

10-2024

## Learning in Lockdown: Assessing the Impact of Online Legal Education on the Development of Professional Competencies and Identity

Adrien Habermacher

*Faculté de droit de l'Université de Moncton*

Sulaimon Giwa

*School of Social Work, Memorial University*

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [Legal Education Commons](#)



This work is licensed under a [Creative Commons Attribution 4.0 International License](#).

---

### Recommended Citation

Adrien Habermacher and Sulaimon Giwa, "Learning in Lockdown: Assessing the Impact of Online Legal Education on the Development of Professional Competencies and Identity" (2024) 47:2 Dal LJ.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact [hannah.rosborough@dal.ca](mailto:hannah.rosborough@dal.ca).

---

Adrien Habermacher\*  
Sulaimon Giwa\*\*

## Learning in Lockdown: Assessing the Impact of Online Legal Education on the Development of Professional Competencies and Identity

---

*We administered a survey to law students at three Canadian law schools in the Atlantic region at the end of the Fall 2020 term. The survey asked students to compare their learning of each of the Federation of Law Societies of Canada (FLSC)-mandated competencies, as well as several others taken from the Law Society of New Brunswick (LSNB) competency profile, in the Fall 2020 (online) term versus previous terms of study. The survey also solicited testimonies on students' socialization into the legal community during their unexpected online law school experience. Our data sheds lights on which competencies, among those deemed essential for law school graduates, are less likely to be adequately developed in an online instruction environment. Our analysis shows that online learning is not demonstrably less effective at fostering the FLSC-mandated competencies. Socialization into the legal community was the aspect of the typical law school experience most hindered by the online modality of instruction. While the Fall 2020 term was a difficult experience for many students, we also found that a sizeable minority of students thrived in the online environment, even with the temporary and emergency nature of the online law school experience in Fall 2020 and the pandemic-related public health restrictions during this period. Our findings are consistent with other studies conducted on law students during and before the pandemic outside of Canada.*

*Nous avons mené une enquête auprès des étudiants en droit de trois facultés de droit canadiennes de la région de l'Atlantique à la fin de la session d'automne 2020. L'enquête demandait aux étudiants de comparer leur apprentissage de chacune des compétences exigées par la Fédération des ordres professionnels de juristes du Canada (FOPJC), ainsi que de plusieurs autres compétences tirées du profil de compétences du Barreau du Nouveau-Brunswick, au cours de la session d'automne 2020 (en ligne) par rapport aux sessions d'études précédentes. L'enquête a également sollicité des témoignages sur la socialisation des étudiants dans la communauté juridique au cours de leur expérience inattendue de l'école de droit en ligne. Nos données mettent en lumière les compétences qui, parmi celles jugées essentielles pour les diplômés des facultés de droit, sont moins susceptibles d'être développées de manière adéquate dans un environnement d'enseignement en ligne. Notre analyse montre que l'apprentissage en ligne n'est pas manifestement moins efficace pour favoriser les compétences exigées par la FOPJC. La socialisation au sein de la communauté juridique est l'aspect de l'expérience typique de l'école de droit qui a été le plus entravé par la modalité d'enseignement en ligne. Bien que la session d'automne 2020 ait été une expérience difficile pour de nombreux étudiants, nous avons également constaté qu'une minorité importante de ceux-ci s'est épanouie dans l'environnement en ligne, malgré la nature temporaire et urgente de l'expérience de la faculté de droit en ligne à l'automne 2020 et les restrictions en matière de santé publique liées à la pandémie pendant cette période. Nos conclusions sont cohérentes avec d'autres études menées auprès des étudiants en droit pendant et avant la pandémie à l'extérieur du Canada.*

---

\* Adrien Habermacher is an Associate Professor at Faculté de droit de l'Université de Moncton.

\*\* Sulaimon Giwa is an Associate Professor in School of Social Work at Memorial University of Newfoundland and Labrador, cross-appointed to the Department of Sociology, Police Studies.

*Introduction*

1. *Essential competencies in Canadian legal education*
2. *Mode of instruction*
3. *Research question*
- I. *Literature review*
  1. *Online legal education abroad*
  2. *Online legal education in Canada*
  3. *Remote learning and socialization*
  4. *Remote legal education during Covid-19*
- II. *Research design and participants*
- III. *Findings*
  1. *Competencies*
  2. *Socialization*
    - a. *Dominant narrative*
      - i. *Causes*
      - ii. *Consequences*
    - b. *Minority narrative*

*Conclusion*

*Introduction*

Prior to the COVID-19 pandemic, and in contrast to sister jurisdictions such as England and Australia, no law school in Canada offered the option to complete even a portion of the Juris Doctor (“JD”) program online in a systematic manner. Interestingly, a few law schools offered online courses equivalent to those required for their JD program, but only to law students not enrolled in a JD program (e.g. foreign-trained lawyers seeking equivalency accreditation or graduate students).<sup>1</sup> Moreover, several provincial law societies had already implemented substantial portions of their admission program online in the form of modules that law graduates were required to complete during their articling period prior

---

1. See University of British Columbia, “Online Learning at Allard” (last visited 18 February 2024), online: <[allard.ubc.ca/programs/online-learning-allard-law](http://allard.ubc.ca/programs/online-learning-allard-law)> [perma.cc/KB4P-NRRJ].

to being called to the bar.<sup>2</sup> In addition, the Law Practice Program (“LPP”), a university-run and law society-approved alternative to the traditional year of articling required for bar admission after obtaining a JD, included four months of training in a “virtual law firm” followed by four months experience in real life work environment.<sup>3</sup>

This pre-COVID landscape signalled an increasing use of online and distance education formats in the legal education continuum, with the exception of the JD-level where there appeared to be a reluctance to experiment with such formats in any systematic way. This reluctance appeared to be limited to the JD level, which is regarded as the initial qualification level for future lawyers in common law Canada.

### 1. *Essential competencies in Canadian legal education*

For the past decade or so, Canadian legal circles have grappled with the perennial question of defining the essential components of a qualifying legal education with renewed vigor. This is a result of the Federation of Law Societies in Canada’s (“FLSC”) new regulatory framework for approving common law degrees, the “National Requirement.”<sup>4</sup> It mandates a list of competencies that aspiring lawyers must demonstrate upon graduation (such as legal skills, ethics and professionalism, and substantive legal knowledge), as well as institutional requirements (such as the program’s length of study and admission standards, adequate staffing, a law library, facilities, and IT infrastructure). The institutional requirements specifically include a rule that the program consists “primarily of in-person instruction and learning and/or instruction that involves direct interaction between instructor and students.”<sup>5</sup> The FLSC Implementation Committee clarified

---

2. See Canadian Centre for Professional Legal Education, “Practice Readiness Education Program (PREP)” (last visited 18 February 2024), online: <cpled.ca/students/cpled-prep> [perma.cc/6GFN-S3FT].

3. See Toronto Metropolitan University, “About the Law Practice Program” (last visited 18 February 2024), online: <lpp.torontomu.ca/about> [perma.cc/53E9-D3ZS].

4. See Federation of Law Societies of Canada, *National Requirement* (Ottawa: Federation of Law Societies of Canada, 2018), online (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/National-Requirement-Jan-2018-FIN.pdf> [perma.cc/6VXZ-S3JR] [NR 2018].

5. NR 2018, s C 1.1; In the time between completion of the article and publication, the FLSC adopted a new version of the National Requirement, set to come into effect in 2029. The amendments include replacing the above quoted with, “The course of study must include at least 60 credits (out of 90) of in-person instruction. The remaining 30 credits may consist of in-person instruction, interactive online instruction or distance learning. A blend of the modes of delivery can be integrated throughout the 90 credits to suit the goals of the program.” See Federation of Law Societies of Canada, *Final Report and Recommendations National Requirement Review* (Ottawa: Federation of Law Societies of Canada, 2024), online (pdf): <flsc.ca/wp-content/uploads/2024/04/National-Requirement-Review-Final-Report-and-Recommendations-FEB-2024.pdf> [perma.cc/GEZ4-WBXR]; and Federation of Law Societies of Canada, *National Requirement* (Ottawa: Federation of Law Societies of Canada, 2024), online (pdf): <flsc.ca/wp-content/uploads/2024/04/NRR-approved-on-March-12-2024-

in 2011 that this language should be interpreted as requiring “a minimum of two-thirds of instruction over the course of the law degree program must be face-to-face instruction conducted with the instructor and students in the same classroom.”<sup>6</sup> This approach entrenched the existing practice in Canadian law schools, while leaving some room for innovation. Overall, the institutional requirements were formulated in an effort to “[capture] the richness of a law school education” beyond the perceived limitations inherent to a list of competencies, and to reflect contemporary practices in Canadian law schools.<sup>7</sup> The general opposition within Canadian legal academia to the FLSC’s regulatory endeavour, viewed as an unwelcome and unwarranted intrusion in sovereign curricula and academic matters, might have encouraged status quo-oriented rules in this regard.<sup>8</sup>

On the heels of this initiative creating a common regulatory framework to recognize Canadian common law degrees, the FLSC also developed a “National Competency Profile,” based on an empirical study aimed at identifying which competencies should be expected of entry-level lawyers.<sup>9</sup> The FLSC then emphasized the need for any such national standard to be “defensible,” i.e. evidence-based.<sup>10</sup> This work did not lead to establishing a national admission standard as initially expected, but has provided a foundation and impetus for provincial law societies to develop competency profiles for their own admission programs.<sup>11</sup> Provincial profiles are frequently much more comprehensive than the list of competencies found in the National Requirement or in the

---

ENG-1.pdf> [perma.cc/63LQ-V9BC] [NR 2024].

6. Federation of Law Societies of Canada, *Common Law Degree Implementation Committee Final Report* (Ottawa: Federation of Law Societies of Canada, 2011) at 22, online (pdf): <flsc.ca/wp-content/uploads/2021/02/documents\_implementation-report-ecc-aug-2011-r.pdf> [perma.cc/3LWM-MQBZ].

7. Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree Final Report* (Ottawa: Federation of Law Societies of Canada, 2009) at 38, 41, online (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Apiptaskforcereportoct2009.pdf> [perma.cc/59F2-XW9Z].

8. See Council of Canadian Law Deans, “Statements & Reports” (last visited 18 February 2024), online (website): <cclcd-cdfdc.ca/statements-reports> [perma.cc/UU9K-YFM6].

9. See Federation of Law Societies of Canada, *National Entry to Practice Competency Profile Validation Survey Report* (Ottawa: Federation of Law Societies of Canada, 2012), online (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/National%20Entry%20to%20Practice%20Competency%20Profile%20Validation%20Survey%20Report.pdf> [perma.cc/7CAG-GYFQ].

10. See Federation of Law Societies of Canada, *Briefing Note: Defensibility in Admission Standards* (Ottawa: Federation of Law Societies of Canada), online (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Briefing%20Note%20-%20Defensibility%20in%20Admission%20Standards.pdf> (circa 2013) [perma.cc/4QEP-ZHX9].

11. See Canadian Centre for Professional Legal Education, “PREP Competency Framework” (last visited 18 February 2024), online: <cpled.ca/about-cpled/competency-framework> [perma.cc/A8XP-M4QJ]; Law Society of New Brunswick, *Competency Profile* (Fredericton: LSNB, 2021), online (pdf): <lawsocietybarreau.nb.ca/uploads/LSNB\_BNB\_Competency\_Profile\_Profil\_de\_comp%C3%A9tences\_2021\_BIL.pdf> [perma.cc/7W5C-W2Nj].

National Competency Profile and are informed by new (mostly American) research in the field.<sup>12</sup> The FLSC is currently developing a competency profile for its National Committee on Accreditations (“NCA”), which is tasked with examining the credentials of foreign-trained lawyers seeking admission to Canadian legal professions. When it launched a review of its National Requirement, the FLSC instructed the review committee to take into account the ongoing work for the NCA competency profile.<sup>13</sup> Thus, though they are separate instruments with distinct purposes, the National Requirement and the National Competency Profile are destined to be interconnected as the FLSC and provincial law societies deploy a competency-based education approach throughout the continuum of legal education. The FLSC initiatives still face significant opposition from the legal academy with respect to the content of competencies lists and the process for their elaboration.<sup>14</sup> The competencies-based approach favoured by the FLSC and provincial law societies remains foreign to most legal educators, often attached to the traditional approach defining the essential components of a university legal education mainly through a list of courses reflecting domains of doctrinal knowledge.

## 2. *Mode of instruction*

If the list of essential competencies has garnered significant public attention, the same cannot be said for the instructional formats. Throughout the 2010s, there was nearly no public debate in Canada regarding the desirability or feasibility of online education in JD programs,<sup>15</sup> and accordingly no clear articulation of the rationale for not testing this possibility. This absence may seem puzzling given the recurring concerns about the accessibility of law school for students who could not commit to six semesters of full-time study in a large urban centre due to financial constraints or

---

12. See Institute for the Advancement of American Legal Studies, *Foundations for Practice* (last visited 20 February 2024), online (website): <iaals.du.edu/projects/foundations-practice> [perma.cc/YP5Q-8E6S]; National Conference of Bar Examiners Testing Task Force, *2019 Practice Analysis* (Madison: National Conference of Bar Examiners, 2020), online: <nextgenbarexam.ncbex.org/reports/phase-2-report> [perma.cc/GN66-64VA].

13. Federation of Law Societies of Canada, *Federation Initiates Review of National Requirement* (Ottawa: FLSC, 2022), online (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/National%20Review%20Ev5.pdf> at 2 [perma.cc/B8YP-7KAD].

14. See Richard Devlin & David Wiseman on behalf of the Executive of CALT/ACPD, “CALT Letter to the Canadian Federation of Law Societies” (23 December 2021), online: <acpd-calt.org/caltletterflscjan22> [perma.cc/4HB8-JF4L].

15. Rare examples of op-eds on the topic include: Philip Bryden, “Canada isn’t ready for an online law school” (15 December 2014), online (website): <canadianlawyeromag.com/news/general/canada-isnt-ready-for-an-online-law-school/269626> [perma.cc/N7FG-EXR9]; Victoria Watkins, “The Time for Digital Legal Education Is Now” (22 January 2015), online (website): <blog.osgoodepd.ca/the-time-for-digital-legal-education-is-now>.

caregiving responsibilities.<sup>16</sup> Moreover, in the same decade, the American Bar Association (“ABA”) accepted that a few law schools experiment with mostly online JD programs.<sup>17</sup> In early March 2020, the ABA was even considering structural changes to its accreditation rules that would make it easier for willing law schools to establish mostly online qualifying programs, and publicly solicited comments to inform its next decisions. This was just weeks before the pandemic and accompanying public health restrictions on in-person gatherings compelled American and Canadian law schools alike to move all their operations online.

In Canada’s JD programs, the pandemic necessitated a trial of online legal education on a national scale. This prompted all actors in the field to study it, practice it, and confront their preconceived conceptions with real-world experiences spanning several months up to nearly two years. The period has been habit-forming for many, and it is now evident that demand for remote study or work opportunities will remain high.<sup>18</sup> Moreover, teaching institutions must now be prepared for the possibility of fully or largely online operations when public health or other reasons require it. Law schools and all legal education stakeholders may now be required to justify their reluctance to offer primarily or entirely online law programs, and in some situations, they may also be required to prioritize certain activities for in-person instruction. Updating the language or the substance of the National Requirement regarding format of instruction, especially the minimum volume of in-person instruction and the possibility of interactive, synchronous online instruction, was a priority issue in the revision process that led to amendments in early 2024.<sup>19</sup> In order to inform future policy decisions, there needs to be a comprehensive understanding of whether online instruction is conducive to students acquiring the FLSC-mandated competencies.

---

16. See Alan JC King, Wendy K Warren & Sharon R Miklas, *Study on the Accessibility of Ontario Law Schools* (Kingston, ON: Queen’s University Social Program Evaluation Group, 2004), online (pdf): [perma.cc/FG9T-E58W].

17. Southwestern Law School, Syracuse University College of Law, University of Dayton School of Law, University of New Hampshire School of Law; see American Bar Association, Section of Legal Education and Admissions to the Bar, *List of Applications for Variances* (last visited 20 February 2024), online (website): <americanbar.org/groups/legal\_education/public-notice/applications-for-variances> [perma.cc/26X6-QW5G].

18. See Statistics Canada, “Study: Working from home: Productivity and preferences” (1 March 2021), online (website): <150.statcan.gc.ca/n1/daily-quotidien/210401/dq210401b-eng.htm> [perma.cc/RC25-VPSW].

19. See Federation of Law Societies of Canada, *Discussion Paper National Requirement Review* (Ottawa: Federation of Law Societies of Canada, 2023), online (pdf): <flsc.ca/wp-content/uploads/2023/06/NRRC-Discussion-Paper-V3.pdf> [perma.cc/8LTH-GDVH].

### 3. *Research question*

In the context of the pandemic, the delivery of JD education online via digital technology presented a fertile ground for investigating law students' experiences in developing the FLSC's mandated competency and other aspects constitutive of the richness of legal education. We collected empirical data from law students at three Canadian law schools in the middle of the 2020–2021 academic year to shed light on the following question: how did students perceive their learning of important skills and socialization in the legal community during their pandemic-related online education period? We will examine two aspects that are complementary to one another: first, we will examine the students' accounts regarding their development of the FLSC's mandated competencies online versus previous terms in person, and second, we will investigate how students experienced (or did not experience) a sense of socialization in the legal community during this period. This approach will ultimately shed light on the current regulatory framework, including the defensibility of current requirements on the format of instruction and its limitations, in order to inform future policy development at the FLSC and law school levels.

It is useful to establish the vocabulary that will be used throughout this article from the outset because there are few consistent standards in this regard. In this context, the term “online education” shall mean instruction that is predominantly conducted through web-based digital technologies (e.g. videoconferencing), which enable learners to engage in direct, synchronous interaction with instructors and fellow students despite their geographical distance. Conversely, the term “distance education” shall be employed to refer to learning that predominantly takes place via asynchronous mediums and tools (e.g. recorded lectures), irrespective of its web-based nature. Within our dataset, 100 per cent of students reported that all their courses took place online during the Fall term of 2020. Eighty-five per cent reported that their courses were taught either entirely or mostly synchronously, whereas only three per cent reported mostly or entirely asynchronous teaching. Twelve per cent reported an equal share of synchronous and asynchronous teaching. Consequently, this article specifically examines online education, rather than distance education, as it was the prevailing mode of instruction in Canadian law schools during the COVID-19 pandemic.

We must emphasize that what Canadian legal education experienced on a broad scale for the first time in March 2020 may be better referred to as “emergency remote teaching” rather than “online education.”<sup>20</sup> It was of

---

20. See Charles Hodges et al, “The Difference Between Emergency Remote Teaching and Online

an *emergency* character as instructors were required to make the transition overnight with, at best, minimal prior experience with online pedagogies. Despite instructors' efforts during the summer of 2020 to educate themselves and plan the following year to the best of their abilities, they anticipated that normal operations would resume within a few months; online pedagogy was therefore viewed as a *temporary* stopgap measure. The temporary character of this remote delivery of legal education is further evidenced by the fact that law schools have made no significant changes to their program structures. In addition, both students and instructors were subjected to weeks or even months of isolation, during which normal social activities outside of the home were prohibited. Thus, 2020–2021 could in no way be described as an ideal online education experience for any actors; rather, it would be more accurate to describe it as online education at its worst in terms of planning, implementation, and context. With this important proviso, which we will maintain throughout our analysis, something that many thought impossible or undesirable occurred in all Canadian law schools (as throughout society at large). This forced “natural experiment” provided all actors with a previously unimaginable new experience that had the potential to prompt a profound re-evaluation of assumptions and beliefs regarding legal education, its current forms and its future, its essential elements and its fortuitous characteristics. This experience can provide new perspectives on the feasibility, desirability, and adequacy of online instruction at the JD level of legal education, as well as on the future of traditional brick-and-mortar law instruction in an era of competencies-based regulation. Thus, we argue and demonstrate below that the experience with emergency and temporary remote teaching in Canadian law schools during the Fall 2020 term, flaws and all, can shed light on what could be an online education experience once we account for the distinction between these two modalities of education.

### I. *Literature review*

Due to the paucity of empirical research on what “*actually* happens in legal education,” Pue and Rochette asserted in 2001 that opinions regarding legal education remained “undisciplined, entirely unconstrained by reliable verifiable data or evidence of any sort.”<sup>21</sup> This is largely still

---

Learning” (27 March 2020), online (website): <er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> [perma.cc/R3RD-Y4VZ].

21. Annie Rochette & W Wesley Pue, ““Back to Basics”? University Legal Education and 21st Century Professionalism” (2001) 20 Windsor YB Access Just 167 at 167-168; In striking contrast, there is a wealth of large-scale and methodologically robust empirical research on legal education in the US, notably through the American Bar Foundation, the AccessLex Institute, the Institute for the Advancement of the American Legal System and the Law School Survey of Student Engagement.

the case in Canada, despite a growing body of more empirical studies shedding light on the realities of Canadian legal education. Some have focused on the aspirations and practices of teachers,<sup>22</sup> and others on the decisions and journeys of law school students.<sup>23</sup> Few researchers, the majority of whom were influenced by the COVID-19 pandemic, have examined attitudes toward online legal education or even its outcomes.<sup>24</sup> Aside from regulators' efforts to define their competency profiles for their admission programs, Canada produced very little research on lawyers' essential skills, knowledge, and characteristics.

### 1. *Online legal education abroad*

For empirical insights in these domains, Canadian legal educators continue to rely primarily on research from foreign—and not perfectly comparable—jurisdictions, such as the United States, Australia, and England. Although it was nonexistent in Canada prior to the pandemic, online legal education was well-established in these countries: the Open University Law School in England has been offering a full law undergraduate degree online to thousands of students since 2014;<sup>25</sup> in Australia, several universities offer an online option for the required post-degree training program; and in the United States, several schools offer hybrid or even fully online JD programs.<sup>26</sup>

---

22. Theresa Shanahan, "Legal Scholarship in Ontario's English-Speaking Common Law Schools" (2006) 21:2 CJLS 25; Theresa Shanahan, "Creeping Capitalism and Academic Culture at a Canadian Law School" (2008) 26:1 Windsor YB Access 121; Craig Forcece, "The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools" (2015) 36 Windsor Rev Leg & Soc Issues 66; Annie Rochette, *Teaching and learning in Canadian legal education: an empirical exploration* (DCL Thesis, McGill University Faculty of Law, 2011) [unpublished]; David Sandomierski, *Aspiration and Reality in Legal Education*, (Toronto: University of Toronto Press, 2020); Adrien Habermacher, *Institutional Cultures and Legal Education at Select Canadian Law Faculties* (DCL Thesis, McGill University Faculty of Law, 2020) [unpublished].

23. See e.g. Desmond Manderson & Sarah Turner, "Coffee House: Habitus and Performance Among Law Students" (2006) 31:3 L & Soc Inquiry 649; Natasha Bakht et al, "Counting Outsiders: Critical Exploration of Outsider Course Enrolment in Canadian Legal Education" (2007) 45:4 Osgoode Hall LJ 667; Joshua J A Henderson & Trevor CW Farrow, "The Ethical Development of Law Students: An Empirical Study" (2009) 72:1 Sask L Rev 75; Cassandra MS Florio & Steven J Hoffman, "Student Perspectives on Legal Education: A Longitudinal Empirical Evaluation" (2012) 62:1 J Leg Educ 162.

24. See mainly Melanie Murchison et al, "Remote Learning in Law School During the Pandemic: A Canadian Survey" (2022) 8 Can J Comp & Contemporary L 148; Audrey Fried, "Lessons from Online Pandemic Pedagogy in North America Law Schools: Toward Law Student Wellbeing" in Emma Jones & Caroline Stevens, eds, *Wellbeing and Transitions in Law: Legal Education and the Legal Profession* (London, UK: Palgrave Macmillan, 2023) 107.

25. See The Open University, "20 years of teaching law at The Open University" (last visited 20 February 2024), online: <law-school.open.ac.uk/overview/about-school/celebrating-20-years> [perma.cc/75VT-URV7].

26. E.g. Syracuse University College of Law, University of Dayton School of Law, University of New Hampshire Franklin Pierce School of Law, St Francis School of Law; See AccessLex Institute, *Distance Learning Questionnaire Findings* (West Chester, PA: AccessLex Institute, 2020), online:

From the experience of these pioneers as well as from smaller-scale and individual experiments in traditional programs, a sizeable body of scholarship is now available. As an illustration, Goldman published in 2019 an annotated bibliography on legal education that included over 40 publications related to distance education and learning in the preceding decade;<sup>27</sup> a prior iteration of the same exercise included approximately 50 entries on the same topic for the period 2001–2008.<sup>28</sup> This repertoire attests to the lessons already learned in the field, despite not being entirely empirical and at times relying on now-obsolete technology. Using this library and additional research on relevant scholarship published before and during the pandemic, we can establish solid foundations and identify persistent knowledge gaps. First, a 2010 comprehensive meta-analysis sponsored by the US Department of Education<sup>29</sup> discovered that “students in online conditions performed modestly better, on average, than those learning the same material through traditional face-to-face instruction,” although this positive effect could not be definitively attributed to the medium alone.<sup>30</sup> This general conclusion pertains to the expansive field of higher education, and the articles included in the meta-analysis pertained to the teaching of a wide range of disciplines (medicine/health care was the most prevalent, but there were no articles on legal education). Several authors rely on this benchmark as evidence that online education can be at least as effective as in-person instruction, and to investigate the conditions under which this can be true in legal education, in particular. In 2015, the Working Group on Distance Learning in Legal Education, a group of more than thirty-five law professors based primarily in the United States, published a guide of recommended practices for the design and delivery of distance learning in legal education.<sup>31</sup> This more than 130-page guide concludes with a crucial point: there is a lack of data on the effectiveness of distance learning for specific learning outcomes (e.g. retention, knowledge of rules, problem-solving ability, critical thinking).<sup>32</sup>

---

<[arc.accesslex.org/research/10/](https://arc.accesslex.org/research/10/)> [perma.cc/3R4Z-67X7].

27. Pearl Goldman, “Legal Education and Technology III: An Annotated Bibliography” (2019) 111:3 Law Libr J 325 at 338-346.

28. Pearl Goldman, “Legal Education and Technology II: An Annotated Bibliography” (2008) 100 Law Libr J 415 at 466-476.

29. Barbara Means et al, *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies* (Washington, DC: United States Department of Education, 2010).

30. *Ibid* at xiv.

31. Working Group on Distance Learning in Legal Education, *Distance Learning in Legal Education: Design, Delivery and Recommended Practice* (2015), online (pdf): <[wgdlle.org/files/2015/12/WorkingGroupDistanceLearningLegalEducation2015\\_pdf.pdf](https://wgdlle.org/files/2015/12/WorkingGroupDistanceLearningLegalEducation2015_pdf.pdf)> [perma.cc/KFC6-CWWY].

32. *Ibid*, Appendix G.

Indeed, even studies published after the Working Group's guide frequently discuss very general outcomes rather than specific ones. Dutton et al., reporting on a survey conducted with students at an ABA-accredited US law school who had taken required upper-year courses online, did not address specific skills, but confirmed that "law students can be just as engaged and learn just as much, if not more, in an online course as a traditional classroom."<sup>33</sup> They highlighted the importance of careful design and implementation (e.g. engaging content and lectures, multiple opportunities for feedback) as well as the compatibility of this mode of instruction with the students' needs and preferences.<sup>34</sup> Subsequent studies by Sutton confirmed the same conclusions.<sup>35</sup>

Hewit and Stubbs argued, based on Australian research, that in addition to the findings of the US Department of Education's meta-analysis, "there is also some evidence that online learning environments can be used to facilitate the development of specific legal skills."<sup>36</sup> The authors reported the positive results obtained by adding asynchronous modules to traditional in-class instruction (i.e. blended or hybrid learning) targeting, among others, the following skills: researching and using legal sources, analyzing case law, writing a legal essay, and writing a letter of advice to a client. Hewit had previously reported similar positive outcomes with comparable modules aimed at fostering group work and advocacy skills, such as disclosure and pre-trial application hearings, as well as ethical behavior.<sup>37</sup> Similar conclusions were drawn from equivalent asynchronous modules focusing on legal reasoning, the ability to tolerate ambiguity,

---

33. Yvonne M Dutton, Margaret Ryznar & Kayleigh Long, "Assessing Online Learning in Law Schools: Students Say Online Classes Deliver" (2019) 96:3 Denver Law Review 493 at 530.

34. *Ibid.*

35. See e.g. Victoria Sutton, "Asynchronous, E-Learning in Legal Education: A Comparative Study" (SSRN, 2016) online: <ssrn.com/abstract=2819034> [perma.cc/RUD2-ZRSP]; Victoria Sutton, "Law Student Attitudes about their Experience in the COVID-19 Transition to Online Learning" (SSRN, 2020) online: <ssrn.com/abstract=3665712> [perma.cc/A337-JX3M]; Victoria Sutton, "Perceptions of Online Learning and COVID-19 Countermeasures Among Law Students in a One-year Follow-up Study" (SSRN, 2021), online: <ssrn.com/abstract=3865262> [perma.cc/DT6T-GYW6]; The VanZandt reached similar conclusions based on an empirical study of an online 1L Torts course at an ABA-accredited law school (see Victoria L VanZandt, "Thinking Like Lawyers" in the Online Environment: Students' and Faculty Members' Perceptions of Using the Socratic Method in an Online J.D. Course (PhD Dissertation, University of Dayton, 2021) [unpublished]).

36. Anne Hewit & Matthew Stubbs, "Supporting law students' skills development online - a strategy to improve skills and reduce student stress?" (2017) 25 Research in Learning Tech 1 at 2, citing Jennifer Yule, Judith McNamara & Mark Thomas, "Mooting and Technology: To what extent Does Using Technology Improve the Mooting Experience for Students?" (2010) 20 Leg Education Rev 137.

37. Anne Hewit, "Can you learn to lawyer online? A blended learning environment case study" (2015) 49:1 Law Teacher 92.

comprehension of a legal problem question, and critical analysis, this time in the context of an entirely online course in England.<sup>38</sup>

In contrast, another author concluded that a post-degree online training program in Australia produced inferior results compared to the in-person option when it came to the teaching of negotiation and interviewing, oral communication, and teamwork skills.<sup>39</sup> This study, although based on a smaller sample size than those previously described, highlights the need for further examination of the attainment of specific learning outcomes and the success conditions of online programs before jumping to broad conclusions.

The aforementioned studies have focused on evaluating the learning of competencies traditionally regarded as fundamental to the practice of law. In recent years, educators and professional associations have increasingly acknowledged the significance of a subset of skills that are less specific to lawyers but are nonetheless essential for good lawyering: so-called “soft skills.”<sup>40</sup> Rogers provided a review of existing research on the teaching and learning of such skills, including research from online law schools in the United States.<sup>41</sup> The soft skills category encompasses a vast array of competencies, from self-awareness and self-management skills to social proficiency and leadership skills, as well as ethical development. A small number of empirical studies have attempted to measure the outcomes of some of these skills in online legal education settings. Jones et al, for example, focused on assessing mental wellbeing,<sup>42</sup> while Platfoot Lacey investigated the formation of professional identity.<sup>43</sup>

## 2. Online legal education in Canada

Prior to the COVID-19 pandemic, little has been written about online legal education in Canada. In a 2012 article, Dewhurst relied on American

38. Jessica Giles, “The Superfoods of Online Learning: Threshold Concepts and Threshold Skills” (2016) 11:1 J Commonwealth L & Leg Educ 26.

39. Gaye T Landsel, “Have we ‘Pushed the Boat Out Too Far’ in Providing Online Practical Legal Training? A Guide to Best Practices for Future Programs” (2009) 19:1 Leg Education Rev 149.

40. Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient* (Denver, CO: Institute for the Advancement of American Legal Studies, 2016), online (pdf): <iaals.du.edu/sites/default/files/documents/publications/foundations\_for\_practice\_whole\_lawyer\_character\_quotient.pdf> [perma.cc/9ZD3-AL3W]; Randall Kiser, *Soft Skills for the Effective Lawyer* (Cambridge, UK: Cambridge University Press, 2017); Neil W Hamilton & Louis D Bilonis, *Law Student Professional Development and Formation* (Cambridge, UK: Cambridge University Press, 2022) at 17-27.

41. Justine Rogers, “Teaching Soft Skills Including Online: A Review and Framework” (2020) 30:1 Leg Education Rev 1.

42. Emma Jones, Rajvinder Samra & Mathijs Lucassen, “The world at their fingertip? The mental wellbeing of online distance-based law students” (2019) 53:1 Law Teacher 49.

43. Denise Platfoot Lacey, “Do All Roads Lead to Rome? Effectively Using Asynchronous Online Reflective Practice in an Externship Course” (2021) 89:3 UMKC L Rev 609.

and Australian examples, as well as Canadian developments in other disciplines (e.g. applied psychology), to assert that “the evidence is beginning to show that the e-learning outcomes are at least equal if not superior to those of traditional classroom instruction.”<sup>44</sup> Without the benefit of an original empirical study, Dewhurst attempted to demonstrate that this would also hold true for legal education. Echoing Gleason,<sup>45</sup> he provided Canadian legal educators with compelling arguments indicating that online instruction has the potential to replicate, and possibly surpass in-person instruction, for the intended learning outcomes embedded in the Socratic and case methods, such as reading, analyzing, and critically thinking about legal decisions; identifying legally relevant facts; applying legal principles to new fact situations; constructing and communicating logical and well-supported legal arguments; and using legal terminology appropriately.<sup>46</sup> This list aligns closely with the one found in the FLSC’s National Requirement and with some of the ‘hard skills’ on which some of the previously mentioned foreign studies focus. In addition, he provided evidence that online pedagogy could adequately address the long-standing criticisms levelled against the signature pedagogy of North American common law schools. Dewhurst’s contribution was crucial because many saw legal academia’s profound commitment to the Socratic method as key to explaining legal educators’ reluctance to embrace online or distance learning.<sup>47</sup> Since then, empirical studies have confirmed Dewhurst’s arguments that the learning outcomes expected from the Socratic method could be fostered in an online or distance education context.<sup>48</sup>

---

44. Dale Dewhurst, “The Case Method, Law School Learning Outcomes and Distance Education” (2012) 6 Can Leg Educ Ann Rev 59 at 70.

45. See Diana Gleason, “Distance Education in Law School: The Train Has Left the Station” (2007) UNLV William S. Boyd School of Law Legal Studies Research Paper No 07-09, online: <ssrn.com/abstract=1022216> [perma.cc/74G7-4C6B]. See also Matt Hlinak, “The Socratic Method 2.0” (2014) 31:1 J Leg Studies Education 1.

46. Dewhurst, *supra* note 47 at 63-64.

47. Steven C Bennet, “Distance Learning in Law” (2014) 38:1 Seton Hall Legislative J 1; Eric S Janus, “The Worst Idea Ever”: Lessons from One Law School’s Embrace of Online Learning” (2020) 70:1 Syracuse L Rev 13 at 14.

48. See e.g. VanZandt, *supra* note 35; Kimberley A Blake, “*Faculty Members’ Perspectives—Using the Socratic method in the Online Higher Education Classroom to Increase Cognitive Presence, Critical Thinking, and Decision-Making Skills: Implications for the Workplace*” (DBA: Leadership Studies dissertation, Baker College, 2019) (unpublished). See also Working Group for Distance Learning in Legal Education, “Distance Learning in Legal Education A Summary of Delivery Models, Regulatory Issues, and Recommended Practices” (2011) at 13, online (pdf): <law.berkeley.edu/files/Harvard\_Report\_on\_Distance\_Learning\_in\_Legal\_Education\_2011.pdf> [perma.cc/2PMH-497H] (“the Socratic method can be retained under the synchronous model”).

### 3. *Remote learning and socialization*

Dewhurst also listed “the socialization necessary for a proper legal education” as one of the intended results of the Socratic and case methods, while reserving judgment on whether it is indeed a desirable outcome. He acknowledged that despite being widely regarded as essential, this aspect is frequently implicit and operates “below the level of clear awareness.”<sup>49</sup> Other studies have examined closely this traditional hidden curriculum to make it explicit.<sup>50</sup> Nonetheless, the socialization aspect is not accounted for by the FLSC’s current framework.

Jones emphasized the double-edged consequences of socialization and identity formation.<sup>51</sup> On the one hand, socialization into “thinking like a lawyer” typically entails emotionally detached, individualistic, and combative modes of reasoning, and translates into general pressures for educational performance and adherence to the norms of the legal culture.<sup>52</sup> With less physical proximity in online education, such pressures are diminished, which is beneficial from a mental health standpoint. On the other hand, less physical proximity typically translates into less social connectedness and peer support, two factors that have a positive effect on academic achievement and mental wellbeing.<sup>53</sup>

Landsel also observed that online law students appear to be more isolated from their peers than in-class students. Additionally, he noted that students with competing commitments (e.g. work and/or family) were more likely to choose online or distance education programs because they had less time to interact with their classmates and because doing so would place “heavy demands on their already stretched lives.”<sup>54</sup>

When nearly all legal education moved online in 2020, concerns about law students’ social isolation in this context gained prominence. In this regard, Schwartz, a legal education research specialist, testified based on his online teaching experience prior to the pandemic that law professors could rely on an abundance of resources for fostering community and

49. Dewhurst, *supra* note 47 at 6, citing William M Sullivan, et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) at 29.

50. See e.g. Robert Kerry Wilkins, “The Person You’re Supposed to Become: The Politics of the Law School Experience” (1987) 45:1 U Toronto Fac L Rev 98; Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (Oxford: Oxford University Press, 2007).

51. Emma Jones, “Connectivity, socialization and identity formation. Exploring mental well-being in online distance learning law students” in Rachael Field & Caroline Stevens, eds, *Educating for Well-Being in Law: Positive Professional Identities and Practice* (London: Routledge, 2019) 103.

52. *Ibid* at 108.

53. *Ibid* at 115.

54. Gaye T Landsel, “Have We ‘Pushed the Boat Out Too Far’ in Providing Online Practical Legal Training? A Guide to Best Practices for Future Programs” (2009) 19:1 L Education Rev 149 at 161.

connection in an online learning environment.<sup>55</sup> Wall Sweany added, “professors can rely on decades of educational psychology research to ensure that the well-established best practices for instruction transfer to the online classroom.”<sup>56</sup> Such examples demonstrate how experts mobilized preexisting knowledge about online and distance education to support remote emergency education during the pandemic. Despite the seeming disparities, valuable lessons can be learned from each context that can benefit the others.

#### 4. *Remote legal education during COVID-19*

The forced transition to nearly universal online education during at least the earlier phases of the pandemic sparked a renewed interest in assessing the potential and achievements of online education in general. A number of institutional and individual initiatives to collect and analyze data on what actually transpired during this time period have emerged. The International Association of Law Schools (IALS) conducted one of the first large-scale studies in the field, a survey of 1,250 law students from 35 countries (including Canada).<sup>57</sup> In the end, 39 per cent of law students polled between 15 May and 15 June 2020 felt that the quality of their education had improved as a result of the shift to online instruction, compared to 40 per cent who believed that it had worsened (21 per cent remained neutral).<sup>58</sup> In a subsequent 2021 survey, this time based on 700 students among whom only seven per cent were attending classes solely in-person (compared to 74 per cent entirely online and 19 per cent in a hybrid format), the IALS found that 40 per cent of students said that the quality of their education had not changed since the beginning of 2020.<sup>59</sup>

After approximately one year of (mostly) online learning, Gallup and AccessLex surveyed 1,739 JD students from 147 US law schools.<sup>60</sup> This

---

55. Michael Hunter Schwartz, “Towards a Modality-less Model for Excellence in Law School Teaching” (2020) 70:1 Syracuse L Rev 115 at 131.

56. Noelle Wall Sweany, “From Theory to Practice: Evidence-Based Strategies for Designing and Developing Engaging Online Courses” (2020) 70:1 Syracuse L Rev 167 at 178.

57. International Association of Law Schools, “Transitioning to Online Legal Education—The Student Voice” (2020), online (pdf): <[ialsnet.org/wp-content/uploads/2020/08/IALS-Report-Transitioning-to-Online-Legal-Education-The-Student-Voice-August-2020.pdf](https://ialsnet.org/wp-content/uploads/2020/08/IALS-Report-Transitioning-to-Online-Legal-Education-The-Student-Voice-August-2020.pdf)> [perma.cc/NP9Z-K8R7].

58. *Ibid* at 13–15.

59. International Association of Law Schools, “Global Legal Education Responding to COVID19 —The Student Voice” (2021) at 6, 17, online (pdf): <[ialsnet.org/wp-content/uploads/2021/12/2021-Global-Legal-Education-Responding-to-COVID19-The-Student-Voice-Final.pdf](https://ialsnet.org/wp-content/uploads/2021/12/2021-Global-Legal-Education-Responding-to-COVID19-The-Student-Voice-Final.pdf)> [perma.cc/VYP2-88H7].

60. Gallup & AccessLex, “Law School in a Pandemic: Student Perspectives on Distance Learning and Lessons for the Future” (2021), online (pdf): <[arc.accesslex.org/commissioned/12/](https://arc.accesslex.org/commissioned/12/)> [perma.cc/BU49-ZMVX].

study provided new insights and confirmed some previously acquired knowledge, such as the preference of part-time students and those with children under 18 for online learning. The majority of students (40 per cent) stated that the pandemic (and shift to online) had no effect on their academic performance, with 25 per cent stating that it had improved it and 35 per cent saying the opposite.<sup>61</sup> Moreover, the survey revealed that first-year students viewed their online courses more favourably than upper-year students, likely due to the absence of loss aversion bias.<sup>62</sup> About one third of JD students studying mostly or completely online reported feeling a sense of community with their law school peers, compared to nearly half of their peers studying mostly or completely in person.<sup>63</sup> Students who completed all of their first-year courses online were as likely as other students to express a sense of belonging at their law school and a sense of community with their peers.<sup>64</sup>

Also from the United States, the LSSSE reports for 2021 and 2022 (both drawing on responses from more than 13,000 law students) provided insightful information.<sup>65</sup> The overall level of student satisfaction with their law school experience was very similar among mostly-online and mostly-in-person students, and was also comparable to data from pre-pandemic years. The data showed that law students remained highly engaged with classmates and faculty regardless of the instructional modality. The rate of students reporting that their schools contributed to their ability to acquire a broad legal education, develop legal research skills, and learn effectively on their own was also relatively stable when comparing in-person to online students.<sup>66</sup> Surprisingly, online students were more likely to report developing their oral communication skills.<sup>67</sup> Nearly all law students (91 per cent) reported at least some increase in mental or emotional exhaustion in 2021 as a result of the COVID-19 pandemic, and over two-thirds reported

---

61. *Ibid* at 17.

62. *Ibid* at 26.

63. *Ibid* at 20.

64. *Ibid* at 21.

65. Meera E Deo, Jacquelyn Petzold & Chad Christensen, *LSSSE 2021 Annual Report: The Covid Crisis In Legal Education* (Bloomington: Indiana University Center for Postsecondary Research, 2021), online (pdf): <[lssse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-1.24.22.pdf](https://lssse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-1.24.22.pdf)> [perma.cc/Z8LN-KABH] [*LSSSE 2021 Annual Report*]; Jacquelyn Petzold, Meera E Deo & Chad Christensen, *LSSSE 2022 Annual Report: Success With Online Education* (Indiana University's Center for Postsecondary Research, 2022), online (pdf): <[lssse.indiana.edu/wp-content/uploads/2022/10/Success-with-Online-Education-Final-10.26.22.pdf](https://lssse.indiana.edu/wp-content/uploads/2022/10/Success-with-Online-Education-Final-10.26.22.pdf)> [perma.cc/H2RQ-RELC] [*LSSSE 2022 Annual Report*].

66. *LSSSE 2021 Annual Report*, *supra* note 65 at 11.

67. *Ibid*.

at least some increase in loneliness.<sup>68</sup> In 2022, the LSSSE concluded that “the core” of legal education remained unchanged, and that “online law school experience can be as successful, enriching, and satisfying as the traditional curriculum.”<sup>69</sup> It nonetheless noted that COVID-19 could have potential negative consequences on the professional competence of future lawyers going through law school in this period, and that “some important intangibles are less accessible to online students, including academic and career support services.”<sup>70</sup> They also reached the differentiated conclusion that “for full-time students, in person learning is important to fulfill the need for social connections in a way that online learning—at least in its current form—cannot,” whereas “part-time students, who are likely to have comparatively more intense work and family responsibilities, thrive with the flexibility that online learning affords.”<sup>71</sup>

Approximately one year into the pandemic, Murchison et al provided insights into the preferences of 422 Canadian law students from 11 universities.<sup>72</sup> Forty-one per cent felt that they were not able to learn effectively in an online format, while 37 per cent felt the opposite and 22 per cent were neutral. Furthermore, 47 per cent of participants agreed or strongly agreed that videoconferencing is an effective method of course delivery in law school. The authors also found that students place a high value on the socialization that occurs within law school, with upper-year students valuing interactions with their peers more than first-year students who began law school online. They also observed that upper-year students were more likely than first-year students to say that online classes had “a detrimental effect” on their mental health, despite the fact that 70 per cent of all students felt this way. While their survey covered many topics and provided rich insights into the learning preferences of students in terms of pedagogy, evaluation, and other aspects of their experience, the authors concluded that it was “for a different study to evaluate whether remote or in person modes of instruction lead to better learning outcomes.”<sup>73</sup>

## II. *Research design and participants*

Between early December 2020 and mid-February 2021, we distributed a Qualtrics-hosted online survey to all law students enrolled at three different universities in the Atlantic region of Canada. The mixed-methods

---

68. *Ibid.*

69. *LSSSE 2022 Annual Report*, *supra* note 65 at 14.

70. *Ibid.*

71. *Ibid.*

72. Melanie Murchison et al, “Remote Learning in Law School During the Pandemic: A Canadian Survey” (2022) 8:1 *Can J Comp & Contemporary L* 149.

73. *Ibid* at 191.

survey centred on the experiences of students during the Fall 2020 term. This anonymous survey included both multiple-choice and open-ended questions. All questions were optional and required between 30 and 45 minutes to answer. The survey was available in both English and French. We also offered a \$5 gift card as an incentive for participation to students who provided their email address. These participants were led to a different page from the survey, preserving the anonymity of the survey and email addresses collected. We obtained ethical approval from all three participating universities.

Before finalizing and launching the survey, we presented the project's design at the conference of the Canadian Association for Legal Ethics in October 2020. In addition, we presented preliminary results at meetings of the Law and Society Association in May 2021 and July 2022.

Like nearly all studies in the field, ours rely on students' declarations and self-assessment of their learning. Although it comes with inherent limitations,<sup>74</sup> this approach was the only one available to collect data on the topic. It would be very difficult to set up a controlled experiment where the instructional modality is the only variable distinguishing two groups of students whose achievements on select competencies would then be compared; it would be impossible to test nearly fifty competencies this way. Our study is exploratory and aims to identify which specific competencies may seem less likely than others to be adequately developed in an online law school environment; further research will then be able to focus on the said competencies and test the relative success of different teaching and learning modalities.

We collected valuable data from only 66 law students, which represents a small fraction of the total student population of approximately 940 enrolled across the three faculties of law.<sup>75</sup> In two universities, the participation rate ranged from 10 to 16 per cent of the total student body,

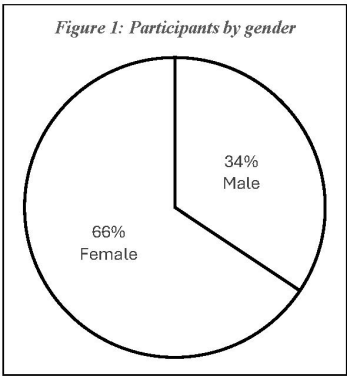
---

74. Students, especially in the early stages of their education in a given discipline, tend to overestimate their mastery (see e.g. David J Boud & Alan L Tyree, "Self and Peer Assessment in Professional Education: A Preliminary Study in Law" (1980) 15 *J Society Pub Teachers L* ns 65; Nancy Falchikov & David Boud, "Student Self-Assessment in Higher Education: A Meta-Analysis" (1989) 59:4 *Rev Educational Research* 395; and Justin Kruger & David Dunning, "Unskilled and unaware of it: how difficulties in recognizing one's own incompetence lead to inflated self-assessments" (1999) 77:6 *J Personality & Soc Psychology* 1121. See also Benjamin Andoh & Phil Jones, "Students' self-assessment in law" (2008) 42:2 *Law Teacher* 200; and Jennifer Flynn, "Why you don't know what you don't know (and what to do about it)" (1 November 2017), online (blog):, <knowprincipia.com/2017/11/01/why-you-dont-know/> [perma.cc/4BVV-ZW6X].

75. Sixteen more participants started but did not reach the end of the survey; their responses were thus excluded from the analysis. As all questions after the consent form were optional, the number of responses to each individual question analyzed thereafter varies. The number of responses to multiple choice questions was usually around 60.

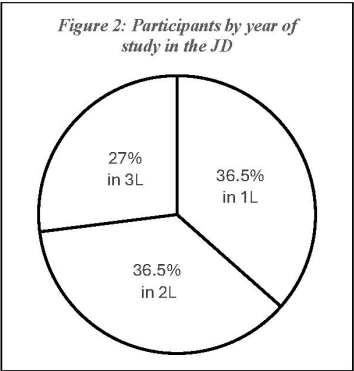
thus falling in the expected range for long online surveys, whereas in the third institution, it was below one per cent.<sup>76</sup> The key characteristics of our participants are summarized in Figures 1 to 7 below. Notably, two-thirds of participants identified as female, while the remaining third identified as male. All of the students were enrolled in a JD program, and a similar proportion of students were enrolled in each of the three years (1L, 2L, 3L). During the Fall 2020 term, all participants took all of their courses online and studied primarily from home (including 29 per cent who worked mainly in a shared space at home). Among all participants, nearly half worked for pay in addition to their studies, with over a quarter of participants working more than six hours per week. Eight per cent of participants identified as either racialized or Indigenous; 11 per cent as LGBTQ2S+; 14 per cent as having a disability (physical or non-physical); 32 per cent as mature, and eight per cent as primary caregivers for at least one other individual. In addition, 13 per cent of respondents reported that neither of their parents had completed a postsecondary education, and 82 per cent were the first members of their immediate family to attend law school. Finally, two-thirds of the participants described the socioeconomic status of their families as medium, and the remaining third split equally between high and low.

*Figure 1. Participants by gender*

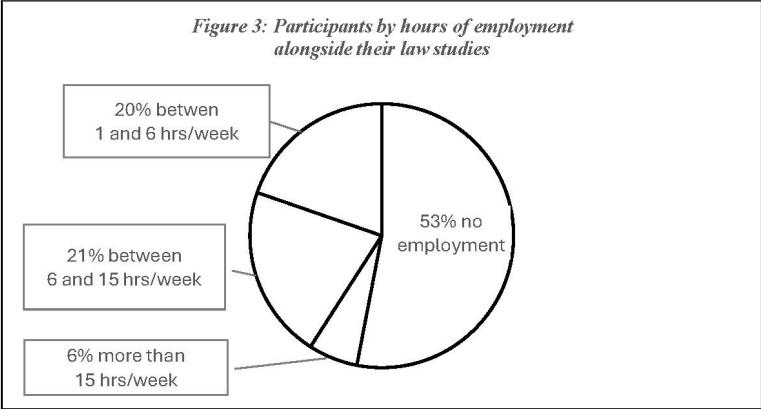


76. There was an unidentified problem with the dissemination of the survey at University 3; we were not able to resolve the issue after several attempts at probing further additional participation and we decided to close the survey in February 2021 before the memory of the Fall 2020 term became too distant, despite having collected only four usable responses from this student body (compared to 38 in University 1 and 24 in University 2).

**Fig. 2. Participants by year of study in the JD**



**Fig. 3. Participants by hours of employment alongside their law studies**



**Fig. 4. Participants by self-described family socio-economic status**

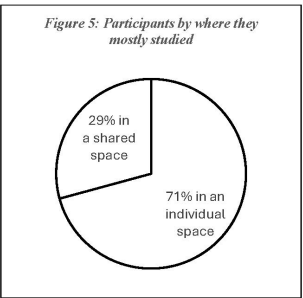


Fig. 5. Participants by where they mostly studied

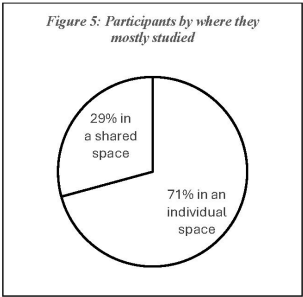


Fig. 6. Participants' self-reported socio-demographic characteristics

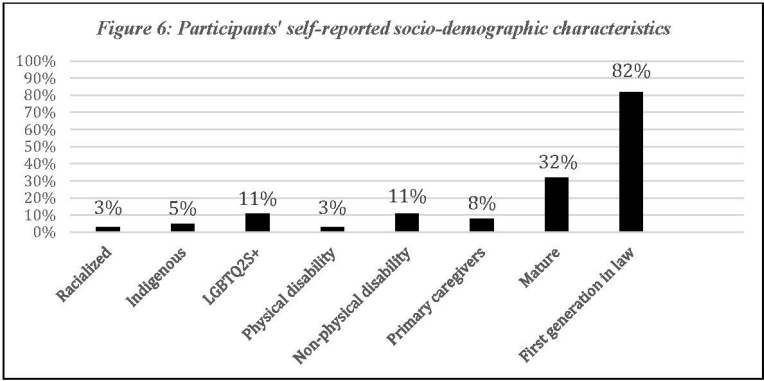
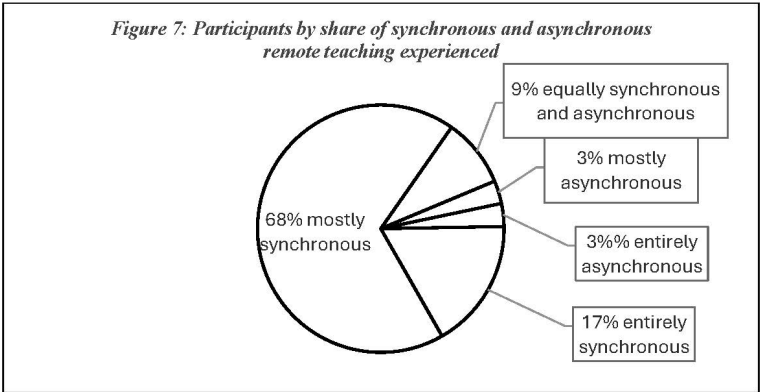


Fig. 7. Participants by share of synchronous and asynchronous remote teaching experienced



To evaluate the representativeness of our sample, we cannot rely on robust data on the general population of law students at the targeted universities. Due to the size of the sample, we do not conduct advanced quantitative analysis, nor do we consider this group to be strictly representative of the law student population at the targeted universities or elsewhere. Comparing our sample to aggregated profiles of the law student population in comparable jurisdictions,<sup>77</sup> we can nonetheless conclude that it is representative of the student population as a whole. Moreover, based on the characteristics of the students and the content of their responses to open-ended questions, we are confident that this study captures a variety of experiences during the Fall 2020 term, allowing us to extrapolate valuable insights beyond the confines of this sample.

We were pleasantly surprised by the amount of text that the majority of respondents provided in the open-ended fields of the questionnaire. The amount of textual data collected in addition to the multiple-choice questions (more than 13,300 words in total) enables a rich qualitative study of students' experiences in Fall 2020. This demonstrates the participants' eagerness to share their reflections and details about their experience in order to inform future decisions regarding the structure and content of legal education.

### III. *Findings*

#### 1. *Competencies*

In the first section of the survey, we asked students to compare how well they developed each of the FLSC National Requirement competencies in the Fall 2020 term to previous (in-person) terms. To this list, we also added a selection of competencies identified in the New Brunswick Law Society's (NBLS) competency profile. While the NBLS competency

---

77. Among all law students in Canada in 2013, there were 51 per cent of female students and 10 per cent of mature students (see Brent Cotter, *Report on Canadian Common Law Admissions Information and Statistics: 2012, 2013 and Historical Perspective 1985–2013* (Ottawa: Council of Canadian Law Deans, 2014), online (pdf): <cclld-cdfdc.ca/wp-content/uploads/2019/10/CLASSIREPORT2014.pdf> [perma.cc/9YD9-AR6Q]). Of nearly 700 law students surveyed in Ontario, 61 per cent identified as female, 27 per cent as part of a visible minority, 10 per cent as having a disability, 14 per cent as LGBQ2S, 17 per cent as mature and three per cent as having at least one dependent; 14 per cent reported that neither of their parents had completed a post-secondary education program (see Law Students' Society of Ontario (LSSO), *Just or Bust? Results of the 2018 Survey of Ontario Law Students' Tuition, Debt, & Student Financial Aid Experiences* (LSSO, 2019), online (pdf): <lssso.ca/\_files/ugd/32a46b\_6b77ff472e4748d4a789240a85ed1865.pdf> [perma.cc/AFY2-QU6E]). A recent report found Black law students represented between 1.45 per cent and 9.46 per cent of students in the Atlantic region's law schools, (see Rachel Lewis et al, *Black Law Student Census Report 2022–2023* (Black Law Students' Association of Canada, 14 February 2023), online (pdf): <indd.adobe.com/view/234705c0-1395-4c24-b226-45e673868ea1> [perma.cc/5H6S-D77Q]).

profile was designed for newly called lawyers, and not JD graduates like the FLSC National Requirement, it includes many elements that lawyers start developing before enrolling in the bar admission program and their articling experience. We chose the NBLS list because it had been very recently developed, was very comprehensive and based on the latest research, and was relevant given the regional scope of our study. Among the elements included in the NBLS list that were not already captured by the National Requirement, we selected items that we determined reflected newly recognized expectations for law students (e.g. develop knowledge of the history and legacy of residential schools, Indigenous law, and Aboriginal and Crown relations; recognize and cope with stress in a healthy manner)<sup>78</sup> or could reveal significant differences between the Fall 2020 and previous admissions cycles (e.g. maintain work-life balance; take in and follow through on volunteer commitments within or outside of the law school environment).

We recognize that the complete and final development of any of these competencies is not the intention of any particular term of a JD program or any particular course. Instead, it is the responsibility of aspiring lawyers to develop and reinforce these skills throughout their legal education, which extends beyond the completion of their JD degree and includes continuing legal education and bar admission programs. We decided to focus on the Fall 2020 term as it was the first full term where all Canadian law schools would be teaching mostly online, after teachers had some time in the summer to become more familiar with the tools and strategy to adapt to this new context. We did not aim to survey students later about subsequent terms also completed online as there was great uncertainty at the time regarding how law schools would continue delivering their programs primarily remotely.

The following competencies are included in the survey:

1 – *Legal skills (from FLSC National Requirement)*

- a. Identify relevant facts in solving legal problems
- b. Identify legal, practical, and policy issues and conduct the necessary research arising from those issues
- c. Analyze the results of research
- d. Apply the law to the facts to solve legal problems

---

78. Our identification of emerging expectations was based on knowledge of the literature and current debates in the legal educational and legal profession circles. The pertinence of the items we selected is confirmed by subsequent developments regarding what the National Requirement should include, see Federation of Law Societies of Canada (FLSC), *National Requirement Review*, Discussion Paper (Ottawa: FLSC, 26 June 2023) at 24-29, 33-34, online (pdf): <[flsc.ca/wp-content/uploads/2023/06/NRRC-Discussion-Paper-V3.pdf](https://flsc.ca/wp-content/uploads/2023/06/NRRC-Discussion-Paper-V3.pdf)> [perma.cc/P7N5-2SDD].

- e. Identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute
- f. Identify legal issues
- g. Select sources and methods and conduct legal research relevant to Canadian law
- h. Use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues
- i. Identify, interpret and apply results of research
- j. Effectively communicate the results of research

2 – *Communication skills (from FLSC National Requirement)*

- a. Communicate clearly in the English or French language
- b. Identify the purpose of the proposed communication
- c. Use correct grammar, spelling and language suitable to the purpose of communication and for its intended audience
- d. Effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions in written form
- e. Effectively formulate and present well reasons and accurate legal argument, analysis, advice or submissions orally

3 – *Substantive legal knowledge (from FLSC National Requirement)*

- a. Understand the principles of common law and equity
- b. Understand the process of statutory construction and analysis
- c. Understand the administration of the law in Canada
- d. Understand the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles
- e. Understand the rights of Aboriginal peoples of Canada
- f. Understand the principles of Canadian criminal law
- g. Understand the principles of Canadian administrative law
- h. Understand the principles of contract law
- i. Understand the principles of torts law
- j. Understand the principles of property law

4 – *Ethics and professionalism (from FLSC National Requirement)*

- a. Know the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada
- b. Know the nature and scope of a lawyer's duties including to

- clients, the courts, other legal professionals, law societies,  
and the public
- c. Know the range of legal responses to unethical conduct and  
professional incompetence
- d. Know the different models concerning the roles of lawyers,  
the legal profession, and the legal system, including their  
role in securing access to justice
- e. Identify and make informed and reasoned decisions about  
ethical problems in practice
- f. Identify and engage in critical thinking about ethical issues  
in legal practice

5 – *Additional competencies (from LSNB Competency profile):*

- a. Recognize and cope with stress in a healthy manner
- b. Maintain work-life balance
- c. Engage in creative and stimulating mental activities
- d. Take in and follow through on volunteer commitments  
within or outside of the law school environment (e.g. student  
associations, clinics, community work)
- e. Maintain congruency between values and actions
- f. Demonstrate awareness, acceptance and appreciation of  
difference
- g. Develop knowledge of other cultures
- h. Develop knowledge of the history and legacy of residential  
schools, Indigenous law and Aboriginal-Crown relations
- i. Manage one's emotions and thoughts in the face of  
ambiguity and challenging circumstances
- j. Account for client's circumstances (e.g. age, language,  
disability, socioeconomic status, cultural context) when  
developing a legal strategy, advising and communicating  
with client
- k. Listen attentively and respectfully
- l. Treat others with courtesy and respect
- m. Promptly respond to inquiries and requests
- n. Maintain standards of honesty and integrity
- o. Honour commitments
- p. Arrive on time for meetings and appointments, submit  
documents on time

N.B.: Hereinafter in this article, we will refer to specific competencies by their numbering in this list (e.g. 1-a for "Identify relevant facts in solving legal problems").

The response options included “I developed it...,” “Better,” “About as much,” or “Worse” compared to previous terms, as well as “I developed it for the first time” and “I did not develop it” during the Fall 2020 semester. The final two response options were added to account for the varying levels of legal education among the participants and the typical structure of a law school curriculum (i.e. courses being organized around domains of legal knowledge).

One of our goals with this section of the survey was to determine whether the online format of instruction could be demonstrably deemed less susceptible to the development of essential legal competencies, and if so, which ones. We determined that the sum of “[I developed it] worse” and “I did not develop it” answers in proportion to the total (excluding “[I developed it for the first time]” answers) provided the most meaningful data to answer this question. If a large proportion of the surveyed students reported that they developed a competency worse than in previous terms or did not develop it at all during the Fall 2020, then the online format of instruction (a significant difference from previous terms) could be one of the explanatory factors. On the contrary, if a low proportion of students reported developing a competency worse than in previous terms or not at all, this would imply that students developed said competency at least as well as in previous terms, despite the online format of instruction, the pandemic context, and other potential variables.

The following is a summary of the findings:

**Table 1. Proportion of respondents who reported that they developed the competency worse in the Fall 2020 compared to previous term or did not develop it in the Fall 2020 (% excludes “First time” answers), by competency (n=56 to 62, depending on item)**

	1 – Legal skills	2 – Communication	3 – Substantive legal knowledge	4 – Ethics and professionalism	5 – Additional competencies
a	30%	12%	20%	<b>48%</b>	<b>54%</b>
b	17%	13%	20%	32%	<b>65%</b>
c	15%	15%	26%	<b>56%</b>	<b>58%</b>
d	18%	17%	25%	43%	<b>64%</b>
e	32%	<b>35%</b>	27%	<b>50%</b>	31%
f	20%	-	29%	<b>52%</b>	21%
g	15%	-	<b>52%</b>	-	30%
h	21%	-	32%	-	26%
i	20%	-	36%	-	42%

j	23%	-	37%	-	39%
k	-	-	-	-	26%
l	-	-	-	-	12%
m	-	-	-	-	26%
n	-	-	-	-	13%
o	-	-	-	-	18%
p	-	-	-	-	21%

We can see clear patterns emerging from the data in this table.

The proportion of “worse” and “did not” answers is consistently low for the first two groups of competencies (legal skills and communication skills), ranging from 12 to 35% of the total.

The competencies listed in these two groups are highly transversal, which means they can be taught and developed across the law school curriculum rather than being associated with a specific number of courses; they are thus more susceptible to comparisons across terms of study and courses. On the other hand, this means that students can frequently rely on previous terms’ learning; thus, a very imperfect opportunity to practice the same competencies again can lead to marginal improvement overall.

The student comments on their answers to these items illustrate these explanations:

- I think my improvement was more to do with a general better understanding of the law than the semester being online. (#49, 2L<sup>79</sup>)
- Some of the things [I]’ve learned I knew about before but, in spite of learning less effectively in online school, still gained some understand[ing] of. (#57, 1L)
- My [previous] experience of the first year makes me trust myself more, but also has helped me develop ways to improve legal analysis. [translated from French] (#18, 2L)

In addition, some participants explained how the online variable impacted their learning of the same competencies. While one of them wrote, “Going through this list, I think the skills are able to be taught in a similar fashion but the path to getting there is much more painful” (#60); several others emphasized how specific aspects of the online instruction format benefited them:

---

79. We indicate the participants’ level of study in the JD program (1L, 2L, or 3L) only where it adds relevant context to understand the quotations reproduced here.

- Online [instruction] did provide opportunity to thoughtfully lay out arguments in a discussion board. (#21)
- [It was] [e]asier to do virtually, from the comfort of my own home vs in front of others in a strange or uncomfortable environment. (#33)
- More internet access during work /lectures and even exams has resulted in my learning more. (#62)

Across groups 1 and 2, oral communication (2-e) is the competency with the highest proportion of “worse” and “did not” answers; with 35%, it singularly stands out in comparison with other communication skills. This is somewhat surprising when comparing to LSSSE 2022 data, in which a greater proportion of online law students than on-campus law students (68% vs 65%) reported developing the ability to communicate clearly and effectively orally.<sup>80</sup> Two students provided opposing perspectives on the development of oral communication skills in the online environment:

- Speaking becomes so important in an online format, and I have had to put more emphasis on how I present myself effectively when speaking and writing to compensate for an online environment. (#29)
- We did far less communication formally than we would in a normal class setting. (#54)

Oral communication is likely to be impacted by online forms of exchanges where written formats are made easier (e.g. chats) and oral conversations are hindered by technology and are less spontaneous (e.g. turning microphones on and off). Developing oral communication skills may also be more contingent on the courses students took in the Fall 2020 term, including the instructors and their preferred pedagogies: several students noted that they had not had opportunities to practice oral communication skills (#15, 16, 44) whereas none reported not having had the opportunity to practice written communication skills, to the contrary (e.g. #20 wrote that he had “never done so much written work before”).

Regarding competencies reflecting substantive legal knowledge, the sum of “worse” and “did not” responses was generally between 20 and 37 per cent, with one exception at 52 per cent (3-g, knowledge of Canadian administrative law). This category of competencies is the most reliant on the traditional structure of the law curriculum and students’ course selection for the term. The first four items in this category (3-a, b, c, and d) are the most transversal and developed throughout the curriculum (e.g.

---

80. LSSSE 2022 Annual Report, *supra* note 65 at 11.

“knowledge of the administration of law in Canada”); although they may appear explicitly in the learning objectives of first-year introduction to law courses, they are also taught in nearly all law school courses. Another set of four items (3-e, h, i, and j) are typically the subject of a mandatory dedicated course in the first year (contracts, torts, property, and criminal law); though less explicitly, a number of mandatory and elective courses in the upper years reinforce and expand on this knowledge base (e.g. commercial law, corporations, secured transactions, etc.). Administrative law (3-g) is also typically the subject of a required course, though this course is typically taken in upper years. The traditional structure of the curriculum explains why the sum of “worse” and “did not” responses for items 3-a, b, c, and d (20 to 25 per cent) is slightly lower than for items 3-e, h, i and j (27 to 37 per cent) and why item 3-g stands alone with a much higher percentage (52 per cent) than the rest of the items in this category. The relatively high number of “did not” responses for items 3-e, f, g, h, i and j (four times more frequent on average than “worst” responses) further supports this explanation. A potential takeaway from this finding is to further help law students identify how advanced courses further develop their knowledge of the fundamental areas of law listed by the FLSC, especially when the titles of such courses do not explicitly refer to them (e.g. courses on environmental law, municipal law and immigration law all deepen students’ understanding of administrative law).

Comments from the students on their answer to this part of the survey confirm this interpretation:

- In the subjects where I took a course in the fall semester, I checked the “better” boxes. For the others, it’s classes we had in first year, so I don’t feel like I got better at what I’ve already learned. [translated from French] (#18)
- This is almost entirely due to my course selection. (#49)
- [I] [t]ook administrative law for the first time this year. (#56)

In the fourth category of competencies (regarding ethics and professionalism), the sum of “worse” and “did not” responses ranged from 32 to 56 per cent of respondents, significantly higher than the previous three categories. Again, the traditional structure of the curriculum is a significant factor in explaining this outcome. The competencies in this category, and the rules of professional conduct in particular (4-a), are strongly associated with a single mandatory course, typically taken in the third year of study, as explained in students’ comments:

- These courses are offered in the 3rd year; I did not take any 3rd year courses in fall 2020. [translated from French] (#4)

- I didn't develop this competency because I did not take any legal ethics or professional ethics courses yet and the courses I did take did not cover this material. (#33)

This explains why students were five to twenty-two times more likely to select “did not” and/or “worse” for these items. This illustrates that law students associate learning ethics and professionalism with a single course in their curriculum, at the exclusion of all other experiences in their law school journey.

Regarding the fifth and final category of competencies (additional competencies extracted from the LSNB competency profile and not included in the FLSC National Requirement), the range of outcomes is greatest. Given that we hand-selected the items comprising this category from among those that at least one provincial law society (LSNB) deems essential for beginning lawyers, it is not surprising to find such diverse responses in a somewhat heterogeneous category. Nonetheless, a pattern emerges from the data, separating the first four items (5-a, b, c, d) for which 54 to 65 per cent of students reported developing them worse or not at all in Fall 2020, from ten subsequent items (5-e, f, g, h, k, l, m, n, o, p) featuring only 12 to 31 per cent of such responses, and two items (5-i, j) in the middle with 39 to 42 per cent.

Students' responses to items 5-a (Recognize and cope with stress in a healthy manner); 5-b (Maintain work-life balance); 5-c (Engage in creative and stimulating mental activities); and 5-d (Take in and follow through on volunteer commitments within or outside of the law school environment), were significantly influenced by the pandemic situation and the online format of education, as evidenced by their comments:

- The semester [...] was stressful and frankly I was worried about my mental health at times. [translated from French] (#11)
- Between law school, new demands as a caretaker and becoming the primary person in the house to clean/cook/do errands, there was not much time left [to engage in creative activities]. Online law school seemed to require more of my time than in-person classes. Also listening to professors and trying to stay engaged online was very difficult. (#21)
- An online environment has created a [more] difficult work-life related struggle than I am used to. I spend so much time at the law school in a typical year, and use my home environment to escape[,] which I am now unable to do. (#29)
- Law school is already stressful and the pandemic made this at times, almost unbearable for me. I have been working on managing my stress and reminding myself that this is only school, but it is

difficult when right now, law school is the only thing that occupied my time. Because of the difficult time I have been having, I am more patient with those around me (why I put “better” for things such as “treat others with courtesy and respect” [5-l] and “promptly respond to inquiries and requests” [5-m]). (#56)

- Due to the additional stress under Covid, I’ve become more proactive in dealing with my mental health. [5-a, 5-b, 5-c] (#45)

Later in the paper, we will elaborate on the themes that emerged from these quotations, as they were a central component of the responses students gave to questions regarding socialization into the legal community.

The development of other competencies within this category, however, does not appear to have been affected by the online format or the pandemic in general. The relatively low number of “did not” responses was surprising; “did not” responses were numerically inferior to “worse” responses for all but three of the sixteen items in this category. Despite the fact that this category contains the items least associated with traditional learning outcomes in law school (i.e. a student described them as “mostly pre-existing qualities” (#32)), the vast majority of law students nonetheless believe they are developing these competencies throughout their law school experience.

We can also note several student comments highlighting how the online modality contributed to developing some of the competencies in this category, or how the online format allowed them to make greater use of pre-existing similar competencies:

- Online education has helped me be more punctual. [5-o] (#53)
- I am very independent so studying online has allowed me to better manage my time [5-m, 5-o, 5-p] [translated from French] (#20)
- Due to the additional stress under Covid, I’ve become more proactive in dealing with my mental health. [5-a, 5-b, 5-c] (#45)
- Easier to arrive on time [5-p] and stick to commitments [5-o] when I just have to walk into my home office and turn my computer on, rather than fight traffic and oversold parking lots and try to find a seat in an overcrowded classroom. (#33)

Before turning to the students’ responses to questions on socialization into the legal community, we can compare the general picture that emerges from their responses to questions on specific competencies, i.e. that their learning of the essential competencies was rarely worse than in previous in-person terms, with the answers they provided to two more general questions, which were presented to students before the detailed list of competencies.

*Table 2. General impressions on learning and impact of remote learning*

In general, would you say that you achieved the intended learning outcomes for your courses during the Fall 2020 term ... (n=62)		To what extent did remote learning impact your learning? (n=60)	
Better than in previous terms	21%	<b>A lot</b>	<b>77%</b>
About the same	29%	Not very much	17%
<b>Worse than in previous terms</b>	<b>50%</b>	Not at all	7%

There appears to be a discrepancy between the students' perceptions of their overall learning and their actual mastery of specific competencies. Among possible explanations, one is that the FLSC list of competencies on which we surveyed students does not reflect the actual or perceived learning outcomes in law classrooms and another relates to the difficulty for law students to accurately assess their own learning, either overall or on specific items.<sup>81</sup>

## 2. Socialization

In a subsequent part of the survey, we asked students to share their experience in the Fall 2020 term regarding their socialization into the legal community. This is an aspect of the typical law school journey that is not explicitly captured by the FLSC list of competencies (nor the additional competencies that we selected from the LSNB competency profile). Here, socialization refers to forming a professional identity, learning the norms and values of the professional group constituted by lawyers, and developing a sense of belonging into the social group and solidarity with fellow lawyers.

We recognize that there are diverging views in the legal education community regarding whether university law programs should play a role in professionalizing students into lawyers, and we do not take a position on the desirability of this. Nevertheless, the literature shows how prevalent this aspect is in the typical JD experience,<sup>82</sup> and we determined that specific research into this facet of student experience would allow us to understand more fully how students' experience in the Fall of 2020 can inform future developments in legal education.

To gather feedback on students' experience, we distributed a series of questions containing both open-ended and Likert scale items. Examples of questions asked were the following:

81. See discussion of students' self-assessments, *supra* note 74.

82. Sullivan, et al, *supra* note 49; Wilkins, *supra* note 50; Mertz, *supra* note 50.

- Did you develop solidarity, collegiality, lasting collaboration or enduring bonds with other members of the legal community during the Fall 2020 term?
- Do you feel that constructing your professional identity (e.g. starting to imagine if you want to join the legal profession, the kind of lawyer you want to become [...]) was part of your experience in the Fall 2020 term?
- Do you feel that learning the norms of the legal community [...] was part of your experience in the Fall 2020 term?

What follows is a thematic analysis of the responses we received to this series of questions.

a. *Dominant narrative*

A dominant narrative emerged from the data, with about two thirds of students expressing that socialization into the legal community was not part of their experience in the Fall 2020 term. When taking into consideration the broader context, characterized by a pandemic caused by an airborne virus, this result is not surprising as there were major obstacles to any form of socialization. The reasons students offered for this situation and the consequences they highlighted were deeply instructive.

i. *Causes*

First of all, students emphasized how the pandemic situation and changing public health measures impeded socialization. For instance:

- It is certain that the current pandemic situation puts a brake [on socialization]. Some annual activities did not take place. [translated from French] (#12)
- [I felt more isolated.] However, this was more due to the ongoing pandemic rather than law school related issues although I did have less time for other socialization than in previous education (#40)
- I felt incredibly isolated the Fall 2020 term, which accounted for many of my struggles. Limited to no access to the law school building was incredibly impactful and...also contributed to my isolation. (#29)

This serves as a reminder that online law school in Fall 2020 was far from the ideal online education experience. On the contrary, it was probably the worst kind of online education situation for all actors, despite immense efforts deployed by faculty members and students alike. In most places, students could not engage in any social activity outside of the home or only with a limited number of relatives; they could not go to the gym, hang out with friends and family, go study in a coffee place for a change of

atmosphere or even meet their fellow students in the same city. Any lesson we draw from this experience must account for this key variable.

However, the pandemic is far from the only reason that students evoked to explain the absence of socialization into the legal community during Fall 2020. Some students highlighted reasons stemming directly from the nature of online education. For instance, the geographic distance between learners made it impossible to gather informally in the same physical space, even if public health measures allowed for it:

- Since I am in a different province from where my law school is, socialization in the legal community was not possible. [translated from French] (#4)

The mediation of exchanges through technology and the limitations inherent to this form of communication were also often cited as hindrances to remote socialization:

- I found the online aspect of the fall term made me feel disconnected from the legal community (#27)
- ...I rarely talked to other students outside of class discussions... and seeing the names on a screen or a face on a webcam only during class time did not make me feel like part of a community. (#60)
- [Socialization into the legal community was not at all part of my experience.] Classes brought zoom fatigue so the thought of networking through zoom after classes felt nauseating. (#43).

The pandemic was thus a major obstacle to socializing among students during their online law school experience, but it was not the only one. Law schools and instructors knew of this challenge and often tried to address it; students sometimes noted the efforts deployed by their law school or even individual professors to this end:

- I think the school tried as best as it could to have students socialize with each other and legal professionals, but it still feels incredibly isolating being entirely remote—especially coming in to the first year of law school. (#36)
- While I can appreciate the staff and faculty's attempt for us to get to know each other, I have met only a handful of people in the class. (#51)

Only on rare occasions did students find such efforts fruitful. Most of the time, students found that such efforts suffered from critical flaws in design or implementation, such as the ensuing workload, to achieve their intended goals, as demonstrated by the following testimony:

- We are doing extra assignments in more than one class that are directed at making us communicate with each other about content.

There are a number of issues with this. ...Formal assignments taking place of “class discussions” add extra work. They are not even close to comparable. Class discussions happen naturally and during class-time. Discussion posts/comments take TIME whether you’re marked on quality or not. People can read and re-read (including profs). This pressure has students spending an hour on something outside of class that we would not have had to do otherwise in regular school. This keeps us sitting at our computers, disconnected from the rest of the world and doing school work more than we would have been had we been in normal classes. (#58)

Many other students expressed a similar frustration with such assignments and explained how it “did not help socialization” (#19), and “ended up imposing higher workloads as [students] still had to do the readings and normal things that [they] would in person, but now [they] also had to contribute to online forums and discussion posts [...] that were very time-consuming but worth very little” (#48), something they experienced in many of their courses (“Every prof thought it was a good idea to pile on extra work because of the online learning. Created way more mental health issue than already existed from COVID due to an obvious lack of faith and trust the teachers have in students” (#49)). In addition to the difference in perception between work done exclusively at home for online classes and work previously done in a variety of places (coffee shops, library, etc.) where social interactions could happen naturally, many students thus felt that the strategies deployed by their professors and schools to keep them engaged and foster socialization had the opposite effect. In fact, it contributed further to their isolation from peers, as well as from non-law related circles.

We should not jump too quickly to the conclusion that it is not possible to create engaged and social communities of learners in a distance education context; pre-pandemic studies on the community of inquiry framework suggest otherwise.<sup>83</sup> There again, we have to account for the fact that the online experience in Fall 2020 was forced on a faculty with little training for such environment, and with limited time and incentives to redesign their habitual pedagogies for what was seen as an emergency and temporary situation. Overall, only minimal changes were brought to the traditional education experience.

---

83. DR Garrison, *E-learning in the 21st Century: A Community of Inquiry Framework for Research and Practice*, 3rd ed (New York: Routledge, 2017).

Perhaps most importantly, the students' comments remind us that a law school building is not just a compilation of classrooms connected by corridors and staircases. It is a social space where planned and spontaneous encounters happen, where people chit chat before, during and after class, etc. In sum, it is the epicentre of a social group that comes to form a community through prolonged experience in the presence of each other, all the while facing similar academic and professional challenges.

Several participants wrote comments showing empathy for fellow students that they had not met, especially upper year students toward first year peers:<sup>84</sup>

- This year has been extremely alienating even for upper-year [students] who have had the opportunity to build relationships prior to this, but I feel very bad for the 1Ls, some of whom have never met any of their classmates and feel very disconnected. (#48, 2L)
- The upper-years that I've been in contact with all seem very sorry for us 1Ls who are doing our first year of law school online. They all say how much we're missing out on by not having our classes in-person. I have no frame of reference, so I have to take their word for it. (#30, 1L)

In these remarks, we can see that students feel some form of solidarity with others simply from the fact that they are studying law in the same program even though they have not met. In addition, it shows how they perceive building genuine relationships as very important in their law school journey, especially those who had the chance to do it before the pandemic. It can also speak to the difference in the extent of socialization between students who had a chance to study in-person together before continuing online, and others who started directly online. Comments from a 1L student reinforce this idea: "it still feels incredibly isolating being entirely remote—especially coming in to the first year of law school" (#36).

## ii. *Consequences*

In addition to writing about the reasons for the absence of socialization, students often shared comments relating to the consequences of online education during the pandemic.

84. Participants echo Heise's worries (as early as 1999) about the risk that online legal education "further isolate law students, particularly the less experienced first-year law students (see Michael Heise, "Closing One Gap But Opening Another?: A Response to Dean Perritt and Comments on the Internet, Law Schools, and Legal Education" (1999) 33:1 Indiana L Rev 275 at 282).

The first clear consequence is the prevalence of feelings of isolation and alienation, and general poor mental health. For instance:

- It was a very isolating experience (#7)
- [It is] depressing to be at home away from my colleagues and teachers (#10)
- I felt incredibly isolated the Fall 2020 term, which accounted for many of my struggles. (#29)
- This year has been extremely alienating.... (#48)
- I felt very isolated and unmotivated as if I was the only law student in the world. I underestimated the value of the structure of a community in a fixed location. (#60)

While the pandemic itself certainly impacted mental health, pre-pandemic studies on online law students also signalled that distance education could negatively impact mental wellbeing.<sup>85</sup> In our study, the emergency and temporary character of the distance education made it worse as many students had already moved to the city where their law school is located and stayed there, waiting for courses to resume in person:

- I moved from a large city to [where my law school is located] to study law, in my second language. This experience would have been isolating regardless. (#3)
- I have been completely isolated and cut off from my previous social circles and interest, because I moved cities for law school (#30)
- I was more isolated only because my friends lived in different cities and provinces and we were not permitted to travel. ... Some of this would have been regardless of the pandemic because the distance would be a factor in the frequency we got together (#33)

In addition, several students expressed a fear that their online learning experience would not prepare them adequately for their future careers, e.g. “I feel entirely unprepared for in-person communication with the legal community” (#36). Whereas this remark related to learning the norms of the legal community, other students spoke about the importance of community building to foster learning in general. This can take the form of study group where students help each other directly: “From the start, we formed a study group with other students [that I didn’t know before]. During the whole semester, I received support from them. If I would not have had this group, it is certain that this whole adjustment would have been different!” [translated from French] (#12); or simply building trust among peers to feel more confident making mistakes and speaking up in

---

85. See e.g. Jones, Samra & Lucassen, *supra* note 45.

front of them: “I have met only a handful of people in the class. This has made speaking up in class extremely tough” (#51). Forming a community of trust and shared values not only with fellow students, but also with teachers and mentors facilitates learning: “The lack of socialization and direct involvement with our teachers and mentors made the learning process more difficult and in part affected my learning to [s]ome extent.” (#10). Building a community among law students and with the legal community is key in the “professionalization” of students into lawyers, but it also helps the general learning experience as students directly help each other.

Regardless of the actual achievement of learning outcomes, a student also shared their fear that future employers could perceive their cohort as unprepared due to the remote nature of their studies: “[Our] introduction into the legal community could be met with a stigma that we are not as well educated being that the school year was completely online” (#34).

Another consequence is that some students took self-directed initiatives to complete their experience and address its perceived shortcomings. For instance, some shared that they endeavored to create opportunities for socialization into the legal community for themselves:

- I had to socialize myself, the school did not help. (#1)
- Since I am in a different province from where my law school is, socialization in the legal community was not possible. However, I have started to prepare for a national moot competition with lawyers from [the province where my law school is located]. (#4)
- I put a big emphasis on seeking safe socialization myself. (#24)
- It’s hard to be socialized into the legal community when you haven’t met many of your classmates or profs. I did meet my alumni mentor in person, which was great. (#30)

After carefully reviewing the characteristics of the students who expressed remarks of this nature,<sup>86</sup> we could not identify a single profile; this further shows that a diversity of students deemed this aspect important for their legal education.

---

86. Gender, sexual orientation, age, socioeconomic status, minority status with regard to racial, cultural, religious, or Indigenous identity, physical and non-physical disability, caregiving responsibilities, and first-generation are some of the personal characteristics of students that were included in the survey and reviewed for this analysis. We acknowledge the possibility that additional pertinent attributes, such as the introverted or extroverted nature of the students, may be overlooked and provide additional insight into this phenomenon.

b. *Minority narrative*

Besides the dominant pattern of students expressing their difficulties and frustration with their experience in the Fall 2020, we also observed an opposite trend: a sizeable minority of students reported thriving in the online education format. In spite of the pandemic situation, this minority also expressed a preference for online legal education to remain largely available (partially or in full) in the future.

The following quotes show how these respondents felt that inherent characteristics of the online education experience (e.g. no commute, no requirement moving to a big city, etc.) or (forced) innovations in this context (e.g. online office hours, recorded lectures) worked better for them considering for instance their routine, social lives, learning styles or family demands:

- For my part, I have nothing to complain about. Home study allows me to be closer to my girlfriend, my family and many of my friends. Also, I have better management of my time. So, I take better care of myself, I can have a balance in my life and take advantage of certain opportunities that would not be available to me if the situation were different. Ultimately, it allows me to limit my daily expenses which will reduce the burden of student debt that awaits me after graduation and accelerate my financial independence. [translated from French] (#9)
- I developed more relationships this fall with fellow students and faculty than during my entire first year. I also believe that these relationships are “stronger,” probably because you are more inclined to engage more with people when the relationships are on smaller scales. [...] I felt like I was learning a lot in the fall 2020 semester despite the fast pace. [...] For me, the experience of studying online is far from negative. I feel like I have more control over my schedule, and I have developed a routine that allows me to focus a lot on my studies, but also to switch off when I want to, at my own pace. I also appreciated the flexibility and humanity of the teachers. I am not saying that we are being given free rein or that we are learning less, but rather that human relationships have been at the forefront since the start of the pandemic [translated from French] (#18, 2L)
- I have found studying online much less stressful (not less difficult!!!). I am very self-directed so studying online has allowed me to manage my time better, work, not be stressed with time management, and I have become much more comfortable asking questions rather than in person. [...] Personally, I hope that online

courses will continue. It would be very pleasant if students could have the choice between face-to-face and online courses (two online courses and three face-to-face courses in a semester for example). Teachers are so much more available online than ever before. It is much easier and more encouraging to ask a question and have a [online] meeting than to travel to the university to ask ONE question.... I would very much like some elements of the online course to remain. [translated from French] (#20)

- I have enjoyed distance learning courses and assessments more. I approach them with less pressure. [translated from French] (#22)
- [S]ome areas are worse off virtually, but others are better. [...] I actually think the workload was less, either because I had more time because I didn't have to drive and fight for parking and be 10-15 minutes early to each, or because professors lightened the load a bit to accommodate everyone. [...] I've heard a lot of complaints about online learning but I feel like a lot of people ignore the positives of online learning. My professors were a lot more accessible because they were willing to meet on Zoom or Teams and I didn't have to make a special trip into the school to meet with them. Lectures were mostly recorded so if I had a doctor's appointment or something I didn't have to worry about missing material, or if I missed something in class or needed more clarification I could rewatch the lecture. I also had a professor who spoke really really fast so I would watch her recorded lectures at 0.8x speed so I could take really good notes, which helped me on the exam! I also had a professor who spoke incredibly slow it was painful so I would watch lectures at 2x speed and got along great. Exams were also a lot better because I didn't have to print pages and pages of notes and I could use the control f function to search my notes. This meant I spent more time actually studying and learning the material rather than preparing my notes and organizing and familiarizing myself with my notes and making table of contents. This saved me hours and I was more prepared for the exams this year. Yes, maybe the social aspect wasn't as great because there's lot of people I never got to socialize with, but I'm more concerned about my legal education than my social calendar, and I strongly feel that my education was significantly better this year with classes online. Other than the social aspect I see no reason as to why in person learning is preferable to virtual. I would always choose virtual and I hope next year is virtual as well. (#33)

- I would say I'm very happy with the way my law school experience is and that in no way do I really feel like I've missed out on something. (#47)
- Online learning benefitted me because I tend to be ok with being alone for long periods of time and teaching myself with little or no guidance. (#49)
- I felt that online learning was more beneficial for me than in class learning. (#57)

These and other participants expressing similar opinions represent approximately 15 to 20 per cent of our sample. When examining the personal characteristics, we noticed that students with very diverse profiles composed this group (including first generation law students, mature students, ethnic/cultural minority students, and/or disabled students). They thrived thanks to the flexibility that the online education offered, in spite of the emergency and temporary character of their online experience and in spite of the pandemic context.

In addition, among the students who expressed frustration with their experience in the Fall 2020, some also expressed a belief that online legal education could work well for them or other students in different circumstances. For instance, in the absence of “societal shutdown” (#39) or if instructors implemented pedagogies designed for effective engagement in an online teaching situation (#19). A participant even wrote that online law teaching and learning could work but would require “massive changes to curriculum, methods of evaluation, teaching structure, and innovations in socialization so the extremely important communities are still built” (#48).

### *Conclusion*

Our data do not support the hypothesis that online learning is demonstrably less effective at fostering the FLSC-defined core competencies for new lawyers. This holds true across the categories of legal skills, communication skills, substantive legal knowledge, and ethics and professionalism, especially when we consider how the curriculum structure influences the perceived order of learning objectives by students. The only competencies that were significantly less developed in Fall 2020 compared to previous in-person terms were mental health and work-life balance management; our data also indicates that students lacked socialization and a sense of belonging during the same period. While these aspects are undeniably essential for the social well-being and integration of students into the legal community, the FLSC National Requirement framework does not include them. They contribute to the “richness” of a legal education that

the current list of competencies hardly reflects. In turn, this demonstrates that focusing solely on competencies as currently defined by the FLSC has significant drawbacks, despite bringing other benefits to our reflection on legal education.

Regardless of how they felt about their online experience, the majority of students emphasized the significance of social communities to support their learning, live healthy lives, and prepare for their professional future. Learning in general is most often inherently social, and other studies have demonstrated the importance of social connections in the legal education experience,<sup>87</sup> which is supported by our research. Students value socialization into the legal community with peers, mentors, and instructors for a variety of reasons, including preparation for their professional lives, but also to support their learning and make law school and its heavy workload more tolerable. Despite efforts by faculty and school administration to foster social communities among their students, it was frequently absent from students' Fall 2020 experiences. Some students also questioned whether it had been part of their experience before the pandemic and switch to online instruction. This suggests that fostering long-lasting relationships with diverse members of the legal community, if deemed essential for entry level lawyers, should be an explicit goal of JD programs, as opposed to being left to informal and implicit processes. In order to avoid the counterproductive results observed in Fall 2020, institutions and instructors should carefully design and implement strategies to foster such goals.

Moreover, our data demonstrates that a sizeable proportion of students flourished in Fall 2020 despite the pandemic and the temporary and emergency nature of their online education experience, and that an even larger proportion of students believe that they could benefit from an online legal education in different circumstances. Our data thus confirms the LSSSE 2022 conclusions that some students, especially those with intense work or family responsibilities thrive with the flexibility inherent in online learning modalities,<sup>88</sup> in part because they place less importance on forming law school social connections. This suggests that a good portion of law students in Canada could benefit from a full or partial online legal education to better suit their needs and learning styles.

---

87. Anthony Paik et al, "*Diverse Disconnectedness: Homophily, Social Capital Inequality and Student Experiences in Law School*" (manuscript under advanced review 2023); Rose Lyn & Christopher Williams, "Building BLSA; Doing Community Note" (2020) 10:0 UC Irvine L Rev 489 at 496.

88. LSSSE 2022, *supra* note 65 at 11.

Overall, both traditional on-campus law programs and potential online programs can learn from the 2020–2021 academic year. Our data shows that the experience with online legal teaching and learning in the Fall 2020 was heavily impacted by other variables resulting from the COVID-19 pandemic. Any such lesson must thus take into account the unique circumstances surrounding the occurrence of this forced natural experiment, including the pandemic, societal shutdown, and lack of preparation. The strengths and shortcomings of each instructional modality must be weighed, and may sometimes be combined. Different options will appeal to various students, and a variety of approaches may be the most effective way to cater to the needs of different groups.