed believed that they have not advanced as rapidly as their non-racialized counterparts.⁷⁸ Indeed, the LSUC identifies “wide differences of experience at entry into the profession, and in overall career trajectory.” Almost half of racialized lawyers said they struggled to find an articling position and a majority believed that they had not advanced as rapidly as colleagues with similar qualifications.⁷⁹

Thus, to the extent that the LPP sidesteps recruitment barriers at the licensing stage, it may make qualifying to practice law more accessible to members of marginalized groups. Importantly, however, the LPP is far from being a fulsome solution. As we shall see, while a program like the LPP may mean that more racialized individuals can become lawyers, unless special care is taken, it may also exacerbate existing systemic barriers to the success and relative equality of racialized lawyers within the profession.

6. *The LPP: Solution or Barrier?*

Our survey suggests that the LPP could play an important role in making the profession of law more accessible to qualified candidates, particularly those who face barriers to traditional articles. Importantly, however, this advantage may be set off by a different set of obstacles which the LPP either creates or perpetuates. While racialized lawyers have identified a number of challenges within the profession,⁸⁰ this article focuses on three aspects that are particularly relevant to the LPP: financial challenges; attitudinal challenges; and challenges associated with building a professional network. Without special attention to these issues, the LPP may serve to compound some of certain barriers that already exist within the profession,

Traditional articling positions are generally ten months long and most students receive a salary over this period. In some cases, the period during which a salary is paid is in fact longer, in order to cover the bar exam study and writing period. As noted above, the LPP runs over eight months, which includes full-time studies for four months, followed by a mandatory four-month placement. Not only do LPP candidates not receive an income over the in-class study portion of the LPP, the demands of the LPP make it difficult for them to work elsewhere while they participate. As for the four-month LPP placement, there is no guarantee that a remunerated placement will be found for each candidate. The data emerging from the French LPP

⁷⁸ LSUC, *Challenges Consultation Paper*, *supra* note 4 at 17.

⁷⁹ *Ibid* at 14; see also Foster, *supra* note 74.

⁸⁰ See e.g. LSUC, *Challenges Consultation Paper*, *supra* note 4.

is very encouraging, however: in 2015, all candidates in that program received paid placements.⁸¹ The experience at the English LPP program has been quite different. Though the English LPP has been able to find a work placement for all of its candidates, 30 per cent of those placements are unpaid.⁸² In addition, even for those English LPP placements that are paid, some candidates receive only a stipend, which does not approximate a full salary.⁸³

LPP candidates do not generally know in advance of their participation in the program whether they will be paid for their placement. As the Law Students' Society of Ontario explained, this places candidates in "financial limbo," which is particularly worrisome and challenging given the high levels of debt held by the average student at the end of law school.⁸⁴ Additionally, because the LPP is a practical training course within a professional licensing process, it does not qualify for Ontario Student Assistance Program funding. However, candidates enrolled in the LPP are eligible for continuation of interest-free status, though not during any remunerated work placement.⁸⁵ Spending eight months or more without an income is simply not a viable option for some.⁸⁶

A great deal of uncertainty surrounds the LPP. It is not clear whether paid placement rates in 2015 will be representative of what is to come. We do not yet know whether LPP candidates have a real prospect of being hired back from their placement positions or whether, to the extent that

⁸¹ Law Society of Upper Canada, Professional Development & Competence Committee, *Report to Convocation* (November 28, 2014) at 87, online: LSUC <www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convnov2014_pdc.pdf> [LSUC, *PD&C Committee*]. The report states that all 19 candidates in the French LPP program at the University of Ottawa secured paid placements. Information obtained directly from the French LPP program suggests that while paid placements were *available* to all candidates, some chose unpaid placements.

⁸² Sara Mojtehdzadeh, "Ontario Law Proactice Program leaves some students in financial limbo", *The Toronto Star* (12 January, 2015).

⁸³ Matt Hopkins, "Reality Bites for LPP students", *Canadian Lawyer Magazine 4Students* (29 December 2104), online: <www.canadianlawyermag.com/5401/Reality-bites-for-LPP-students.html?utm_source=responsys&utm_medium=email&utm_campaign=CLNewswire_20141229>. See also LSSO, *Open Letter to the Treasurer*, *supra* note 1, which states that some stipends are as low as \$250/month.

⁸⁴ LSSO, *Open Letter to the Treasurer*, *ibid*. For information regarding the costs and financial barriers associated with attending law school, see Levin and Alkoby, *supra* note 5 at 584-85. See also LSSO, *Report*, *supra* note 69 at 4, 32.

⁸⁵ See LSUC, *LPP*, *supra* note 38.

⁸⁶ One enterprising student even launched a crowd-funding site in the hopes of raising enough money to sustain him through the time it will take him to complete the LPP; see Hopkins, *supra* note 83.

organizations hire back LPP candidates as lawyers, how this will impact the number of placements available to future LPP candidates.

Our survey targeted only those candidates who elected to participate in the French LPP. To fully understand the scope of the barriers to the profession, however, it would be important to also obtain data as to the attrition rate: how many students complete law school, but do not pursue licensing at all because of financial constraints? What proportion of those students are racialized? In short, how many people does the licensing process, as a whole, leave behind? On its face, the LPP seems to be a step in the right direction, one that helps members of marginalized groups become licensed, bypassing possible recruitment biases within the licensing process and providing an alternative to traditional articles. Yet the LPP does nothing to address the biases, which exist not only at the licensing stage but throughout a racialized lawyer's career. In addition, while the LPP helps deal with the licensing bottleneck, it may be doing so at a cost that disproportionately affects those who may be least able to pay.

Indeed, given the relative costs of participating in the LPP, it may be surprising that candidates would *choose* to take part in the LPP if traditional paid articles were available to him or her.⁸⁷ This may add to the perception that LPP-trained lawyers are drawn from amongst the weakest, less-capable students who were unwanted by employers. There is certainly some skepticism about the LPP: the prevailing impression may be that LPP candidates are a less-desirable class of lawyers – persons who had little choice but to engage in a second-class licensing process. The LPP is new and we are not yet in a position to fully evaluate the quality of training candidates receive within the LPP. Certainly, some have questioned whether the training candidates receive in the LPP will enable them to provide quality legal services in real life situations.⁸⁸ The LPP will need to work to overcome some of these perceptions. Again, the curriculum and programs offered within the French LPP are encouraging. They include a curriculum designed by leading practitioners, hands-on simulations, and opportunities for feedback and mentoring. The program is designed to train and test candidates in a full range of competencies. Arguably, this has some advantages over traditional articles. It remains to be seen, however, exactly how the LPP measures up qualitatively to the experience of traditional articles.

⁸⁷ As noted above, clearly some candidates in the French LPP were precisely in that situation, but we have no data on what salary, if any, their potential articling position came with.

⁸⁸ See e.g. LSUC, *Summary of Submissions*, *supra* note 23.

For the time being, the traditional articling stream is the preferred option for most candidates. The LPP is still something of an unknown quantity: it is financially taxing for most candidates, the quality of its programming remains to be seen, and many have expressed skepticism as to its viability. The fact that LPP candidates are disproportionately racialized (at least in the French LPP) may serve to further marginalize them within the practice of law, reinforcing both the stereotype that racialized candidates are less capable and the perception that the LPP is a second-class licensing process. Indeed, even before the creation of the LPP, racialized lawyers already faced these types of stereotypes. As the recent LSUC report explains:

[Racialized lawyers surveyed] spoke of having to work against assumptions by legal professionals, clients, opposing counsel and members of the bench that racialized licensees are less competent, skilled and effective. They recounted incidents in which they were subjected to negative stereotypes, and made to work harder or suffer greater consequences for errors than their non-racialized colleagues.

Some also felt that they were not offered the same opportunities for advancement. For example, they spoke of not being brought in on certain files, not being asked to attend client meetings, not being invited to social gatherings with colleagues where files and assignments are discussed, and receiving lower quality of work. Some wondered if race was a factor in the more rapid advancement of non-racialized colleagues of comparable or less merit.⁸⁹

Finally, professional networks and mentorship relationships are believed to be an important key to succeeding in the profession of law.⁹⁰ Again, it remains to be seen whether the LPP will enable candidates to build these important networks and relationships.⁹¹ The French LPP has devoted significant resources to help LPP candidates develop networks and

⁸⁹ LSUC, *Challenges Consultation Paper*, *supra* note 4 at 12.

⁹⁰ See, e.g. Ashenhurst, *supra* note 8 at 201; Adelle Blackett, "Mentoring the Other: Cultural Pluralist Approaches to Access to Justice" (2001) 8:3 *Int'l J Legal Profession* 275 at 277 (which speaks primarily to mentorship within law schools); Fiona M Kay, John Hagan and Patricia Parker, "Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development" (2009) 31:1 *Law & Pol'y* 69.

⁹¹ Both Blackett and Ashenhurst distinguish between mentoring and role modeling. They view building interpersonal relationships, support, feelings of trust, loyalty, and sometimes friendship, as key to mentoring. Mentorship is a richer relationship than role-modeling. The latter does not have the same interpersonal component and can include the mere emulation of a more seasoned lawyer from afar or downloading a podcast with practice tips. See Ashenhurst, *supra* note 8 at 129; Blackett, *supra* note 90 at 277. Arguably, while the LPP can offer role models to its candidates, it may not be as conducive to building mentorship relationships as traditional articles.

connections within the legal community.⁹² This is important, because unless opportunities and support for both mentorship and networking is incorporated into the LPP, candidates may qualify to practice law but find themselves without the professional support that is important to their success. Again, this is already an issue faced disproportionately by racialized lawyers.⁹³ Many lawyers identified this as an impediment to their success within the profession and a factor that pushed them into sole practice.⁹⁴ It remains to be seen whether the LPP can effectively help candidates build networks and capitalize on these connections to develop the professional network they need to succeed as lawyers.

7. Conclusion

Although our research surveyed only a small group of LPP candidates, our results suggest that some broad issues are at play. The first cohort of the French LPP program is disproportionately composed of candidates who are racialized, who are new Canadians, and who are older than the average law student. Why are candidates with these personal characteristics disproportionately enrolling in the French LPP, particularly when our survey shows their academic results, on average, are on par with students who pursued traditional articles? Why are they choosing the LPP despite the costs, risks, and potential stigma associated with that choice?

Our research suggests the following answer: Although it is not without its risks and disadvantages, the LPP addresses some of the barriers to traditional articles. Indeed, securing traditional articles has long posed a challenge for certain law students, and for racialized law students in particular.⁹⁵ The LPP offers candidates an alternative, one that helps eliminate some of the “fit” issues that have limited their articling opportunities. Importantly, however, barriers such as “fit” follow racialized lawyers throughout their careers, and they can have a continuing impact on their relative success. Though the LPP does not solve the problem of inherent biases and barriers within the profession, it may alleviate these problems at the entry point to practicing law.

⁹² For example, the French LPP has hired respected practitioners to provide in-class instruction, has sought out prominent members of the legal community to participate in the development of its program, and has ensured that candidates could participate in the annual conference of the Association des juristes d’expression française.

⁹³ LSUC, *Challenges Consultation Paper*, *supra* note 4 at 7, 13-4, 32-3.

⁹⁴ *Ibid* at 7, 16-7.

⁹⁵ LSUC, *Articling Consultation*, *supra* note 12.

The LPP is an important means of addressing prejudices and stereotypes that have served as barriers to traditional articles. However, to be a truly viable alternative to articling that gives candidates the tools they will need to succeed as lawyers, the LPP needs to take a broad approach and bring long-term vision to the exercise. As the French LPP has recognized, this training should include opportunities to not only learn how to practice law, but also to build networks and find mentors. It is not enough to increase the number of lawyers or to provide racialized lawyers with better access to the profession. These lawyers must be able to access the profession as equals, with all of the training and tools they need to be successful advocates.⁹⁶

As noted, the LSUC has recently released a report outlining the many challenges faced by racialized lawyers within the profession.⁹⁷ As the LSUC begins working on strategies to address those challenges, it cannot ignore the licensing process. Participating in the LPP comes with a series of financial and other challenges that articling students do not face to the same extent. As we have seen, those challenges are disproportionately born by racialized and/or older candidates, as well as new Canadians. Where the licensing process itself creates or perpetuates barriers to the profession, attempts to address the challenges faced only by current licensees will always be insufficient.

⁹⁶ Foster, *supra* note 74 at 189-217.

⁹⁷ LSUC, *Challenges Consultation Paper*, *supra* note 4.