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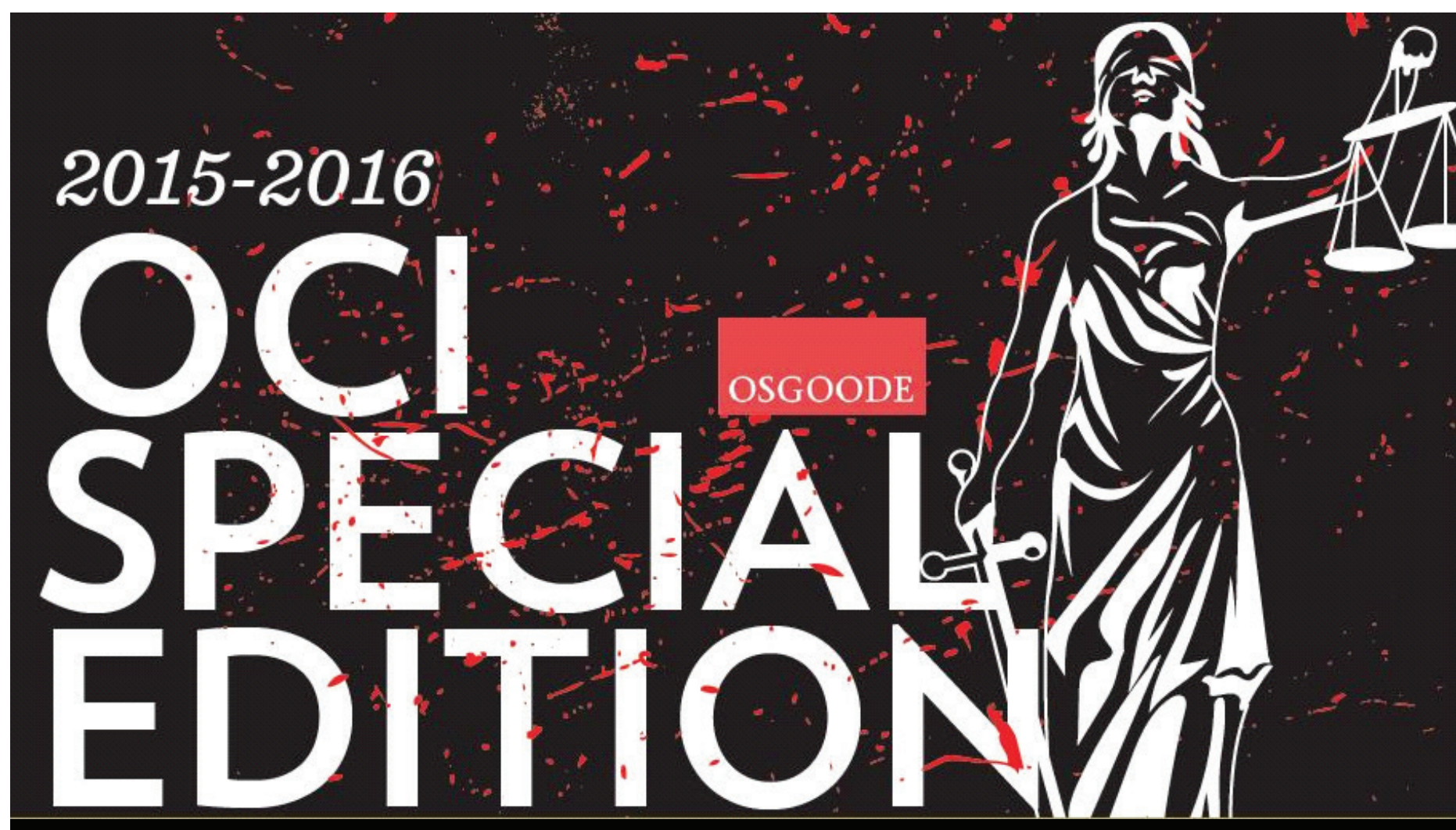
Obiter ♦ Dicta

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The Definitive Source for Osgoode News since 1928

Wednesday, March 23, 2016

OCI SPECIAL EDITION



► Photo credit: *Obiter Dicta*

SAM MICHAELS › EDITOR-IN-CHIEF

TODAY'S PUBLICATION MARKS the penultimate edition of the 2015/2016 *Obiter Dicta*. As we approach the end of another year, this issue also fittingly serves as our first foray into one of Osgoode's most exciting, and notorious, opportunities: On-Campus Interviews. OCI's mark for many of us the last hiring process before we seek out articling positions, and yet this moment of transition is also a source of polarity and divisiveness among students.

The OCI Survey and Special Edition come thanks to the dedicated work of *Obiter* staff member and Osgoode student Michael Motala. Michael did a truly amazing job coordinating with *Ultra Vires* at the University of Toronto, disseminating the survey, collecting the data, and putting together the Special Edition's content and layout. It was an enormous task for a team, let alone one student, and we couldn't be

more appreciative of Michael's work, or more proud to present the final product to you now.

With two thirds of OCI participants responding to our survey, we are confident that the Special Edition gives a useful and informative look at student impressions of the OCI process. The Special Edition begins with a review of some of the most pertinent and important results, and some of the stand-out data. The Edition goes on to an analysis of hiring trends and the makeup of the student population. It concludes with student comments and opinions on the OCI experience.

Our aim was to include the information and opinions that added to, and helped inform the discussion on the OCI process. With hundreds of student

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CBA Legal Futures Initiative Takes a Leap Forward with ‘Do Law Differently’

OF THE MANY opportunities I’ve had over three years with the *Obiter Dicta*, last week provided me with what will undoubtedly be the highlight. The launch of the Canadian Bar Association’s ‘Do Law Differently’ guide, held at the MaRS Discovery District through the invitation of Legal X, was an amazing look at the intersection of the traditional legal institutions with the future of the industry. It was an extremely interesting event, and an exciting first-hand look at an industry that seems to be, slowly but surely, rounding into form.

Now, I am not normally one to sing the praises of the legal industry. I founded my startup, www.Canadalegalhelp.com, specifically to counter a system which has made the basic task of finding legal resources unapproachable and intimidating. I have been closely following news and developments on both the institutional and industry side, watching as the disconnect between innovators and institutions gradually lessens. The ‘Do Law Differently’ event was the first time I saw that divide disappear completely as the CBA actively embraced the prospect and potential of an evolving industry.

The first part of the event was an afternoon round table discussion. Among those attending were former CBA President and Legal Futures Initiative Chair Fred Headon, report writer Jordan Furlong, and the founders of Legal X, Canada’s legal innovation hub, Aron Solomon and Jason Moysé. Of the twenty-five innovators interviewed for the Futures Report, Shelby Austin from Deloitte Forensic, Sam Witherspoon from Miralaw/ThisToo, and Mark Morris from Axxess Law were at the table. Needless to say, it was an impressive group, and I was more than a little intimidated speaking up in the discussion. Fortunately, as I’ve found time and again when speaking with innovators and startup founders, the participants were encouraging and patient in giving me the opportunity to share my opinions and learn from everyone’s perspectives.

The discussion often circled back to the many frustrations everyone felt with the industry. The innovators had high praise for the ‘Do Law Differently’ guide, but lamented their own law school experiences where industry awareness and innovation training were all but unheard of. As someone currently in that boat, I could relate. Omar Ha-Redeye, a Toronto lawyer and legal educator, spoke about the efforts he’s been involved in at Osgoode to bring innovation into the classroom. Between those efforts, new programs at many Canadian law schools, and the new guide,



► Photo credit: Canadian Bar Association

the wheels are certainly turning, but I believe we may still be some time from a truly amended curriculum.

Speaking on his experience growing Axxess Law, a truly innovative law firm operating primarily in Walmarts, Mark Morris spoke to the success of bringing retail practices into his operation. Sam Witherspoon, speaking on his experience growing ThisToo, an online collaborative divorce platform, echoed the sentiment. He spoke about the potential of a fractured family law market where “middle ground” services can pull in new consumer bases. Legal X founders Aron Solomon and Jason Moysé spoke about new industry models, and how Toronto is emerging as a global leader in legal innovation. Aron highlighted the worldwide success of Legal X as a new approach to the development of legal businesses through investment, resource provision, and growing a legal startup community. Around the table, it was clear that this “new class” of legal industry leaders are all on the same page. They stand ready and willing to exploit the weaknesses of old industry models, and seize the opportunities brought by new technologies and changing consumer expectations.

From the CBA, there was a welcome willingness to learn from the innovators, and even from me! I was given the opportunity to discuss the enormous expense of law school and how that expense inhibits innovation by forcing young lawyers to focus exclusively on earning income. To my frustration, the importance of the law school expense does not seem to receive adequate acknowledgement. That being said, the problem was acknowledged, both in the ‘Do Law Differently’ guide and in our discussion, which is

certainly a positive step. The Guide overall is divided into an advisory portion and a series of interviews. It is a fair and even-handed assessment of the current issues facing the industry, and an interesting look at legal innovators, though, arguably, more detail about current new business models would have been a positive addition.

The second part of the day’s event was a reception in one of the MaRS building’s many conference rooms. Sam Witherspoon and Shelby Austin joined a group of innovative speakers who discussed their experiences breaking the mold, and gave advice on accepting fear and failure, seizing opportunity, and taking advantage of the changing market. In their speeches and in conversation, these innovators were kind and thoughtful, providing the type of perspective one can only gain through independent achievement. The reception itself was well-attended and an interesting opportunity to interact with a unique portion of the legal community.

If I have one lingering criticism, it is that legal innovation seems very homogenous, full of wealth, “big law” experience, and money-driven initiatives. This is by no means a criticism of the event or the Guide. It is, more than anything, a consequence of a legal system which is debilitating to the poor. It stands to reason that those with access to resources, networks, and financing are the trailblazers of innovation. For that reason, this criticism is in no way aimed at the event, the new Guide, or the individuals

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LOUIS XIV

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Challenging “Big Pharma”

Opposing Pneumonia Vaccine Patents in India

JERICO ESPINAS › STAFF WRITER

ON 11 MARCH, Doctors Without Borders (DWB) officially launched a ‘patent opposition’ in India in order to better guarantee access to pneumonia vaccines for children. Pfizer, a US pharmaceutical company, is attempting to file a patent on PCV13, so-called because the product is a pneumococcal conjugate vaccine that involves conjugating thirteen serotypes of streptococcus pneumonia into a single carrier. However, under section 25(1) of India’s Patents Act, individuals and third parties can challenge the patent application through pre-grant opposition. These challenges can be justified under a number of grounds, but DWB is claiming that the patent is too obvious and lacks a truly inventive methodology.

Ensuring widespread access to pneumonia vaccines is of particular interest to humanitarian groups such as DWB. Pneumonia is a leading cause of childhood death, with almost one million children under the age of five dying each year because of the disease. Pneumonia inflames victims’ lungs, often affecting the microscopic alveoli that facilitate breathing. While the symptoms, which include coughs, fevers, and phlegm, are usually not severe, they may lead to fatal complications for very young and very old individuals. These complications include bacterial infections, lung abscesses, and fluid build-up.

Critically, pneumonia can be caused by a number of different sources, which include bacteria, viruses, parasites, and fungi. As such, treatment will differ depending on the particular kind of pneumonia, varying from antibiotics to viral inhibitors. Many of these treatments, however, are difficult to provide in low-income settings; often, the healthcare unit is incapable of providing the procedure or the patient is unable to afford it. Given these constraints, most humanitarian organizations do not focus on providing pneumonia treatments for afflicted individuals. Instead, they advocate for increasing the availability of vaccines. This emphasis on vaccines reflects a general strategy that uses preventative care, which is generally less painful and more cost-effective than relying on reactive treatments.

Pneumonia vaccines are widely implemented by many health care systems, and as such are often a large source of revenue for pharmaceutical companies. Indeed, companies like Pfizer have reported sales of up to six billion annually from these vaccines. Importantly, some organizations have noted that there are often differences in vaccine prices depending on the country. For example, according to studies by DWB, a dose of pneumococcal vaccine in France in 2014 was \$58.43 USD. However, that same dose was \$63.74 USD in nearby Morocco. In general, for pneumonia and other diseases, middle-income countries often had to pay more for the same medication than their high-income counterparts.

Many health organizations have criticized these disparities in vaccine prices. Firstly, they reflect an abuse of bargaining power. Often, these middle-income countries enter into price negotiations with limited information and with fewer pharmaceutical competitors to which they can turn. Secondly, given the limited health care budgets of these countries,

these health care systems are forced to make difficult choices about which vaccines they should prioritize, often leaving certain vulnerable populations at risk.

The vaccine market for low-income countries is different. Gavi, a public-private global health partnership organization that subsidizes pharmaceutical companies in order to lower vaccine prices, ensures

“...Pfizer wants a patent on its supposedly innovative version of PCV 13 in order to extend their monopoly on pneumonia vaccines in India.”

that prices in these countries are capped at around three dollars per dose. While these prices are more affordable, many of these countries still struggle with implementing vaccines while supporting other health care initiatives.

One potential solution to these health care barriers is reliance on generic vaccines rather than

brand-name pharmaceuticals. Indeed, the Serum Institute in India claims that it can generate a generic version of the standard pneumococcal conjugate vaccine for two dollars per dose. The threat of other companies creating competitively priced generic vaccines poses a problem for pharmaceutical companies like Pfizer. As such, these companies often try to use patents in order to prevent other organizations from decreasing their profits.

This profit-maximizing motivation, claims DWB, is at the heart of Pfizer’s current patent application. That is, Pfizer wants a patent on its supposedly innovative version of PCV13 in order to extend their monopoly on pneumonia vaccines in India. DWB’s challenge is not without merit. The European Patent Office already revoked an equivalent patent, and another patent filed in South Korea is also facing formal challenges. If the pre-grant opposition fails, then DWB may also file a post-grant opposition application. ♦

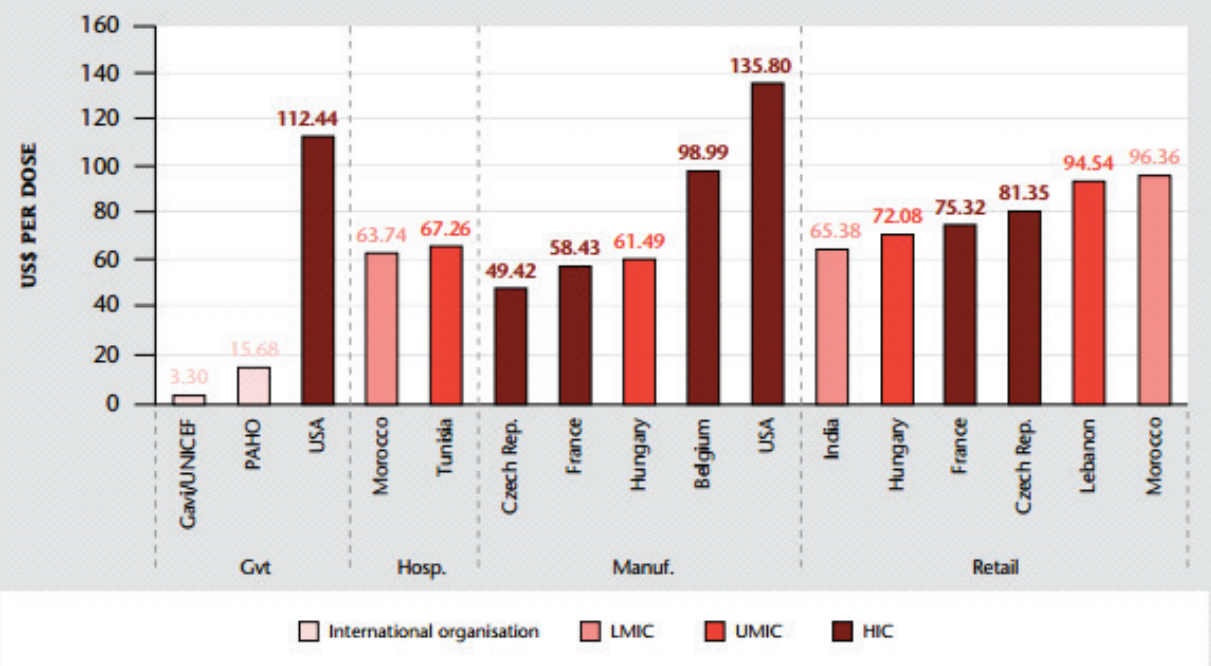


THUMBS DOWN



Donald Trump closes in on republican nomination

Graph 20: Prices for Pfizer's Pneumococcal Conjugate Vaccine (PCV13) in several countries, by income group and price type, 2013/2014*



► Photo credit: (top) Christinna Muschi/Reuters, (bottom) msfaccess.org

Sorry, Dear, but Criminal Law is an Old Boys Club

Alarming Attrition Rates for Women in Criminal Law

ESTHER MENDELSON > STAFF WRITER

ONCE COMMENTED to one of my Criminal Procedure professors that the Crown's office seems like a better place for women who want to practice criminal law. My professor, who is a female Ontario Court of Justice judge and former defence attorney, responded that if all the women who want to practice criminal law end up working for the Crown, the criminal defence bar will regress into what it looked like thirty years ago, and many of the gains fought for by female criminal defence attorneys would quickly evaporate.

A report released earlier this month by the Criminal Lawyers' Association entitled "The Retention of Women in the Private Practice of Criminal Law" seems to suggest that that has already happened.

The report, which analyzed data from the Law Society of Upper Canada and Legal Aid Ontario, as well as information gathered from focus groups, suggests that female criminal defence lawyers are leaving the practice in droves. The numbers are stark: of the forty-seven women who started practicing criminal law in 1996, only thirteen are still practicing. The rate of attrition for women, the report states, is far higher than that of men.

Many women leave after five years of being in practice; most are gone after ten. They cite unpredictable work hours, and the challenges of taking maternity leave, including the fact that few women qualify for the LSUC's maternity leave program, and the financial burdens of Legal Aid work. Indeed, the reality that so much of Legal Aid work is done by women (see Abel and Lewis's *Lawyers in Society*) should raise some concerns about how work is divided among the criminal defence bar. As the report highlights, senior male lawyers are more likely to refer clients to other male lawyers. It appears that in terms of referrals, the criminal defence bar is still an old boys' club.

Most troubling of all, however, is that many cited lack of respect from colleagues, opposing counsel, judges, and court workers as a reason for leaving their chosen practice area.

I have seen several female lawyers perform and adopt affectations in order to be accepted by male colleagues; being one of the boys can be a survival mechanism. Indeed, the way women dress, act, and even speak is so closely scrutinized that it is no small wonder that women find the time to hone their craft while having to ponder how will this dress affect the way I am treated today?

The disrespect starts early on in women's legal careers. It is usually subtle and hard to identify, but can also be more overt. A friend who was summering at a criminal defence firm intimated that she was always the one who was sent to get coffee, while none of her male colleagues were asked to do the same. At an articling interview with a male criminal defence attorney, I was asked if I thought there was any truth to the old adage about scorned women in the context of sexual assault complaints, suggesting that women routinely lie about being sexually assaulted because they are vindictive.

Once we get to court, little changes. Some female defence attorneys have complained about being berated by condescending or aggressive judges and opposing counsel. Being sidelined by colleagues when



► Crown prosecutors Helene Di Salvo, centre, and Louis Bouthillier, right, leave the courtroom following the appearance of Luca Magnotta in Montreal in June 2012.

deciding who will speak with clients and being relegated to performing administrative tasks seems to be commonplace.

The bench, too, is not immune to outmoded and frankly outrageous ideas about women. Justice Robin Camp is facing an inquiry by the Canadian Judicial Council for his suggestion that a sexual assault complainant simply close her legs in order to avoid being raped. His were merely the latest in a long line of outrageous comments about women from the bench (Justice Bourassa's suggestion that Aboriginal women are promiscuous drunks—"a pair of hips" to which a man can "help himself"—and therefore not rapeable, is another example).

Female judges can similarly be targets for opprobrium in ways that would not apply to their male colleagues. Last year, Associate Chief Justice Lori Douglas's career came to a screeching halt when the Canadian Judicial Council mulled over whether a female judge could continue to sit on the bench if she

had taken nude photographs of herself.

The LSUC Rules of Professional Conduct clearly state that civility and commitment to equality are part of lawyers' ethical and professional obligations. Rules 5.1-5 (courtesy, civility, and good faith), 6.3 (sexual harassment), 6.3.1 (discrimination), and 7.2 (courtesy and good faith) are particularly instructive. These rules are not guidelines or suggestions; they are binding on all lawyers.

The CJC's Ethical Principles for Judges is the equivalent of the LSUC Rules for members of the bench.

The LSUC Rules are clear and the Law Society should start enforcing these rules more seriously and encourage the reporting of violations. The Law Society cannot, however, shoulder the burden alone. Likewise, the bar and bench have an important role to play.

"The disrespect starts early on in women's legal careers."

Horror Stories of Men without Shame

Yes, All Women Endure This

IAN MASON › STAFF WRITER

I HAVE A problem. Okay, I have lots of problems, but this article is going to focus on just one of them. I'm an information junkie. Sometimes, that leads me to learn about beliefs, attitudes and behaviours that are downright disturbing. Call it a morbid fascination with the deranged, or a waste of time for someone who almost certainly has better things to do. In any case, I've habitually gazed upon the darkest corners of the human mind, and no amount of brain bleach—aka liquor—can make me unsee what I've seen. When you look long into the abyss, the abyss looks long into you, and we've been locked in a staring contest since my early teens.

Desensitized as I am, some of the things some guys say and do to women utterly horrify me. What they expect can be even more disturbing.

This article was inspired by a friend's online interaction with someone who introduced himself by saying he wanted to "pound [her] sooo hard," only to get upset when she made fun of him. I asked women I knew to share similar stories, and I was simultaneously not disappointed, and beyond disappointed. They are identified with initials that only vaguely correspond to their names, even if they publicly shared their stories on my Facebook wall. I'm also editing the stories for brevity and language (not surprisingly, some unflattering terms were used).

Ladies and gentlemen, grab some antibiotics and put on your scuba gear, because we're diving into the septic tank of moronic depravity.

"A group of us girls went out dancing one night... this older man came up to me and asked for a dance. I said no thanks. He grabbed me by the wrist and started tugging me out the back door. I started yelling but couldn't be heard over the music. Suddenly, this dude came out of nowhere and shoved the old guy off me. I do not hug random people, but I hugged that dude that night. I do not like to think about what would have happened if he had not helped me." - M.A.

"A guy followed me around a Home Depot telling me many flattering things about my appearance. I said thanks and left. He approached me again and said he didn't want to be creepy, but felt I deserved to be told these things. I said thanks again, but said it was starting to get awkward. He apologized, but then said 'don't let me catch you outside though.' At this point, a very nice stranger stood between us and stayed there as my 'admirer' told me again not to let him catch me outside because he would make me his wife." - L.M.

"I was in an elevator one day, when a man looked directly at my chest and asked, 'can I hang my coat on those?' I couldn't think of any response, so I ignored him." - P.M. (she added that this was years ago, and there was a time when people would have laughed at such a thing. In retrospect, *prolonged shudder*.)

"I was seventeen and in my school uniform, riding the subway to downtown. A middle-aged

man and his roughly seven-year-old daughter kept staring at me. I didn't make eye contact and when I left at my stop, I heard the girl say 'papa, she's leaving, I can't see her.' Spooked, I hid behind a pillar, and moments later heard the girl say 'papa, she has to be here.' I saw them actively searching for me, so I booked it to the end of the line where some 'rough' looking men were standing, and hid behind them. They saw I was scared, and when the father approached, they blocked me off from him until he roughly took his daughter's hand and left. He used to his own daughter to find me." - J.A.

(I'm not going to use quotes, because this person gave me three stories and I'm going to summarize two, since one's... certainly creepy, but sadly, not a "winner.") First, a guy grabbed her ass in a club and followed her around, calling her rude when she told him to leave her alone. Second, a guy exposed himself to her, tried to touch her with his genitals, and she feared she would be raped until an off-duty police officer heard her scream and chased the guy off. - N.D.

"...when this sort of thing happens to you, start a damned ruckus."

the bar. "I expect you to show up in nothing but a trenchcoat." I did NOT go. Also, after turning someone down while having drinks at a bar, the rejected replied, "well, it's your loss, because I would have been the best [obvious expletive] of your life. Not with that attitude." - S.M.

M.P. was sent a dick pic, and showed me a transcript of the conversation, which seems to involve him apologizing, then sending her another dick pic, apparently out of spite for calling him out. He also seemed to suggest he masturbated to her Instagram photos. She treated him like a joke. She's definitely one of my favourite people.

I'm getting to both the word limit for Obiter articles, and the limit of my patience for human stupidity. Also, I have some more "triumphant" stories that I feel should be shared, because they reflect one important lesson we can take from this: when this sort of thing happens to you, start a damned ruckus. Call the cops, scream, raise a fist, or find the nearest guy who seems to have a low nonsense threshold. If you're lucky, the last one of those might step in anyway.

Cases in point: I was once at a party where I saw a girl crying because a guy had called her a slut, basically because she shot him down (so much for logic). I was about to step in, when he antagonized my roommate, who proceeded to throw him into a litterbox of a cat with bowel problems. It was a beautiful moment of karma.

Another friend once saw a guy corner a woman on the subway. He stepped in and told the creep to leave. The creep punched him in the chest. My friend has a muscular disorder that prevents him from working out, so he wears actual chain mail armour



► Photo credit: xkcd.com

under his shirt to keep his muscles from atrophying. As the creep tried to figure out what he'd just hit, he got a fist to the jaw, hit the floor, was dragged away by TTC security at the next stop. The creep now presumably has a criminal record, earned losing a fight to a physically handicapped guy who doesn't look a day over fifteen.

The moral of these disturbing stories seems to be "stay vigilant, because some guys have no sense of decency." Stand up for yourself, and don't be shy about asking others to stand up for you. Some of us are more than happy to. ♦

THUMBS UP



Law school ends in a month!

Ethical Issues in Sport

The 2016 Entertainment and Sports Law Conference

NADIA ABOUFARISS › OPINION EDITOR

S PONSORED BY OSGOODE'S Entertainment and Sports Law Association, the eighteenth annual Entertainment and Sports Law Conference took place at the Metro Toronto Convention Centre on 4 March 2016. The long-running and highly successful conference brings together some of the top IP, entertainment, and sports professionals to talk about recent developments in the law and their respective fields. It is also a great opportunity for students to network with lawyers who work in these areas and gain some practical career advice with a panel dedicated specifically toward forging a career in these areas, as well as a reception held after the conference is over. If you are considering trying to enter these fields, or are just interested in sports and/or entertainment (and who isn't), I highly recommend checking it out next year!

I happily got a chance to chat with the person who holds my dream job—Matthew Shuber, VP of Business Affairs and Legal Counsel for the Toronto Blue Jays. Mr. Shuber, who was a panelist in the “Business of Sport - Brand Management” session, said that when he was in law school, he was convinced he was going to be a criminal lawyer. He articulated and worked for a criminal law firm for five years before realizing it wasn't for him, and happily ended up where he is now. I love hearing stories like this as it makes me feel better about not being exactly sure what I want to do with my own career. It was great talking to him about the rather unusual role that the Blue Jays organization plays in MLB, being the only Canadian team in the league. He said that although it certainly makes some things more challenging, it also gives him a level of freedom that a lot of the other teams

don't have, such as in negotiating media contracts.

My favourite panel of the day was on “Legal Issues in Sport and Ethics in Sport Governance,” which consisted of a spirited back and forth discussion between Eric Macramalla, a partner at Gowlings and Legal Analyst at TSN, and David Goldstein, a member of the Cassels Brock Sports Law Group. The first half of the talk centred around a topic near and dear to my

“My favourite panel of the day was on ‘Legal Issues in Sport and Ethics in Sport Governance’...”

heart, having written about it earlier this year for the *Obiter: Deflategate*. The case has recently gone back to the courts on appeal, and although Tom Brady's lawyer was successful at the trial level, mostly due to his focus on improper notice given by the NFL, it looks like the three judges on the appeals bench are focusing on the phone evidence (Brady had his phone destroyed during the initial investigation). This is a rather unusual move for an appeals court since generally speaking the factual record is not at issue. If the judges continue to be concerned about the phone things aren't looking too good for the NFL's golden boy (and for anyone who has Brady in a keeper league).

Also discussed in depth was the MLB's new domestic violence policy, implemented at the end of last season, and what I personally think is a huge step in the right direction for baseball. Under the policy, the commissioner can investigate any allegations involving sexual assault, and suspensions can be handed out regardless

of criminal charges or convictions. There is also no maximum penalty under the policy, which has raised concerns that the commissioner might be given too much power, creating an issue we see all too well in the NFL. The first suspension was given to Aroldis Chapman, who was alleged to have choked his girlfriend and fired off gunshots in his garage. Although the DA felt there was not enough evidence to press any charges, the MLB quickly came out and suspended him thirty games.

What is most surprising in this situation is the fact that Chapman is not appealing the decision, since the union that represents players in the league (the MLBPA) tends to appeal all suspensions as a matter of course. Eric Macramalla said during the panel that he suspects something came out in the MLB investigation that has not been released to the public, and the result is that now the MLBPA is in a bad bargaining position, with the precedent set at a thirty-game suspension for allegations that were never proven. Former Blue Jays shortstop Jose Reyes is likely to be the next player who will face discipline under the new policy, and considering that he was actually arrested and charged for abusing his wife while on vacation in Hawaii, the league is likely—and rightfully—to treat this as an exceptional case. Reyes will definitely miss at least part of the upcoming season, as he is currently on indefinite suspension (with pay, for now) pending the results of his trial, which is slated to start on 4 April. ♦

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OCI SPECIAL EDITION

OSGOODE

Whither justice?



Compelling, but Incomplete...

MICHAEL MOTALA

What's black and white and red all over? For the most part, it is the inaugural issue of *Obiter's* On Campus Interview (OCI) survey.

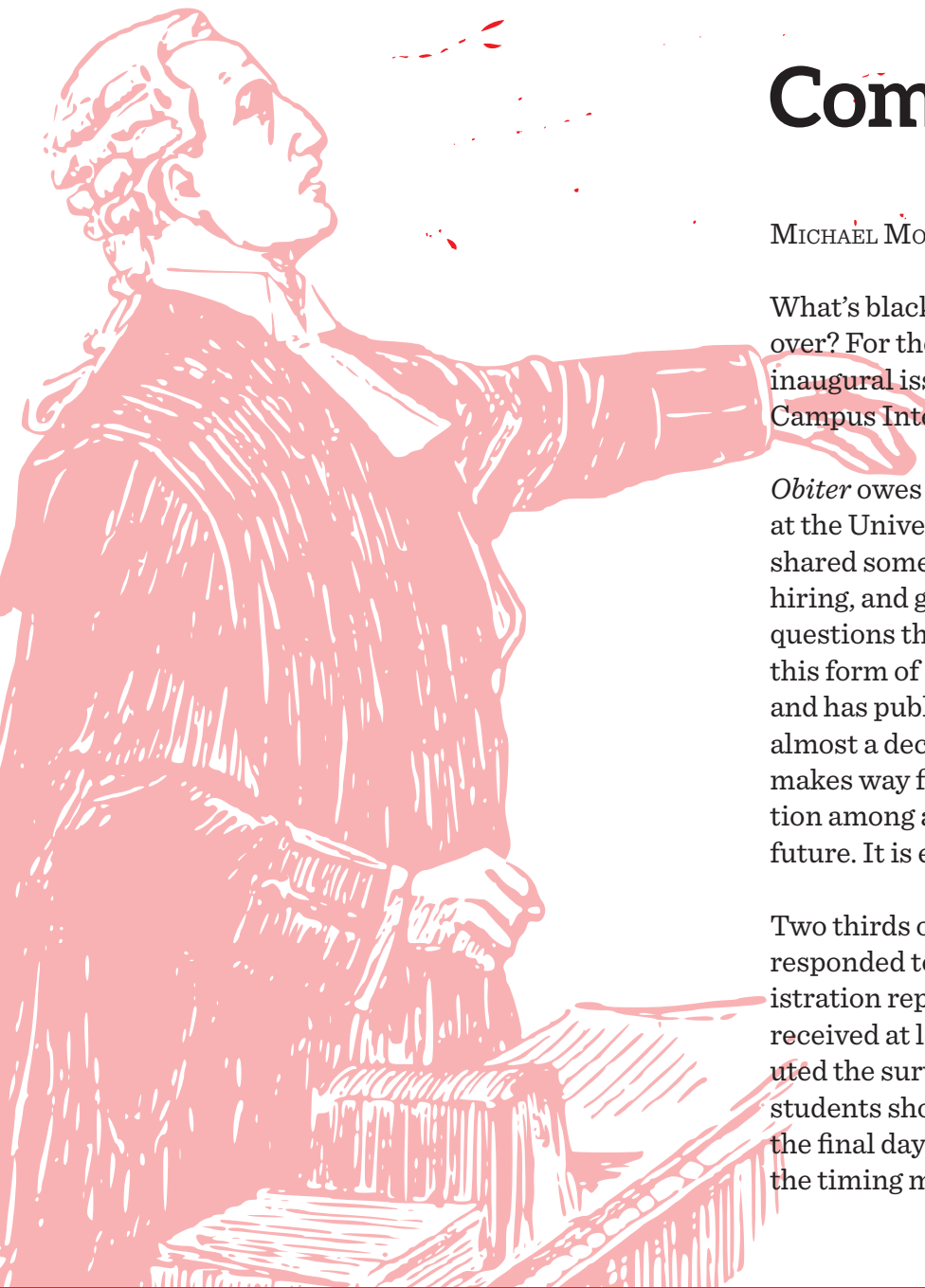
Obiter owes a great debt to *Ultra Vires* at the University of Toronto, who shared some data with us on firm hiring, and gave us a template for our questions this year. UV has pioneered this form of data-driven journalism, and has published these results for almost a decade. Our work this year makes way for sustained collaboration among all Ontario schools in the future. It is exciting.

Two thirds of OCI participants responded to our survey. The administration reported 196 participants received at least one OCI. We distributed the survey by e-mail to 2L students shortly after "call time" on the final day of interview week. While the timing may have been insensitive,

we hoped to capture all insights and frustrations as soon as possible in support of this project.

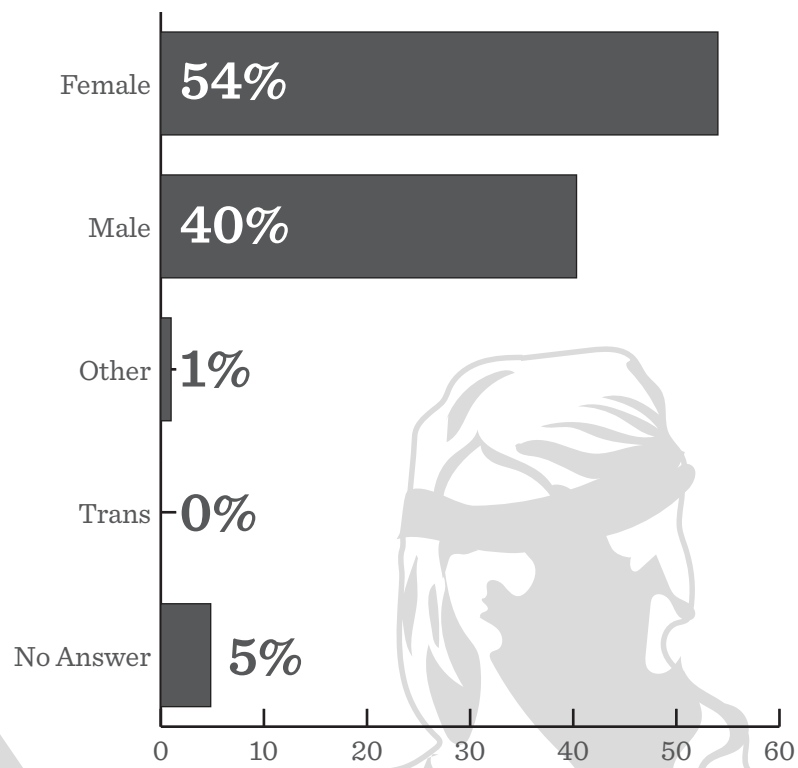
No survey is perfect. There are often errors in question design or method of execution. We recognize that our dataset is open for improvement. However, given the rate of response, we are confident it is sufficiently representative of participants' opinions and feelings about the process. Next year, we hope to improve and deliver even richer data-driven insights to inform future cohorts of students.

Thanks to everyone who participated. We hope you enjoy the result of our blood, sweat and toil—Osgoode's school colours are black and white and red all over after all.

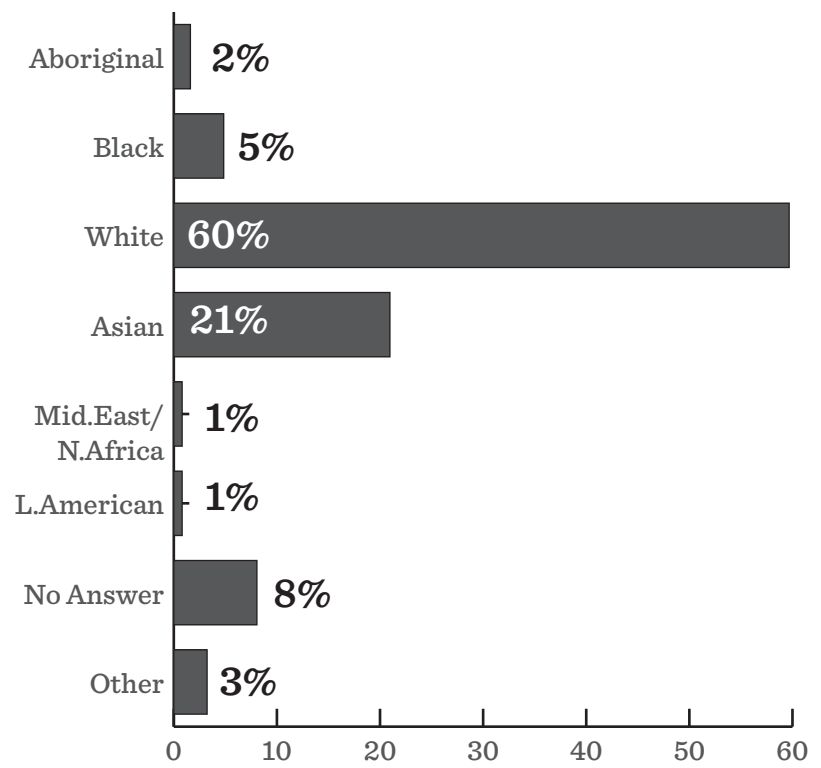


Tell Us About Yourself ...

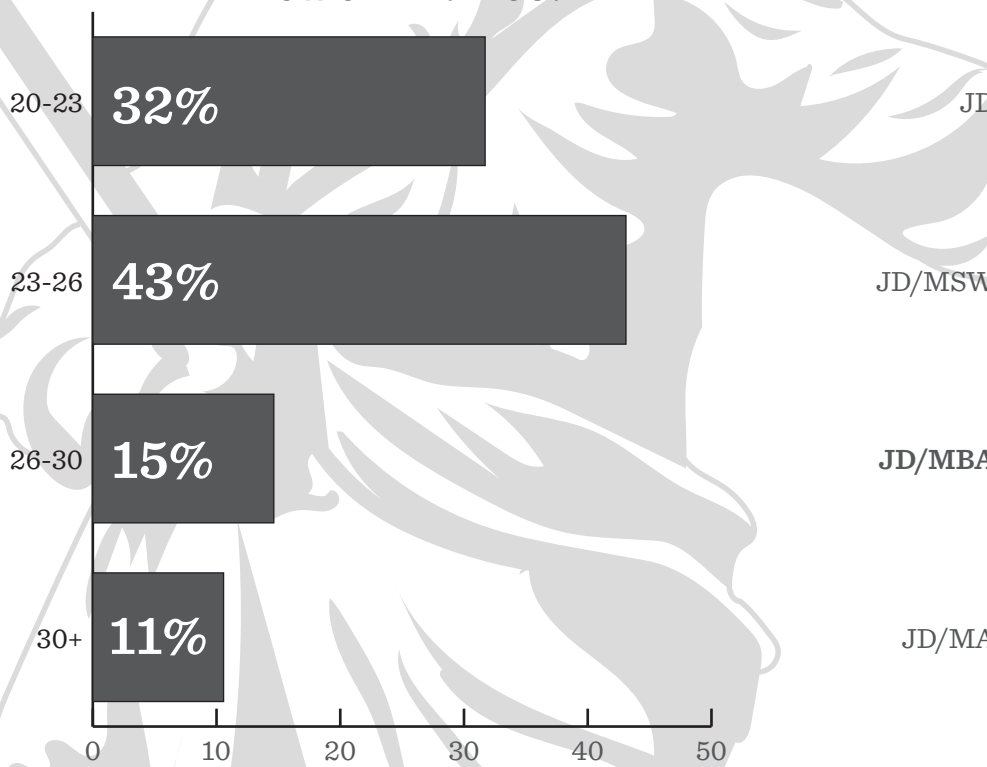
GENDER?



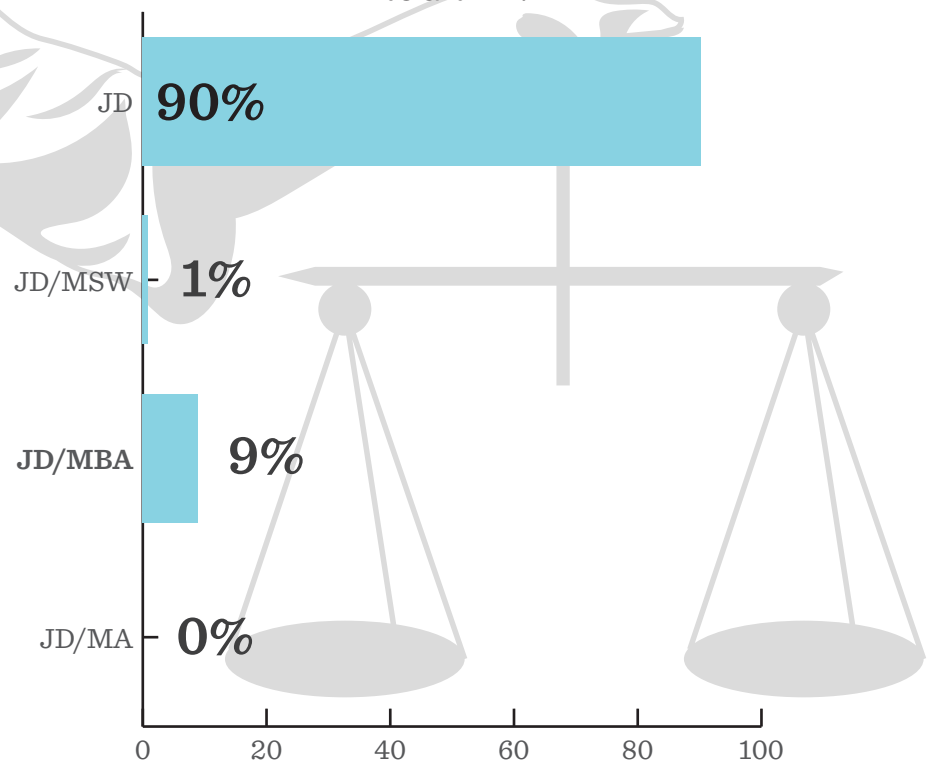
ETHNIC IDENTITY?



HOW OLD ARE YOU?

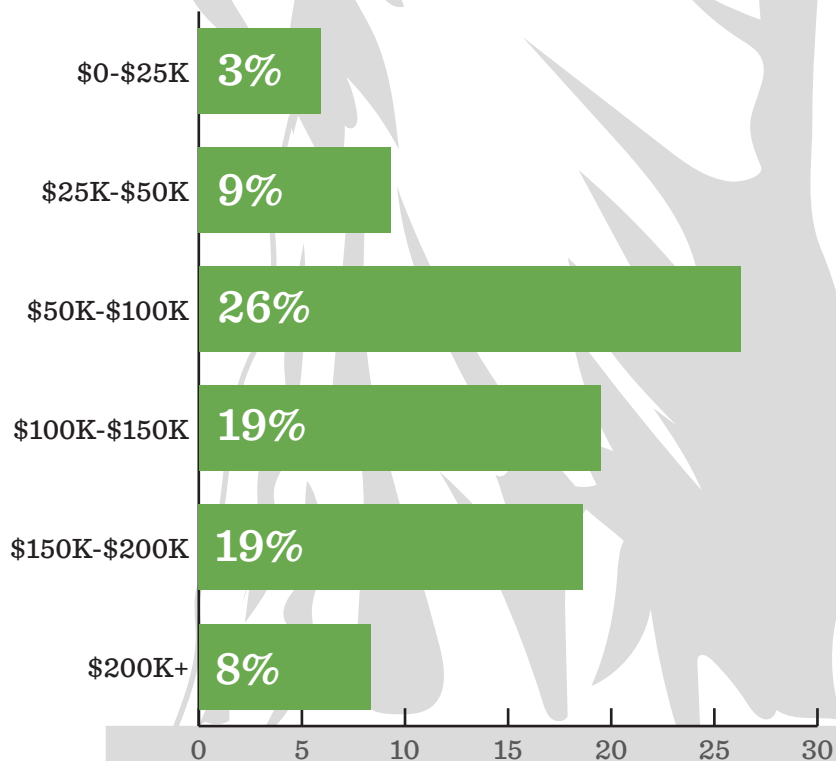


PROGRAM?

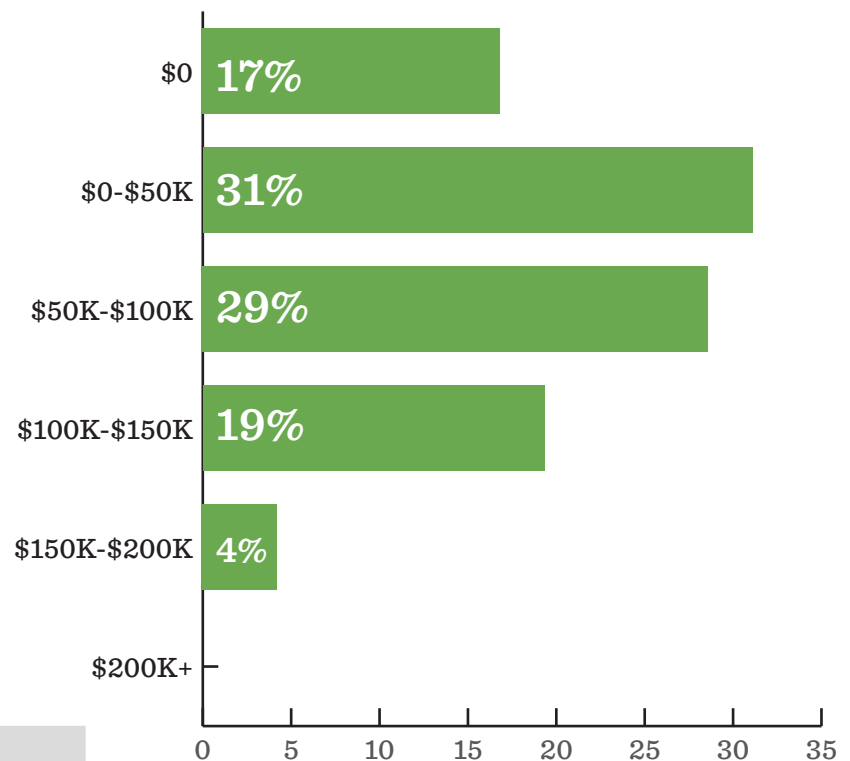


**There was an error in survey design with respect to the age overlap realized after distribution. We apologize for the inaccuracy, and elected to publish in students' interest.*

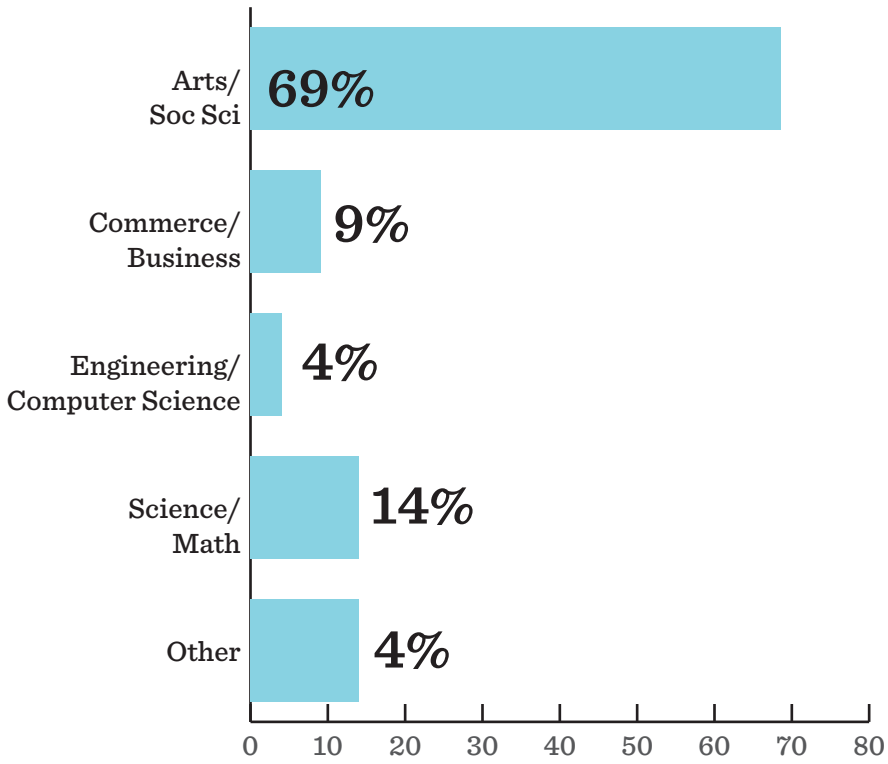
PARENTAL INCOME?



EXPECTED DEBT UPON GRADUATION?



What did you study in undergrad?

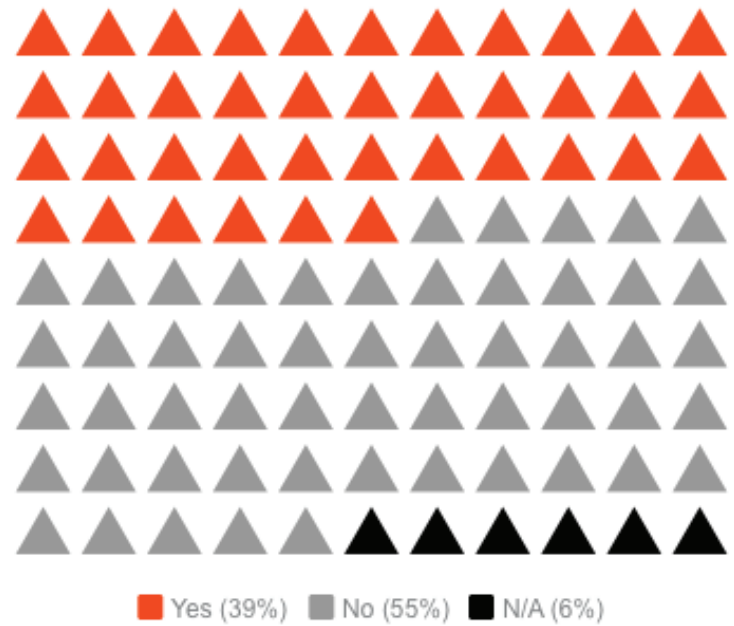


Was your highschool publicly or privately funded?

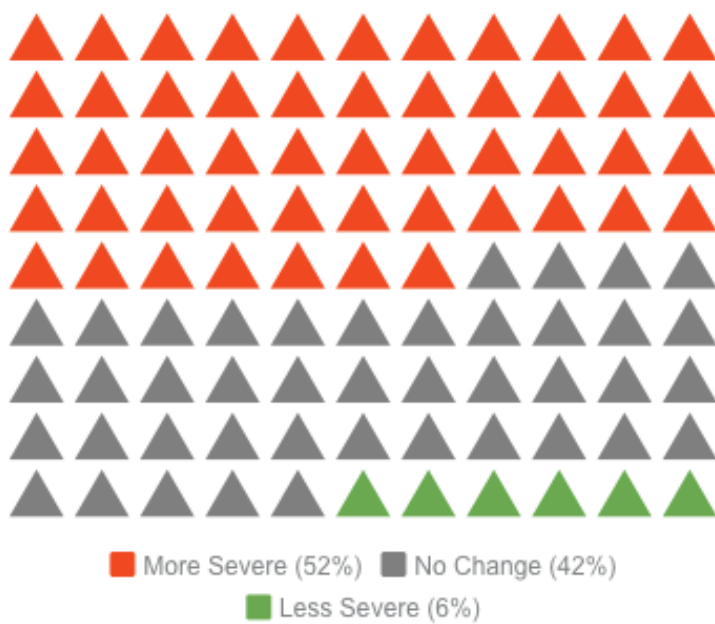


Law School & Mental Health

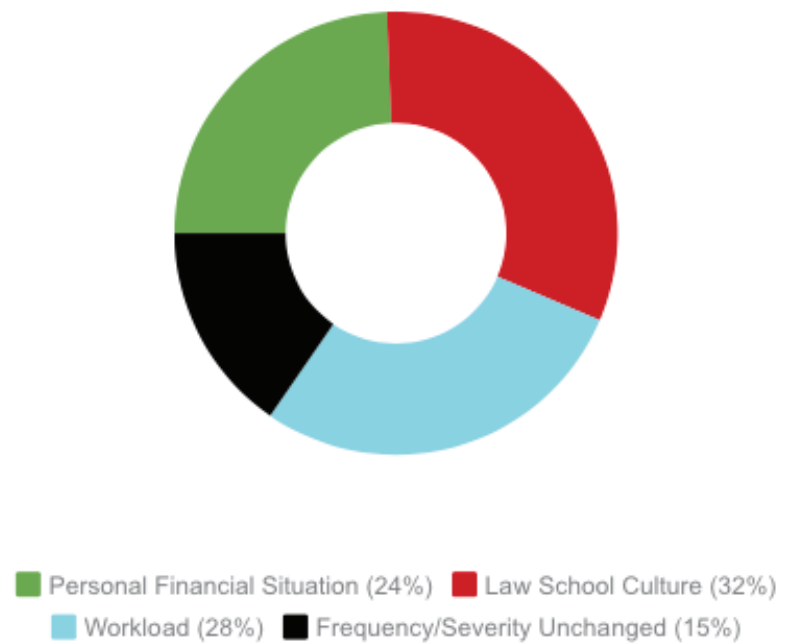
Have you ever experienced a mental health condition?



Has the frequency of your conditions changed during law school?

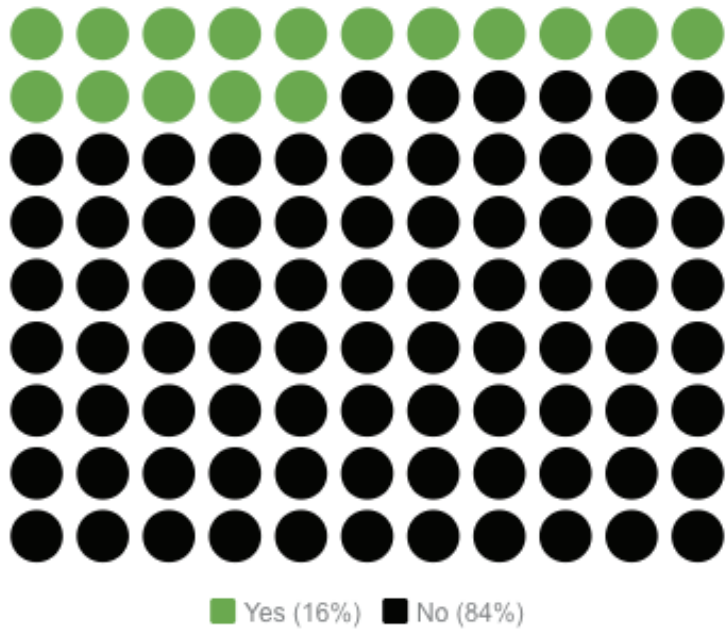


If frequency or severity have increased, what factors have contributed to it?

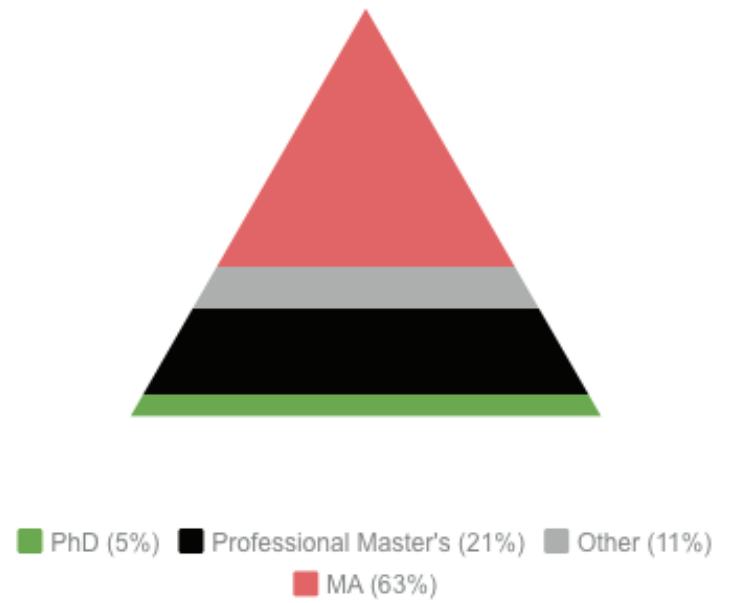


Academic Background

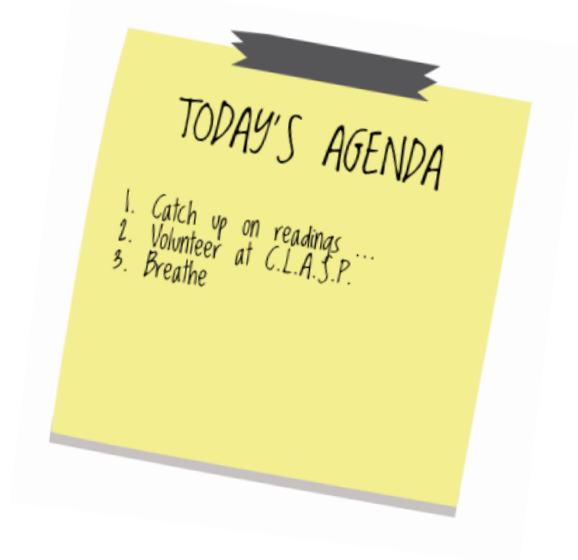
Do you have a postgrad?



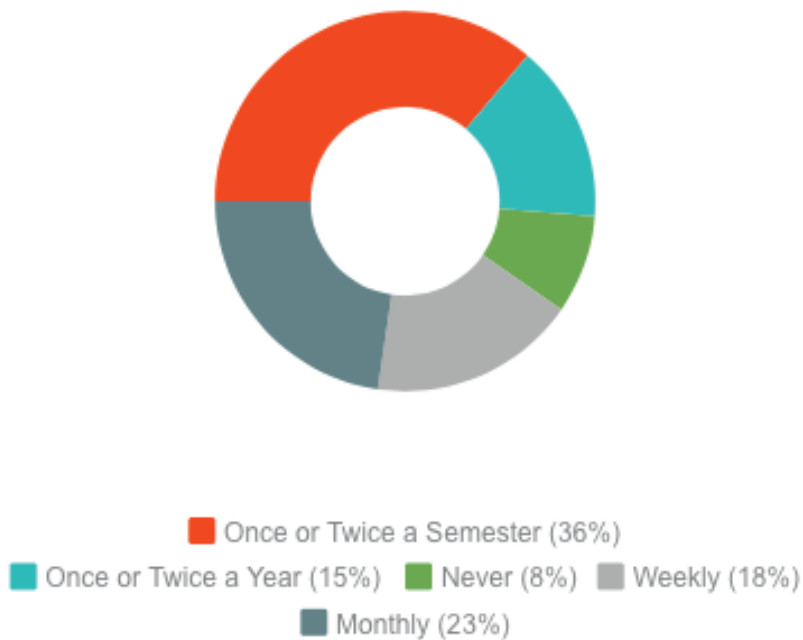
If so, what kind of postgrad?



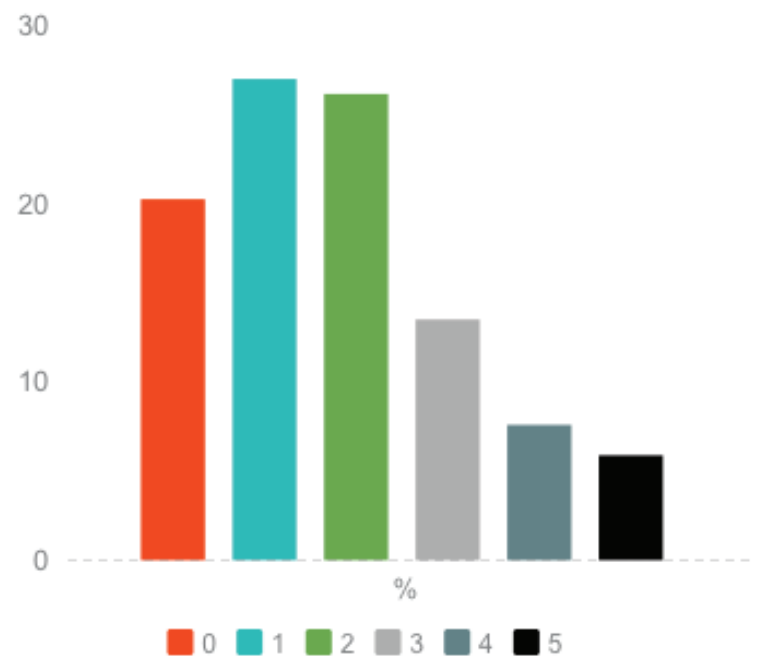
What do you do at school?



How often do you participate in law-school social event?



How many extra-curriculars?



Overall Hiring by Firm

Firm	Total Students	Osgoode	U of T	Western	Queen's	Ottawa	McGill	Windsor	Other
Aird & Berlis	7	2	2	0	2	0	0	1	0
Baker & McKenzie LLP	5	2	0	1	1	0	1	0	0
Bennett Jones LLP	16	1	5	1	2	2	1	1	0
Blake, Cassels & Graydon LLP	36	8	15	4	2	1	1	0	4
Borden Ladner Gervais LLP	21	2	6	5	2	0	3	2	1
Brauti Thorning Zibarras LLP	2	1	0	0	0	0	0	1	0
Cassels Brock & Blackwell	12	3	3	2	2	0	0	1	1
Dale & Lessmann LLP	2	0	1	0	1	0	0	0	0
Davies Ward Phillips & Vinberg LLP	16	7	4	1	1	1	1	0	1
Dentons	12	2	2	1	2	0	1	3	1
Dickson Wright LLP	2	0	0	1	0	0	0	0	1
Dimock Stratton LLP	2	1	0	0	0	0	0	1	0
DOJ Ontario Region & Public Prosecution Service of Canada	9	0	2	2	2	1	0	1	1
DLA Piper	4	2	0	0	1	1	0	0	0
Edward H Royle & Associates	2	0	2	0	0	0	0	0	0
Epstein Cole LLP	2	0	1	0	1	0	0	0	0
Fasken Martineau DuMolin LLP	13	4	1	1	1	2	1	2	1
Gardner Roberts LLP	3	0	1	1	1	0	0	0	0
Gilbert's LLP	2	0	1	1	0	0	0	0	0
Goodman's LLP	13	2	3	1	4	1	0	0	2
Gowlings	14	4	3	3	1	2	0	1	0
Hicks Adams LLP	4	1	1	0	1	0	0	0	1
Hicks Morley	5	0	2	1	1	0	0	1	0
Koskie Minsky LLP	4	0	1	1	0	0	0	2	0
Lenzner Slaght Royce Smith Griffin LLP	5	2	2	1	0	0	0	0	0
MAG - Constitutional Law Branch	4	0	1	0	0	0	0	0	3
MAG - Crown Civil Law Office - Criminal	8	0	4	0	2	0	1	1	0
Mathews, Dinsdale & Clark LLP	3	2	1	0	0	0	0	0	0
McCarthy Tetrault LLP	22	2	4	4	2	3	3	2	2
McMillan LLP	11	1	3	3	0	2	0	1	1
Miller Thompson LLP	9	1	0	2	0	2	0	2	2
Norton Rose Fulbright Canada LLP	19	6	5	0	1	2	2	2	1
Osler, Hoskin & Harcourt LLP	21	3	4	3	4	1	3	2	1
Palliare Roland Rosenberg Rothstein LLP	3	2	1	0	0	0	0	0	0
Paul, Weiss, Rifkind, Wharton & Garrison	3	0	3	0	0	0	0	0	0
Reisler Franklin LLP	3	0	0	0	1	2	0	0	0
Shearman & Sterling LLP	1	1	0	0	0	0	0	0	0
Skadden, Arps, Slate, Meagher & Flom LLP	1	0	0	0	1	0	0	0	0
Smart & Biggar	2	0	1	1	0	0	0	0	0
Stikeman Elliott LLP	20	3	7	2	3	1	0	3	1
Thorsteinssons LLP	0	0	0	0	0	0	0	0	0
Torkin Manes LLP	2	0	0	2	0	0	0	0	0
Torys LLP	23	6	8	2	2	0	2	0	3
WeirFoulds LLP	6	1	3	0	1	1	0	0	0
Wildeboer Dellelce LLP	3	0	0	1	0	1	0	1	0
TOTAL	395	80	105	48	47	29	20	34	32

*Above data collected by *Ultra Vires* at the University of Toronto. Special thanks to UV for allowing *Obiter* to reprint.

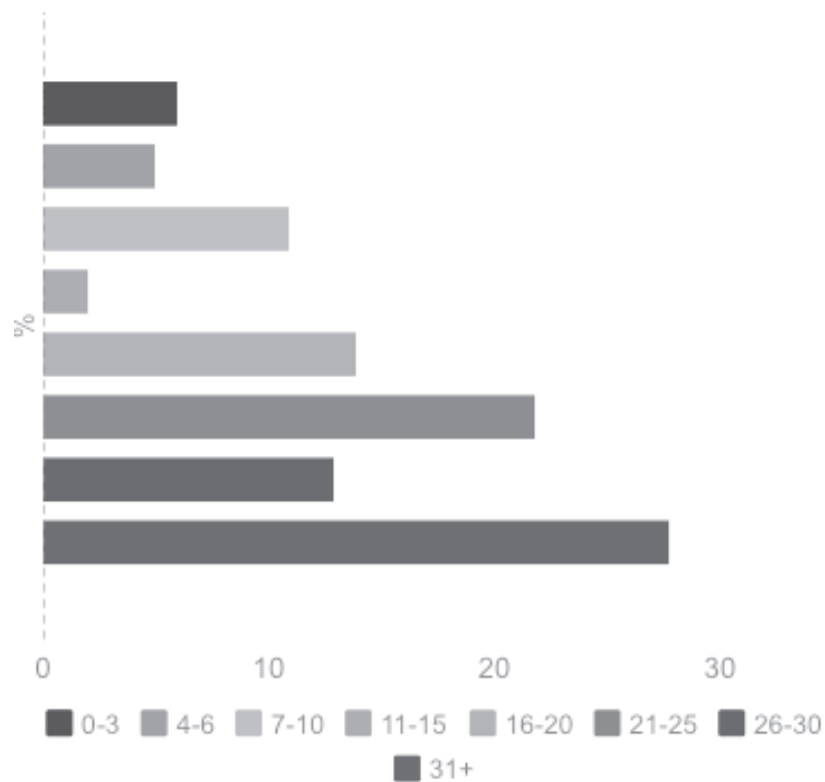
Analysis

Did you receive a job offer?



■ Yes (53%) ■ No (47%)

How many firms did you apply to?



Offer Distribution

52% Female

45% Male

3% Other/Trans

93% Straight

3% Bisexual

0% Gay/Lesbian

3% Aboriginal

3% Black

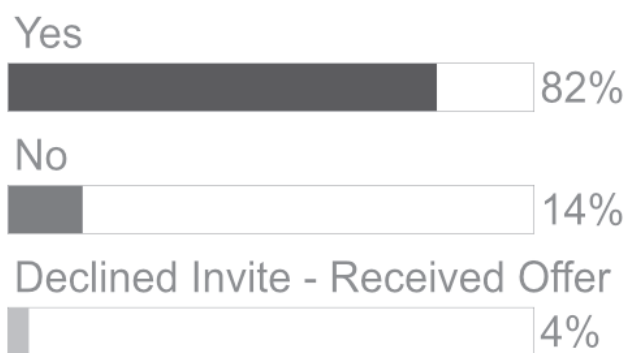
38% Asian

55% White

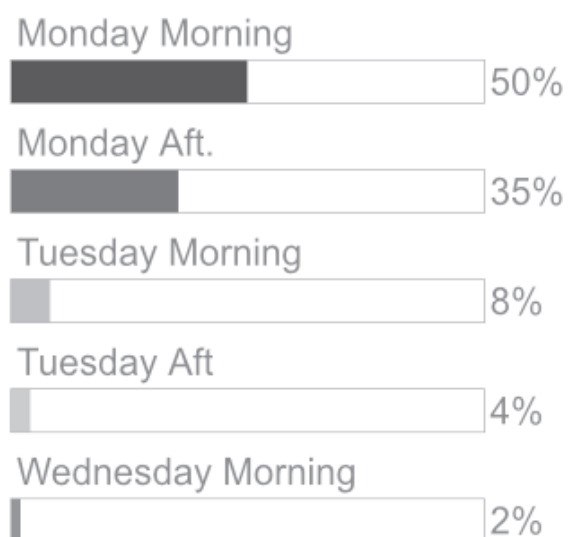
10% No Answer - Ethnicity

3% No Answer - Sexuality

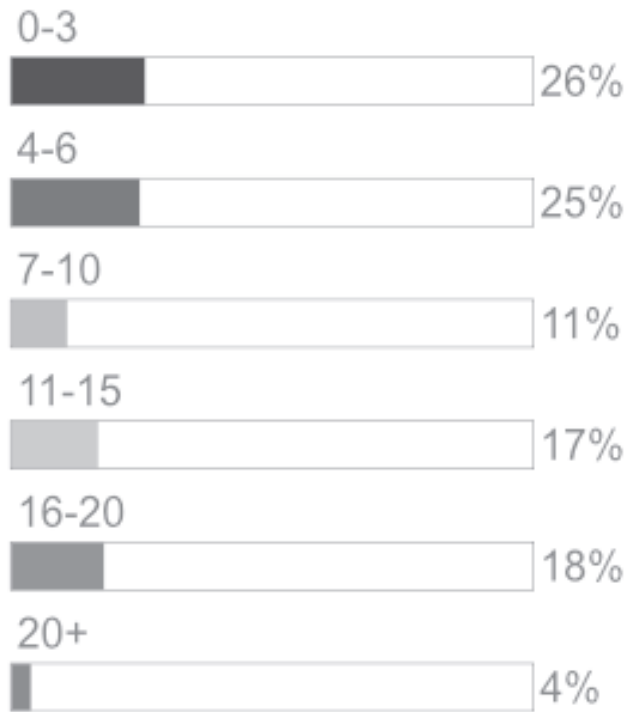
Did you attend any social functions at firms you received offers from (eg. lunch, dinner, cocktails)?



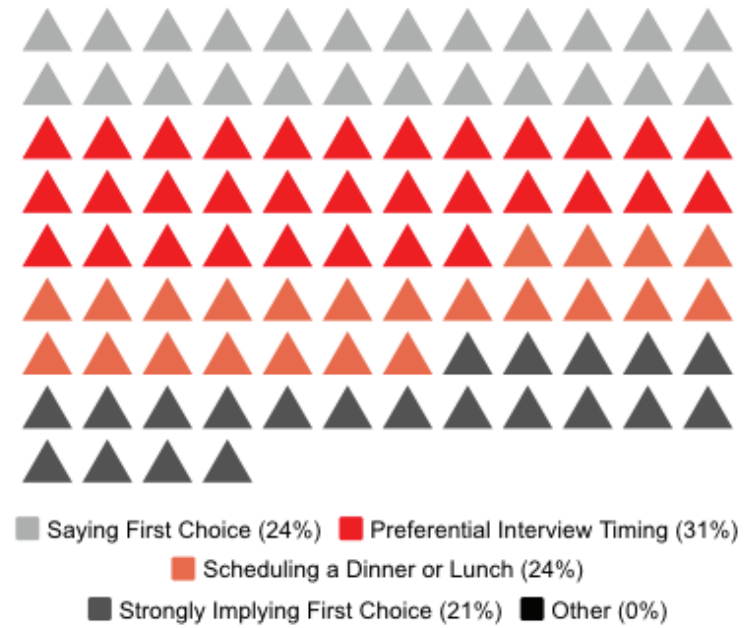
If you accepted an offer, when did you interview with that firm?



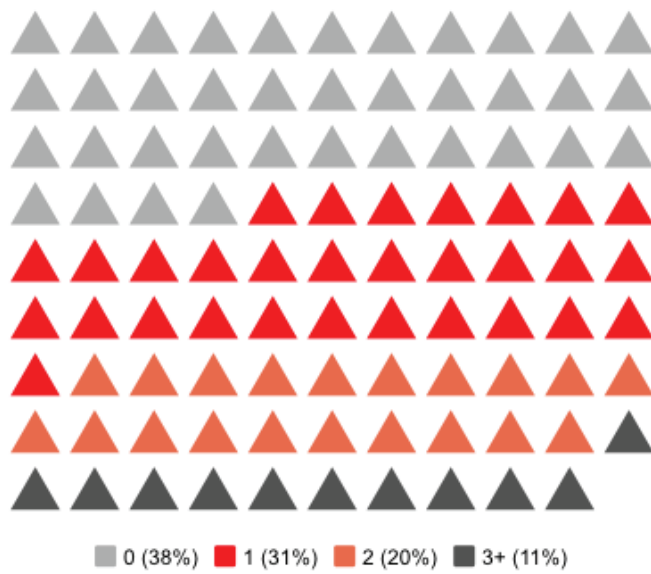
How many OCIs did you attend?



How did you try to signal your preferences to law firms?

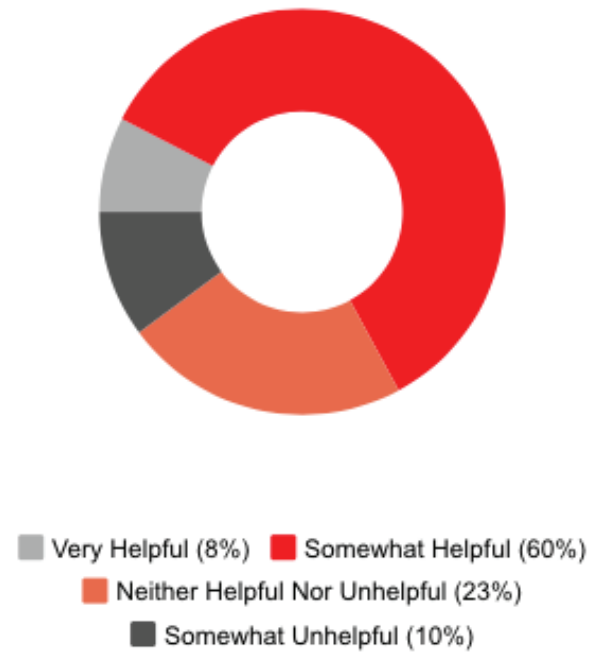


How many job offers did you get?



This graph accounts for the distribution of the total number of offers, indicating that those with more than one offer seized 50% of all individual offers.

Did you find the CDO helpful or unhelpful?



Did you apply to the public sector ?



If so, did you receive an offer from a public sector employer?



Your Thoughts ...

Apart from LSUC procedures, did you observe or experience any inappropriate behaviour or comments from lawyers during the process? If yes, please describe what happened:

*“THE PRES-
SURE TO LET
THEM KNOW
THAT
THEY'RE
YOUR #1. BUT
THAT NEVER
CHANGES,
RIGHT? IT'S
ALL PART OF
THE GAME.”*

Asking me how many interviews I had.

Asking who my top choices are.

I didn't experience any violations.

I felt an extreme, extreme amount of pressure by one firm to voice that they were my first choice. I had not made a decision at that time and decided not to tell them they were my first choice unless it were absolutely true.

At a reception it was strongly implied that I had an offer at my first choice firm, at which point I felt comfortable turning down final-stage interviews from other firms.

CALL AT 7:45 AM

CALL AT 3:45 PM



What were some of the most awkward, inappropriate, or unexpected questions you were asked?

I spoke with a lawyer who spoke about other firms negatively.

One lawyer asked my age.

During a second round in-firm interview, a lawyer said "we will call you tomorrow" and nodded his head smiling, which suggested to me that an offer might be made, but it wasn't. I later learned that these kinds of comments were made to a number of other students.

"[Readacted Seven Sister] should not be making all candidates come to the breakfast reception on Wednesday morning when many of them are clearly not in contention. This is not fair to the students and is a waste of everyone's time. They should be telling the candidates who are no longer in contention to not attend the reception."

"Lawyers from one private firm during the initial OCI round read the schedule wrong, and thought it was time for them to take a break when they were supposed to interview me. No one was present at the booth for at least a minute. And one of them did not come back until 5 minutes into the interview."

Any comments on the CDO's services during the Toronto recruitment process?

I think the students would be well served if the CDO released more statistics on the hiring process. Specifically, how many students participate in this process and how many of them get jobs out of this process? The first-year hiring process should have similar statistics. If fewer than 50% of law students get a job out of the OCI process, then this should be very clearly communicated to all students. It will help us to better manage our expectations and not get so down on ourselves if we do not land a job through this. If it's really improbable that people get a job out of this, then I should not be too disappointed if it doesn't work out for me.

There is a serious focus on private/corporate. Not much support for those wishing to pursue a criminal or social justice career.

OCI day they were great at keeping everyone's energy up!

I was a bit unimpressed that they recorded OCI related information sessions but not non-OCI related sessions.

Very vague. Rarely practical.

Like most Osgoode services, I found the CDO useless.

Very upbeat and positive during the OCI days.



Your Thoughts ...

After completing the process, how do you feel?

Disappointed.

Frustrated.

Unsuccessful.

Great!

Relieved.

Exhausted.

I don't drink.

I feel very disappointed, quite exhausted, and very behind in my other commitments (school, volunteering, and extra-curriculars). I am by no means a pessimistic person, but I do feel very discouraged and am questioning my choices to go to law school and desire to work in a big Toronto firm. Furthermore, I am very concerned about my finances and debt load, as well as my grades this year since I now have to devote MORE time to finding work after having lost weeks to the OCI process already.

Relieved that the madness is over.

It feels surreal! The last few days were a whirlwind! I'm obviously really happy with my outcome but I'm also so tired and ready to relax.

Terrible.

It was an emotionally exhausting week. I didn't even know I possessed the range of emotions that I felt over these three days!

Very relieved. Pressure to compete with other students to be top of the class is significantly reduced.

Discouraged.

Disenchanted with law school, generally. The things people told me would be looked positively upon in interviews (ECs) weren't even a discussion point.

I think the process is unnecessary. LSUC should end the OCI process and just force firms and MAG to conduct substantive interviews. OCIs are needlessly stressful. I spoke to some students who felt as though the employers that interviewed them already knew which students they wanted to invite back for a second interview.

W
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The in-firm interviews NEED to be over a longer period. Also, firms need to narrow down their candidates more before in-firms and between first and second interviews. They allow too many people to interview, wasting their time if they are not fairly likely to be hired.

What would you change about the LSUC process?

No more thank you emails!!!!

Nothing. Its a fake but fun process. Welcome to life on Bay Street :)

I could go on about the flaws in the recruitment process and, more broadly, law school generally speaking for hours. Suffice it to say that I believe the problems with the administration of our grades at Osgoode - namely, the curve - are precedent to the problems with the recruitment process - namely, the emphasis on first year performance, and specifically first semester performance. I don't understand why the recruitment process, in this digital age, must begin in August.

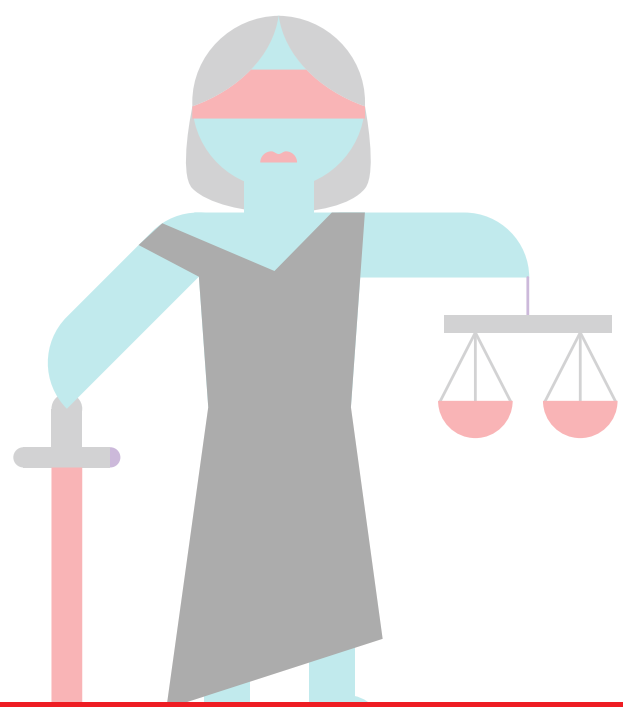


I have nothing productive to say - this was seriously the worst. Encourage people to pursue their interests beyond Bay Street, and invest more in non-OCI job airtime in the schools.

One day longer. Law firm recruiters playing games with students. Misleading students.

It needs to be better regulated, frankly.

I would change my approach and have the mentality that my goal is to get as many offers as possible, possibly to the point of indicating that there is more than one firm that is my "top choice". Though this may be an ethically challenging position to take, having gone through it all, it seems as if firms have no difficulty doing this to students.



Your Thoughts ...

What is one piece of advice you would give to someone participating in this process next year?

Talk to upper years with similar career paths really help, be prepared.

1L grades are really the only factor that matters

Be yourself: Know what you're looking for going into the process and don't let anyone pressure you.

If people want to split summers, get in touch with students at firms who have done the same and ask about the preferred approach to letting the Toronto firm know about the New York offer.

**Do mock interviews.
SIGN UP TO FIRM TOURS. CHECK FIRM WEBSITES STARTING MID MAY. APPLY TO DOZENS OF FIRMS.**



Be honest with yourself about the barriers that face you as a candidate -- race, gender, etc. Don't listen to people who say "be yourself and relax", because yes, be yourself, but focus on being the best that you can be. This means hard introspection, not a happy-go-lucky attitude. Most importantly, do a mental walk-through of what you must do to stay productive if you fail, in both big and small ways. Having a plan to move forward will give you hope moving forward and pull you out of the disappointment and frustration you will feel, if/when you do fail.

Be authentic in your cover letters -- speak in your own voice so the firms see you as a real person. Then prepare, prepare, prepare.

Enjoy it. Even if it is a stressful experience, think about the connections you formed and the people you met. If you don't get a job these connections you make, may prove to be incredibly valuable as you try to find a job.

The servants who run the Establishment

A small battalion of lawyers greases the wheels that ease the flow of power. They're discreet, distinguished, and decidedly WASP

by Jack Batten

What made the moment so exquisite was that, but for a decision of thirteen years earlier, the prosperous man on the other side of the desk might have been me. Dressed in a three-piece suit as immaculate and every pin-striped as his tailor could conceive, face set in lines of confidence and authority, office in an imposing corner of a building that hovered over King and Bay Streets—the man behind the desk exuded the unspoken credentials of the partner in the big downtown Toronto law firm. And at this moment he was looking out to me in a deliberately throw-away gesture a small card that, he hinted, would explain the gorgeous scene of what his downtown life was all about. The card had a short quotation typed on it, the words of Robert Jackson, the late justice of the United States Supreme Court: "Lawyers are the chief instruments of power in our society," the quotation read. "Struggles over power that in Europe call out regiments of troops, in America call out battalions of lawyers."

Life had changed and grown significant for my law friends, and so it had, too, for the firms they were responsible to. When I practiced in 1963, my firm's fourteen or fifteen lawyers marked it as respectably large. But in 1976, Blake, Cassels & Graydon boasts seventy-one lawyers, including six counsel. Older, Hoskins & Harcourt was twenty-seven and three counsel, and in 1976, it was the largest and most distinguished of the firm's law firms. Other

NEVER act desperate. It is a turn off. Be matter-of-fact in stating that you like them but refrain from groveling because it is simply unprofessional (even as a joke). Desperation = immaturity and a lack of confidence.

I would emphasize the importance of their first year grades to their potential success in the OCI process.

The lawyer as powerhouse: at 42, has a partnership in his firm, a seat on its major client's board, a \$250,000 house, and the promise of a senatorship





Anything else you would like to share?

I understand how helpful the results of this survey are, but posting three minutes after the call time for the process started was not appreciated.

Osgoode Hall Law School prides itself on diversity. It boasts one of the most diverse law school environments in the country. I am not sure of the veracity of that statement. I am not sure of how the hard data compares to other law schools. Suffice it to say that Osgoode Hall Law School promotes an image of itself as extremely diverse. The Osgoode administration makes a point of noting the inclusive environment Osgoode provides to students of colour, Aboriginal students, LGBTQ2S+ students, students from varied academic backgrounds, and students with varied interests. I believe that Osgoode Hall Law School has taken greater steps than some law schools in promoting an image of diversity. In other words, I believe the school has to a certain degree achieved its commitment to change the face of the legal community. But this achievement is only on the surface. Osgoode Hall Law School has done very little to support diversity beyond its admission standards. Academic standards still privilege white, straight, male students with a background in political science, history, or economics. I have never felt so much like an outsider as I did throughout the LSUC recruitment process. Osgoode's commitment to diversity is a farce. It is an outrage. It is in no way reflected in the hiring culture at the largest law firms. Osgoode's commitment to diversity has done very little to alter the environment at the firms who recruited through the LSUC system. *The emperor has no clothes. The commitment is meaningless.*

You should ask why I cried. Cried with relief at it being over and of happiness with the outcome. Tears of joy. If you are presenting tears as a bad thing, I insist you exclude my answer from consideration.

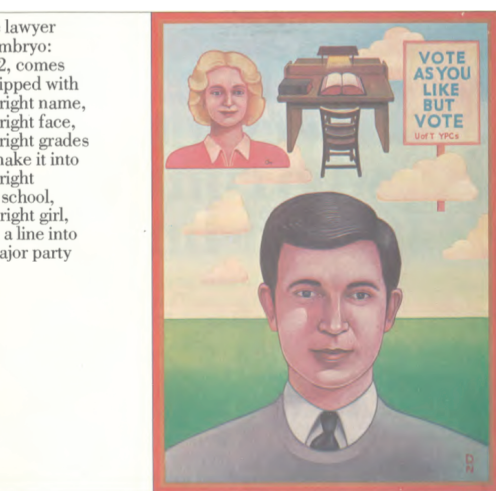
We as law students deserve more support.

In law school, you are either a bay st gunner or you are a social justice warrior. The dearth of moderates makes for a poisonous atmosphere. You either become a cliquy study grouper or you socialize with privileged people have never experienced poverty in their lives who aspire to help people in need. Fuck the system.

I ripped the seat of my pants at some point during an in-firm and did not realize until I got home. Hopefully it was unnoticeable, or at least on the subway afterwards.

Judgements are formed quickly with a great deal of arbitrariness

You are worth more than what firms (and people who dont know you) think of you. It is a game. It is not personal. Be creative, take your life by the reins and dont like set backs keep you down. Broaden your vision. Bay Street is a narrow corridor in a vast world. You'll be fine.



Blue Chippers or Volatile Goods?

How Valuable is the First Overall Selection in the MLB Rule Four Draft?

KENNETH CHEAK KWAN LAM ›
SPORTS EDITOR

Pop Quiz:

What do Andrew Wiggins of the Minnesota Timberwolves (2014), Andrew Luck of the Indianapolis Colts (2012), and Connor McDavid of the Edmonton Oilers (2015) have in common?

ANSWER: They are all recent household names that were chosen with the first overall pick in their respective draft class. Yet, unlike the National Basketball Association, the National Football League, and the National Hockey League, much less attention is paid to the first-year player draft by fans in Major League Baseball. Correspondingly, notwithstanding exceptions such as Stephen Strasburg and Bryce Harper of the Washington Nationals, there is also considerably less hype associated with the first overall selection in the Rule Four draft on the whole.

As America's pastime, how is it possible that the grand old game's annual amateur drafts consistently fall behind the other three North American major professional sports when it comes to media exposure? Why is it that interest among fans on the top pick of MLB drafts pale in comparison to that of the NBA, NFL, and the NHL?

Several explanations have been presented by analysts, including the facts that:

- (1) the majority of potential top draftees, typically comprised of high school and college student athletes, were "unknowns" to the lay public because high school and college baseball are nowhere near as popular as college football, college basketball, and college/junior hockey;
- (2) high MLB selections would almost certainly be assigned to minor league-affiliated ball clubs (either Rookie or Class A) in order to refine their skill sets, whereas top draft picks in the NHL, NBA, and NFL have a good chance of starring in their leagues right away in their draft year; and
- (3) the overwhelming majority of prospects taken in the first-year player draft, including numerous first round picks, would end up never appearing in a single MLB game, whereas significantly more drafted players in the NHL, NBA, and NFL, including some of those who are late-round selections, would reach their destiny in due course.

Although these assumptions all have merits to various degree, I construe that the dual trends are the direct result of the more volatile nature of the first-year player draft (relatively speaking in comparison to the NBA draft, the NFL draft, and the NHL entry draft), which makes the process more difficult to yield a "can't be missed" generational player when compared to the other three North American major professional sports.

All Stars

Dating back to the first Rule Four draft in 1965, there has been a total of fifty-one first overall selections. To this date, this short list has produced twenty-three all stars. By all accounts, the results are quite



► Photo credit: performgroup.com

encouraging, as the chance of landing a player who would go on to be named an all star at least once in their MLB career is a generous 45.10% (23/51).

Rookie of the Year Award Winners

While all star selections are the benchmark of elite players, one question that we need to ask is how many of these players can actually make an immediate impact to their respective ball clubs? Historically, we should look to past American League and National League Rookie of the Year Award Winners to answer this question, seeing that the Rookie of the Year Award is the highest form of recognition to new players who are making contributions to their teams straight away in very meaningful ways.

Of the aforementioned fifty-one first overall picks, twenty-three of whom were named all stars at some point in their MLB career, only three were winners of the Rookie of the Year Award:

- (1) Horner, the National League winner in 1978;
- (2) Strawberry, the National League winner in 1983; and
- (3) Harper, the National League winner in 2012.

Sadly, this means that the probability of choosing an eventual Rookie of the Year Award Winner with the first overall selection is only 5.88% (3/51). Although this phenomenon could be purely circumstantial, it is noteworthy that no first overall pick (as of 2015) has ever been named as the winner of the American League Rookie of the Year Award!

National Baseball Hall of Fame

On the other side of the spectrum, an equally interesting question is how many of the fifty-one previous first overall selections can make a long-lasting contribution to the ball club(s) that he has played for over his MLB career. Here, we ought to look to the National Baseball Hall of Fame and Museum as being inducted into Cooperstown as the ultimate form of acknowledgment for a player in terms of honouring his

sustained excellence and longevity in the big league.

Among the aforesaid fifty-one first overall selections, only one of them was ultimately enshrined into the Hall of Fame: Griffey, Jr. In other words, the odds of choosing an eventual Hall of Famer with the first overall pick is a minuscule 1.96% (1/51). That said, I gather that adjustments are needed as including first overall selections who are still active players into the computation would distort the outcomes. There are seventeen such players who are still playing in MLB. If we were to leave them out, then the possibility of being able to reap a future Hall of Famer utilizing the first overall pick would increase to an ever so slightly better 2.94% (1/34).

Cross-Sports Comparisons

While the short-term outlook of getting an impact player who can pay immediate dividends in the form of a Rookie of the Year Winner is bleak to say the least at 5.88%, the good news is that there is close to a coin flip (fifty-fifty) chance of drafting an all star player with the first overall selection of a first-year player draft at 45.10%. However, when it comes to the long-term outlook, the likelihood of obtaining a future Hall of Famer is highly improbable at 1.96% pre-adjusted and 2.94% post-adjusted.

For comparison's sake, if we look to the left tail of the MLB and NHL distribution curves, the chance of an MLB ball club landing a Rookie of the Year Winner with the first overall pick in a Rule 4 Draft, at 5.88%, is a sizable 12.99% less (or more than three times worse) than an NHL team finding a Calder Memorial Trophy winner in an Entry Draft at 18.87%. Likewise, the probability of an MLB ball club being able to draft an eventual Hall of Famer with the first overall selection of a first-year player draft, at 1.96% before adjustment and 2.94% after adjustment, is a considerable 11.25% (or nearly seven times worse) and 16.48% (or more than five-and-a-half times worse) less than an NHL team unearthing a Future Hall of Famer in an entry draft at 13.21% prior to adjustments and

PR WAR

A few thoughts on the very public negotiation between the Blue Jays and Jose Bautista

KAREEM WEBSTER › STAFF WRITER

VALUE. POTENTIAL. CHARACTER. Health. These are some of the things to consider when players are off the books, a.k.a., free agents.

Picture two scenarios. In Scenario A, there is a budding talent who just came off a career year with your team (you are the general manager, so you do not own the team). He has yet to reach his “peak”, so to speak. He is just as good as his counterparts at his position, yet they are several years older than him and earning triple his salary. Now, this player who is no longer required to work for you is going to have suitors. You are obviously inclined to offer him a new contract, but how would you determine how much he is owed? In Scenario B, one of your veterans just wrapped up his final year under contract. He was the star player who helped you win a championship a few years ago. Although he is still in his prime, at his age, his production could drop off noticeably a couple of years into the new contract, if it is a long-term deal. You are aware that he is searching for financial security and would be insulted if he is not offered a contract of five years.

What would you do in both scenarios? I purport that these situations are contemplated by executives on teams on a weekly (if not daily) basis.

Every player has their prime – it is a window of their best performance during their career, based on their respective position and age. Inevitably, once a player is out of their prime, their performance will decline. Basically, there is an obvious inverted relationship with an increase in age and a decrease in performance, which occurs after a player comes out of their prime. Ideally, you would like to lock your player up before they reach their prime so that your team can reap the benefits of their productivity throughout their best years. The danger in locking players up to lengthy contracts (unless it is an NFL contract, which is only partially guaranteed) is the issue of buyer’s remorse if the player underperforms, gets into trouble with the law, or gets seriously injured.

There are two schools of thought, with perhaps a hybrid emerging in recent years. The question to be answered is whether the team wants to reward the player for what he has done or what he can do in the future. That is, should the general manager (GM) in Scenario A pay the player based off what he has done in the past (he has shown lots of potential, but has been average at other times) or reward him for how the player is likely to perform in the future? Should the GM in Scenario B grant the player a hefty contract based on his contributions to the team or make the new deal commensurate to the fact that the player is likely going to perform at a subpar level because of his age and the toll on his body? There are pros and cons to both paradigms.

Many people were outraged when Kobe Bryant signed a two-year, forty-eight million



► Photo credit: sports.yahoo.com

“Inevitably, once a player is out of their prime, their performance will decline.”

dollars contract extension at the age of thirty-four, just months shy of his ruptured Achilles tendon surgery. Why reward a player whose best days are behind him? Why cripple the franchise financially because of an aging veteran? Conversely, look at the (albatross) contract of Robinson Cano, who, signed with another team, but was paid handsomely based off his quick rise to fame and potential at a relatively young age – at least in baseball. It is safe to say that Cano has not lived up to his ten-year, \$240 million contract – at least, not yet.

Regardless of the approach, there are inherent risks. Reward the aging player who has done a lot for the franchise, but, at some point, he will be one of your highest paid employees and not one of your most productive. Perhaps you would like to “outbid” the other suitors of your budding, rising star by offering him an insane amount of money to convince him to stay. What happens if that anomalous year that he had was just a fluke? What if he performed at such a high level because he knew it would incentivize teams to give him the contract that he wanted? Is there a chance that this player will take his foot off the gas once he is secured financially?

Now, teams are witnessing a happy medium, with veterans taking less money or restructuring their contracts to allow the team to reward younger players. Perhaps the aging veteran still wants to be paid competitively, but is willing to take a shorter contract, or frontloads the deal so that the team bears the majority of the cost early while the player is still relatively “good.”

The answer lies in the culture that is created in the organization. Are the employees truly valued

or are they ostensibly a means to an end? Executives in sports are becoming expendable. Their jobs hinge upon duties that are based off (for lack of a better word) luck, sometimes. Scouting, making phone calls to other executives, and evaluating trade offers all require research, negotiation, and excellent communication skills, but in reality, a lot of what happens to teams is good or bad fortune. That is why GMs have to make sure that they place their team in the best possible position to succeed by making the most intelligible moves so that in the event that success was not in the cards, they do not look like unqualified yes-men with no business acumen. ♦

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Worst to First

Does tanking work in the four major North American professional sports?



MICHAEL SILVER › STAFF WRITER

WITH THE TORONTO Maple Leafs poised to finish last in the NHL and teams across the four major North American professional sports intentionally losing in order to secure the best possible draft picks, the popular narrative has become that “tanking” is the smart way to build a team, and that without high draft picks, it is impossible to build a successful team capable of winning a championship.

Fans are forced to suffer through a series of awful years based on promises of bright futures. There is some anecdotal evidence of the successfulness of this strategy, such as the Chicago Blackhawks and Pittsburgh Penguins, who (though not necessarily by design) spent a period of time as awful teams and were able to assemble the core of championship teams based on the high draft picks acquired. Contrary anecdotal evidence points to the Edmonton Oilers, a team that has been near the bottom of the NHL standings every year since 2009 and out of the playoffs every year since 2006.

To resolve this conflicting evidence, I decided to try to study the problem systematically. I decided to look at the twenty teams that won championships in the last five years in the four major professional sports and determine if at any point in the previous ten years they had been in the bottom ten in the standings of their leagues.

Starting with hockey, in the ten years prior to the Blackhawks’ most recent championship, they selected two players in the top five picks of the NHL draft. The prior winner, the LA Kings, had one such player on their roster for their most recent championship, though they had selected three players in the top five in that span. Each of these teams had the same number of such players the last time they won the championship as well. The Boston Bruins had one such player on their roster and had drafted two over the relevant span.

In basketball (the league in which the concept of tanking originated, and in which rumour has it that a single high draft pick can completely change the

fortunes of a team), of the last five champions, only the Miami Heat have selected a player in the top five picks in the years prior to their championship. They selected two players in this range of the draft in that time span, but only one of these players was on either of their championship teams.

In baseball, the most recent champion, the Kansas City Royals, drafted a staggering seven players in

“...many championship teams in the four major sports receive key contributions from their high draft picks.”

the top five picks of the draft in the ten years prior to their championship season (not counting the draft that occurred during their championship season). Of them, five played on the Royals’ championship team while the others are still considered relatively promising minor league players. The only other team that has won a championship in the last five years while fielding any players who they drafted in the top five was the San Francisco Giants, winners in 2014 and 2012 (along with 2010, outside the timeframe of this discussion), and who did so while fielding the one player who they had drafted in the top five in this span.

In football, the most recent champion, the Denver Broncos, selected one player fitting my parameters and he played for them in the Super Bowl. The previous champion, the Seattle Seahawks, selected one player fitting these parameters but he no longer played for them by the time they won their championship. The New York Giants technically drafted one player who fits these rules, who did not play for them in their most recent Super Bowl. However, I say “technically” because after drafting Phillip Rivers first over all, they traded him for San Diego’s fourth overall pick, Eli Manning.

As these examples show, many championship

teams in the four major sports receive key contributions from their high draft picks. But drafting in the top five is far from necessary for building a championship team. Given the large numbers of teams that select in the top five that never win a championship and the large numbers of teams that do not select in this range that do, it seems that high draft picks are neither necessary nor sufficient to create a winning team. Exactly half of the twenty teams considered had at least one player who they had selected in the top five of the draft over the previous ten years on their winning teams. Tanking may be a component of a viable strategy, but it is far from the only strategy and alone, it is clearly insufficient. It should be acknowledged that this discussion was limited in several important ways. Firstly, the focus on only teams

that win championships misses several teams which were able to utilize their high draft picks to build highly-competitive teams. Secondly, the limitation in number of years and number of picks considered may miss teams that picked highly-regarded players but not quite highly enough to be included in these criteria, or miss teams which selected highly-rated players more than ten years prior to their championship wins.

Given more time, it would be interesting to analyze the relationship between, say, where a team drafts, and their winning percentage over the next ten years. If the theory of tanking were to hold, the teams that finish at the bottom of the league in a given year would be likely to be better than the teams that finish in the middle of the league. But this discussion demonstrates that though high selections may be a better path to competitiveness than middling selections, they are no guarantee of catapulting a team to the upper echelons. ♦

OCI Report

» continued from **COVER**

responses to review, subjectivity was unavoidable in deciding how to assemble the Special Edition. Though we made every effort to ensure neutrality in the collection, analysis, and reporting of the OCI survey, we recognize that improvements can always be made. We welcome, and strongly recommend, students to contact us with their ideas and suggestions for the future of the OCI Special Edition.

If you walk around asking Osgoode students their thoughts on OCI's, you're likely to get quite the spectrum of opinions. In reviewing the survey results, analysis, and student comments, we saw everything from disgust to jubilation. The data itself reveals a mixed picture, arguably a worse hiring situation, or a better one, than what was previously thought... depending who's opinions. What is clear is that the OCI process is not an unequivocal success, not yet at least. It does not guarantee a job, nor is it a guaranteed positive experience. Does it have a duty to be? That is for the reader to decide.

We hope that the Special Edition will provide you with an interesting look into the student experience with the OCI process. OCI's are not for everyone, but they are an undeniably important part of law school. We hope that this survey and reporting will serve as a valuable tool in increasing the dialogue around OCI's, and doing so from a position of knowledge and awareness. A huge thank you to Ultra Vires for working with us on this project, and to Michael for all your hard work. ♦

Boys club

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Male criminal defence attorneys, Crowns, and judges must show leadership if the mass exodus of women from the criminal defence bar is to be stemmed. Reflecting on and challenging one's own attitudes and thinking before speaking will go a long way. Calling out colleagues who engage in disrespectful and discriminatory behaviour is also crucial. There is simply no room for name-calling, sexual harassment, intimidation, condescension, or mansplaining. Part of being a professional is treating other professionals, and indeed everyone one encounters, with respect. And just so we're all on the same page, it's pronounced, "counsel," not "sweetheart."

The CLA report highlights the effects of discourteous and disrespectful behaviour, but the exodus of women will itself have truly unfortunate consequences. There will likely be more "complainant whacking" (the discriminatory practice of aggressive cross-examination of sexual assault complainants, the improper introduction of otherwise inadmissible evidence in these cases, and other tactics aimed at intimidating and silencing complainants based on outmoded attitudes about women, flouting legislative reforms and well established case law) and perhaps a smaller pool of qualified and passionate advocates.

Additionally, it may limit female defendants' options; women survivors of intimate partner violence are increasingly being counter-charged when their abusers file complaints against them, and considering the attitudes of many male members of the criminal bar, these women may benefit from having a female defence attorney. What is almost certain is

Editorial

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involved. They should only be commended for their efforts. In fact, the CBA has even taken steps with an ongoing "Initiative on Equal Justice," dedicated to raising the very concerns I mention here.

That being said, more focus is always needed to create legal innovation opportunities for individuals from different backgrounds, especially those coming from poverty, and to encourage the development of legal services for low-income individuals.

Overall, both the briefing and reception marked a welcome departure from the usual sense of detachment I've had at similar events in the past. For once, I felt like everyone was truly on the same page, ready to embrace the changing industry, and seize on new opportunities collectively. Legal innovators are a different breed from other lawyers. Their competition is with the market, not each other; they are friendly, helpful, and always seeking new opportunities. These are the type of people the legal institutions would be right to embrace. There is so much frustration within law school, the legal market, and from consumers that forward-thinking individuals with a friendly, open, and inclusive approach are sorely needed.

The CBA has taken a huge leap with 'Do Law Differently'. No longer does the legal startup community stand at one end of the room with the traditional institutions at the other. One of Canada's biggest legal organizations has crossed the floor. Now is the time for the startup community, law students, and young

lawyers to continue the push for change. Sticking with the status quo is in no one's interest, but senior lawyers shouldn't be expected to lead the charge forward. Rather, it is the industry's new generation who will be tasked with keeping the CBA on this new path and encouraging the rest of the legal community to join in. Having had an introduction to the pervasiveness of legal needs, the difficulties facing legal innovators, and the potential of new market opportunities I strongly encourage all my peers to take up this task as well. ♦

MLB Draft

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19.44% after adjustments. Accordingly, the results seem to back up my hypothesis that the Rule Four draft is inherently more unpredictable when contrasted to the NBA draft, the NFL draft, and the NHL entry draft, which in turn renders the procedure of uncovering a "can't be missed" generational player harder compared to the other three North American major professional sports.

Final Words

Even though the likelihood of picking a player who fails to have at least a short stint in MLB is remarkably low at 3.92% (2/51), as only two players who were taken first overall in the first-year player draft failed to play a single MLB game—(1) Steve Chilcott, picked by the New York Mets in 1966 and (2) Brien Taylor, drafted by the New York Yankees in 1991—the reality, much like in the NHL, is that the likelihood of being able to discover that "can't be missed" diamond in the rough appears to be an imperfect science regardless of how we break down the fifty-one first overall picks in past Rule Four drafts. Now do you want to choose heads, or tails? ♦

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