

Notes for presentation to California Bar

Cori Ghitter

Deputy Executive Director and Director of Policy and Education

Law Society of Alberta

Introduction

Just for some clarity on the regulation of lawyers in Canada. The Law Society of Alberta regulates Alberta lawyers in the public interest and we are not a representative organization. We oversee the licensure processes, continuing professional development and discipline of lawyers among other things.

My plan today is to talk to you about the process that students in Alberta must go through on the road to becoming licensed lawyers. While I will be talking about my home province in particular, there are many similarities across Canada in how this process works. I will give you some details of the process and also point out some of the limitations of our process just to give you the full picture.

To begin -

In Alberta we have just over 11,000 active lawyers in the province and each year we have between 450-500 articling students.

When I refer to articling students these are people who have typically recent graduates from law school and are in the process of moving towards licensure. They register with us as students-at-law and they have to serve a term of apprenticeship (which we call articling) as well as complete our bar admission course called PREP or Practice Readiness Education Program delivered by CPLED (the Canadian Center for Professional Legal Education). You will hear more about PREP from my colleague Erica Green in a few moments.

To back up a bit – in order to get licensed in our province there are several steps:

- Proof of graduation from a Canadian common law law school, or
- If you went to school in another country, have your degree assessed by the National Committee on Accreditation and provide us with a Certificate of Qualification (a whole other process for internationally trained lawyers)
- You must complete and pass the bar admission course
- You must serve a term of articles of 8-12 months under the supervision of a lawyer who has at least 4 years at the bar. We refer to this supervisor as a Principal.

Articling

Articling programs across Canada are fairly similar although they can vary in length and in reporting requirement. Most range in length somewhere between 8-12 months.

In Alberta for many years we had term of 12 months for articling but during Covid we shortened it to 8-12 months and I expect that will stay. So basically a minimum of 8 months and a maximum of 12 months. This provides some flexibility for students and employers depending on their circumstances and their program.

Because articling is a relatively unknown concept in California perhaps I will explain some of the broad strokes. I think it is safe to say that most of what I am about to describe holds true across Canada as the underpinnings for the articling structures, although the details will vary province to province and you will hear about some very distinct pathways that have been created in the province of Ontario.

Articling has been a part of lawyer training in Canada for over 100 years. Fundamentally it is intended to be an experiential learning component of a new lawyer's training during which time they get practical experience how to be a lawyer. In theory it provides the bridge between the largely substantive law focus of law school to the practical everyday realities of running a law practice and serving clients.

As the regulator we technically oversee and sanction this process in the sense that we set the general parameters for it and make it mandatory before qualifying for licensure. This means for example that we authorize who is allowed to supervise the student. This role is called the Principal. We set some objectives for what is supposed to be achieved during the articling process and we require some reporting from the Principal at the end of the articling term specifically certifying that the student has met the requirements.

Specifically, we have an Education Plan that both the student and principal must agree to at the start of the articling term. The learning plan sets learning objectives in several key competency areas:

- Ethics and Professionalism
- Practice Management
- Client Relationship Management
- Conducting Matters
- Adjudication and Alternative Dispute Resolution

The Principal must submit a mid-year review to us and must at the end of the articling term certify that in their view the student is prepared to practice.

I want to make it clear though that our oversight of what goes on during the articling period is very light. While the articling term is a requirement to become a lawyer, for the most part it is really an employment relationship. In other words we do not regulate, or oversee in any really substantive way the work that the student does or the hours they keep. We do not have any hours requirements for the articling terms but the employer or Principal might depending on how they manage articling students.

Students are recruited out of law school for articling positions and often, similar to the U.S. I believe, they are first recruited to be 1L or 2L summer students. These roles often then turn into articling positions once the student graduates. As a regulator we

have minimal involvement in the recruitment process. For many law firms of all sizes having summer students and ultimately articling students is baked into their business model. They are both serving the profession by helping to train students and serving themselves by recruiting talent early and training them to suit their own needs.

At the end of the articling term the Principal and the firm will decide whether to keep the student on as an associate and this of course is what most students are hoping for.

This system has worked well for many students and law firms for many years but it has not worked for everyone.

Knowing this, we are actually in the process right now of taking a pretty critical look at our articling process and trying to assess whether it is the best way for junior lawyers to be trained.

In general most students coming out of Canadian law school seeking articling positions in Alberta are successful but not all. Finding an articling position is further complicated if you are an internationally trained lawyer with few connections or supports in the jurisdiction. So again while we know most students 450-500/year are finding positions, not all are.

The issue of the shortage of articling positions and the particular challenge of internationally trained students is one of the reasons the province of Ontario created some alternative pathways which you will hear about later from my colleague from Ontario. This is an issue in Alberta as well but it is not quite as acute.

We also know that even for those students who do find an articling position the experience can be very inconsistent and depends a great deal on the quality of the Principal or firm.

In 2019 we conducted a survey of articling students and junior lawyers under 5 years at the bar. We asked them a series of questions about how prepared they felt for practice at the end of their articling term and we also asked them questions about whether they had experienced discrimination or harassment during articles.

We also surveyed Principals and mentors to ask them similar questions.

The results were not encouraging. About 50% of respondents reported feeling unprepared for practice at the end of their articles and about one third reported having experienced some form of discrimination or harassment either during the articling recruitment process or during their articling term.

The feedback from the Principals and Mentors was also instructive and while the results there were not at stark as what we heard from the students and junior lawyers it was still clear that there was room for improvement and many Principals did not really understand their role.

While I have to say we were not entirely surprised by this result it was still alarming to have this data. It has in fact caused us to take stock of the articling system and more particularly look at how we might create a better more accountable experiential learning process for our students.

We are doing this in a number of ways.

We still think that the articling model has value but it is in need of improvement. At the same time we think it is important to explore alternatives to our traditional articling model and look to other ways to provide that important bridge to practice through experiential learning. You will hear from my colleague in Ontario about some of those models that we hope you explore in Alberta.

In terms of improving the system we have, one of the first things we are implementing is mandatory Principal Training. This will roll out in 2022 and will essentially require anyone who wants to be a Principal to take a preparation course on the requirements of being a Principal. This course will include things like the learning outcomes we are seeking for our students, equity diversity inclusion training, mentorship training etc. This is one step we can take as regulator to try to encourage a more consistent experience for students.

We are also having discussions with law schools about how we might be able to collaborate on embedding some quality experiential learning elements into the law school experience beyond the clinic experiences they currently offer.

It is really fascinating work and as I am sure you are experiencing here in California it requires a real cultural shift in the legal profession to move away from the way we have always done things. Many lawyers in Alberta, and Canada generally hold tight to the tradition of articling the way they experienced it so moving to a different model is challenging and will take time.

While I do see changes ahead I doubt we will move away from articling completely as it can be truly excellent training. In my view we need to ensure it is a safe, consistent and accountable process and that it is not the only bridge to practice.

December 8, 2021

Licensing Process – Experiential Training Program



Law Society
of Ontario

Barreau
de l'Ontario

Agenda

- Law Society of Ontario
- Lawyer and Paralegal Licensing Process
- Experiential Training Program
- Metrics and Benchmarks
- Lessons Learned



Law Society of Ontario

- Governs lawyers and paralegals in Ontario
- Duty to:
 - Protect the public interest,
 - Maintain and advance the cause of justice and the rule of law,
 - Facilitate access to justice for the people of Ontario.
- Licensees (2020):
 - 56,953 Lawyers
 - 9,607 Paralegal
- Registrations (2020):
 - 2,485 Lawyers
 - 631 Paralegals



Lawyer and Paralegal Licensing Process

Lawyer:

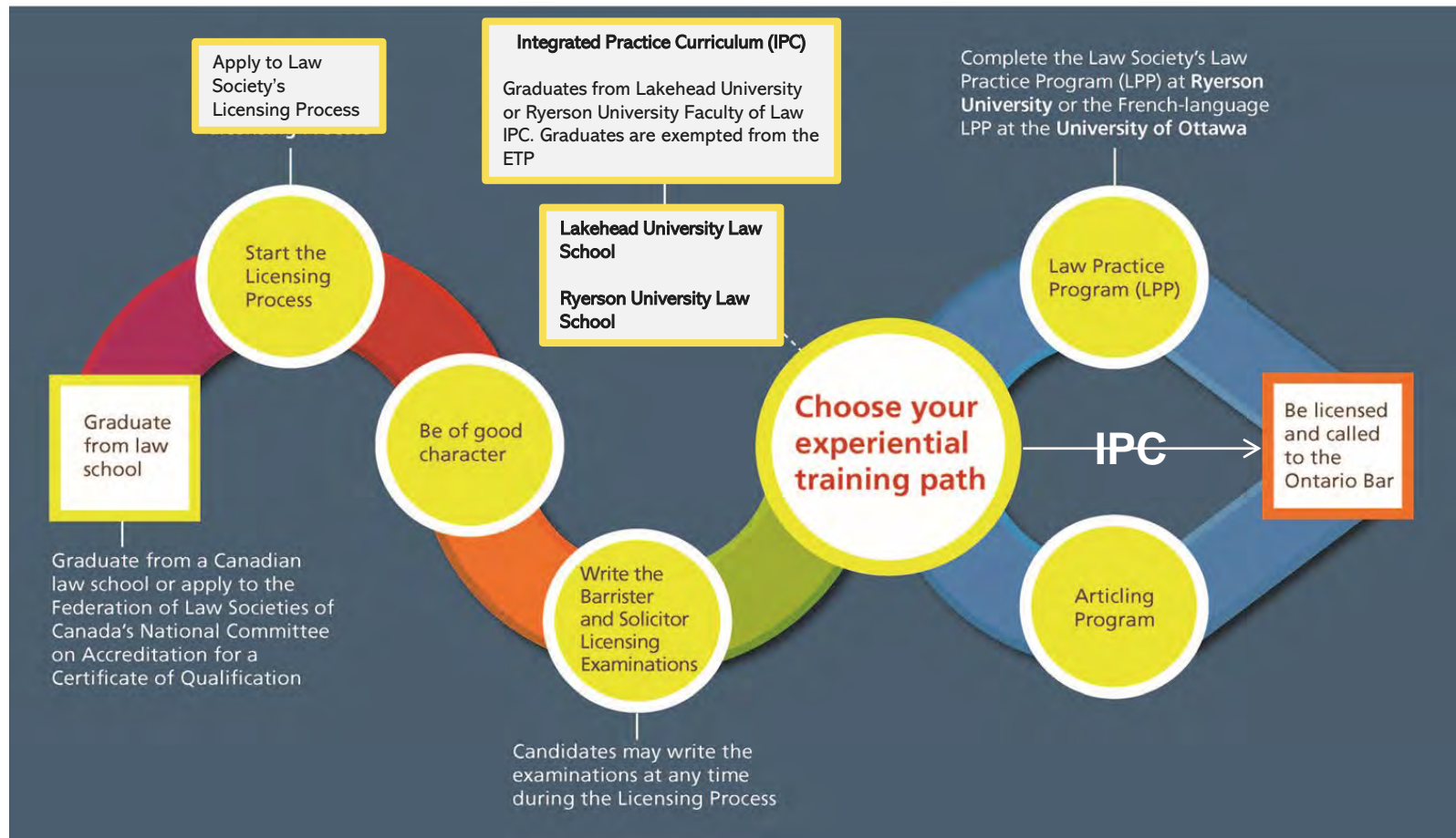
- Meet Academic Requirements
- Apply to the Licensing Process
- Pass Two Licensing Examinations – Barrister and Solicitor Examinations
- Be of Good Character
- Completion of the Experiential Training Program
- Pay Required Fees
- Licensure

Paralegal

- Meet Academic Requirements
- Apply to the Licensing Process
- Pass Licensing Examination
- Be of Good Character
- Pay Required Fees
- Licensure



Lawyer Licensing Process Pathway



Experiential Training Program

3 ETP Pathways

- Integrated Practice Curriculum
 - Law Practice Program
 - Articling Program
-
- **Performance Appraisal Competencies** - Each pathway supports the fulfillment of the experiential training competencies for candidates established by the Law Society.
 - Establishing the Client Relationship
 - Legal Matter Management
 - Advocacy
 - Ethics and Professionalism
 - Practice Management



IPC Pathway

Integrated Practice Curriculum

- The Bora Laskin Faculty of Law at Lakehead University (2013) and the Lincoln Alexander School of Law at Ryerson University (2020).
- Integration of skills training throughout the 3-year law degree program and have the added benefit of reducing the amount of time and financial investment required for licensure.
- Performance based legal education and training - hands-on assignments, clinical experience and a 4-month work placement with an approved supervisor.
- Candidates fulfill the ETP component of the licensing process during law school
- Lakehead IPC admits 65 candidates per year and the Ryerson IPC admits approximately 150 candidates per year.



LPP Pathway

Law Practice Program

- Created in 2014.
- 8-month program offered at Ryerson University (English) and the University of Ottawa (French), respectively.
- Consists of a 4-month training course where candidates learn practical lawyering skills in a simulated law firm environment, followed by a 4-month work placement with an approved supervisor.
- Part of the LSO's licensing process and is completed after graduation from law school.
- On average, approximately 10% of candidates complete this pathway each year.



Articling Program Pathway

Articling

- Candidates complete a 10-month placement with an approved articling principal to gain exposure to the experiential training competencies and develop lawyering skills.
- National articles, international articles, joint articles, and part-time articles are permitted.
- Approximately 85% of candidates pursue this pathway each year.
- The minimum length of articling has been reduced to 8 months during the pandemic.



Supervision in the Pathways

Who Vets Supervision in the 3 Pathways?

IPC

- Universities Delivering the Program

LPP

- Service Providers Delivering the Program

Articling

- The LSO's Licensing and Accreditation Department



Principal and Supervisor Eligibility

Eligibility Framework for Principals & Supervisors

- Actively engaged in practice of law for 3 of the 5 years.
- An exemplar of the profession, having regard to all circumstances including but not limited to experience, competence, ethical standards and professional conduct record.
- Can only supervise a maximum of 2 candidates

Disqualifying Characteristics

- Suspension of the lawyer's license
- Open regulatory proceeding being conducted by Law Society or ensuring court proceeding thereto.
- An open investigation being conducted by the Law Society
- An open complaint to the Law Society containing allegations of harassment or discrimination



Articling Administration - Principal

Principal:

Pre Placement:

- Complete Application to Serve as an Articling Principal
- File Experiential Training Plan
- Conduct Recruitment
- Complete Articles of Clerkship with Candidate

End of Placement:

- Sign Certificate of Service
- Complete Record of Experiential Training with Candidate



Articling Administration - Candidate

Candidate:

Pre Placement:

- Register with the Law Society's Licensing Process
- Choose where to complete placement – Ontario, Canada, International
- Find Placement with an Approved Principal
- Review Principal's Experiential Training Plan
- File Articles of Clerkship

End of Placement:

- File Certificate of Service
- File Record of Experiential Training



Articling Metrics

- Only 5% of Private Law Firms in Ontario have Articling Placements
- Over 2000 principals maintain eligibility with the Law Society
- Over 2000 Articling placements required each year
- LSO ETP Office responds to 5,000 to 6,000 telephone inquiries annually:
 - Administration
 - Scope and/or quality of training and supervision
 - Difficulties in placements
- Based on 2021 ETP Survey:
 - 86% of candidates indicated that their placement experiences enabled development of their legal skills
 - 63% of candidates felt prepared to enter the practice of law
 - Quality of communication, mentoring and timeliness of feedback can be improved



Resourcing All the LSO's ETP Pathways

Requires:

- 8 out of 38 LSO Licensing and Accreditation Department Personnel
- 2 Accredited Ontario Law Schools and staff (IPC)
- 2 Contracted Service Providers and staff (LPP)
- +2000 Licensees
- +800 Public/Private Legal Entities/Actors offering placements
- Candidate Supports (e.g. Member Assistance Program, Discrimination and Harassment Counsel)



Lessons Learned

- If large candidate throughput is anticipated in licensing process, multiple pathways may be needed:
 - Accredited Law Schools
 - Service Providers
 - Regulator
- Be prepared to superintend the ETP Pathway(s) you choose:
 - Build policy framework
 - Placement and principal eligibility
 - Min/Max placement length
 - Recruitment procedures
 - Exemptions from ETP
 - Candidate rights of appearance before courts and tribunals
 - Candidate leaves of absences, vacation
 - Remediation of placements, and principal and candidate performance
 - Withdrawal from an articling commitment (principal or candidate)
 - And more....



Questions



PREP

Practice Readiness Education Program

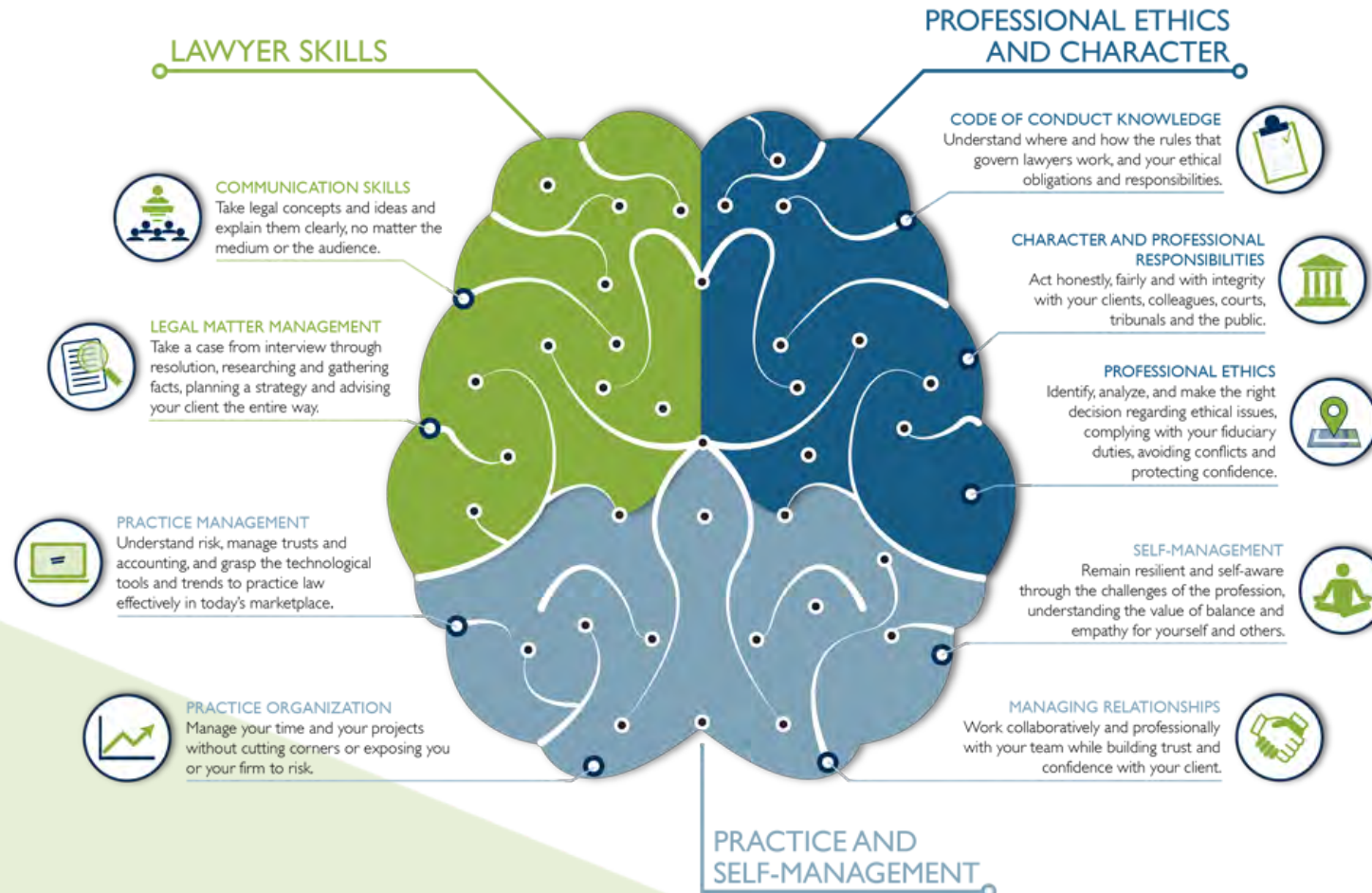


What is PREP?



Competency Framework

THE MIND OF A CPLED-TRAINED LAWYER



PREP

Practice Readiness Education Program

Lawyer Skills: What a Lawyer Does

LAWYER SKILLS



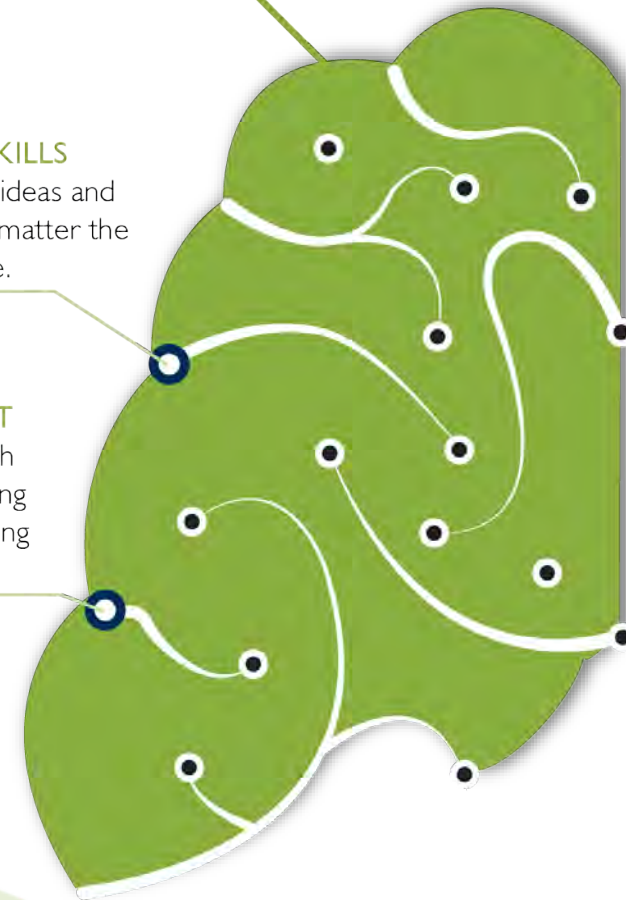
COMMUNICATION SKILLS

Take legal concepts and ideas and explain them clearly, no matter the medium or the audience.



LEGAL MATTER MANAGEMENT

Take a case from interview through resolution, researching and gathering facts, planning a strategy and advising your client the entire way.



Practice and Self-Management: How a Lawyer Practises



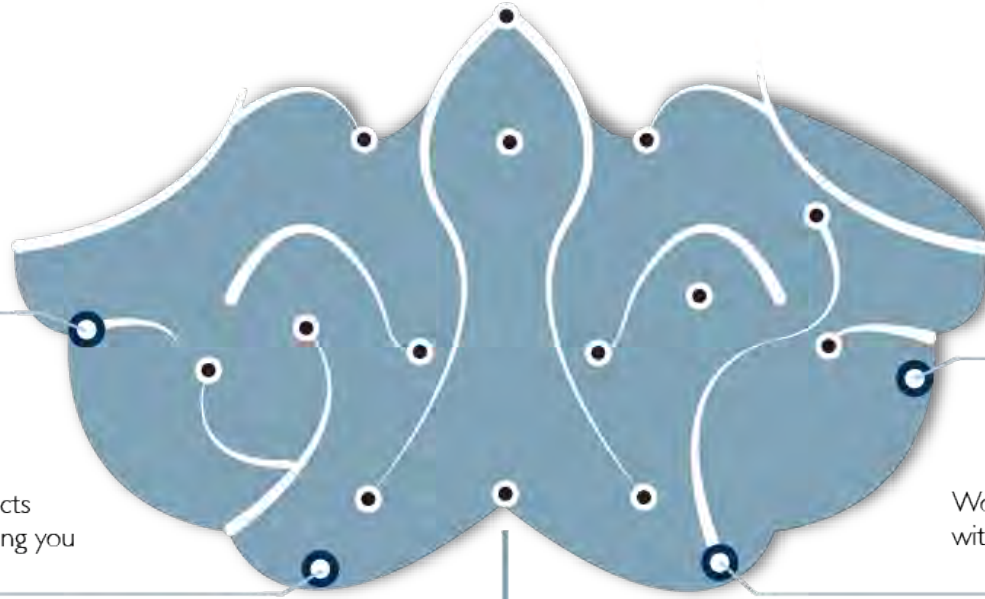
PRACTICE MANAGEMENT

Understand risk, manage trusts and accounting, and grasp the technological tools and trends to practice law effectively in today's marketplace.



PRACTICE ORGANIZATION

Manage your time and your projects without cutting corners or exposing you or your firm to risk.



SELF-MANAGEMENT

Remain resilient and self-aware through the challenges of the profession, understanding the value of balance and empathy for yourself and others.



MANAGING RELATIONSHIPS

Work collaboratively and professionally with your team while building trust and confidence with your client.



PRACTICE AND
SELF-MANAGEMENT

PREP

Practice Readiness Education Program

Professional Ethics and Character: Who a Lawyer is and How they Behave

PROFESSIONAL ETHICS AND CHARACTER

CODE OF CONDUCT KNOWLEDGE

Understand where and how the rules that govern lawyers work, and your ethical obligations and responsibilities.



CHARACTER AND PROFESSIONAL RESPONSIBILITIES

Act honestly, fairly and with integrity with your clients, colleagues, courts, tribunals and the public.



PROFESSIONAL ETHICS

Identify, analyze, and make the right decision regarding ethical issues, complying with your fiduciary duties, avoiding conflicts and protecting confidence.



Practice Readiness Education Program (PREP)

Procertas

Earn qualified or expert certification in Word and at least one other program (Excel, PowerPoint or Adobe Acrobat)

~3-6 hours

Phase 1

Foundation Modules

Interactive Online Modules & Online Orientation

~100 – 110 hours

Phase 2

Foundation Workshops

IN-PERSON WORKSHOPS

5-day workshop
Pre-work and homework required

38 hours

Phase 3 Virtual Law Firm

Business Law

Criminal

Family Law & Real Estate

Simulated Matter Management
Initiate > Plan > Research > Analyze > Resolve > Finalize

Practice Management
Contacts, Clients, Conflicts, Time, Bill, Schedule

Revise | Reflect
Coaching and Mentoring

~85 hours over 3 months

Phase 4

IN-PERSON CAPSTONE

3-day simulation and 1-day reflection

30 hours

TELL & SHOW



PRACTICE



PERFORM, REFLECT, IMPROVE

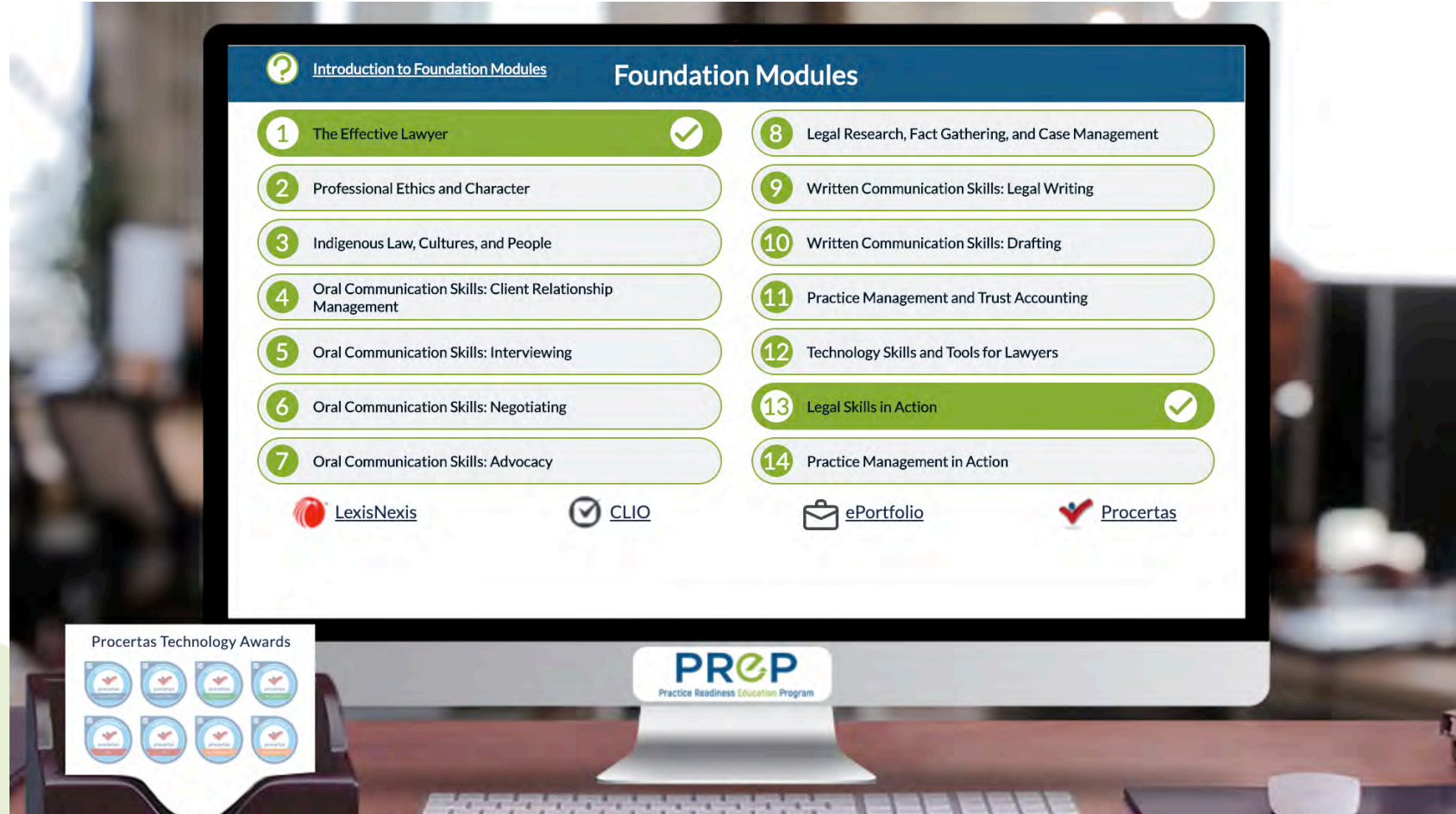


DEMONSTRATE

PREP

Practice Readiness Education Program

Foundation Modules



Foundation Workshops



Virtual Law Firm



Capstone



Statistics

