Attention LSUC Articling Taskforce:

I am writing from Edmonton, Alberta where it is not yet 5pm. Further to my written submission during the consultative phase of the LSUC's recent Articling Taskforce, I have a few very important comments regarding the Taskforce's final "Pathways Report" in point form:

**1. Each licensing registration period is THREE YEARS in duration. A licensing candidate has THREE YEARS in which to complete all the licensing requirements, not ONE year. Thus I feel that the retroactive grace period of only one year prior to the start of the new proposed pilot articling-practical training scheme is unfair, as it continues to exclude precisely those, like myself, who have not found articling for more than one year, and who began their licensing period in 2010 and/or earlier. The one year period seems somewhat arbitrary. It is unfair and unjust. More careful consideration of the plight of ALL recent registrants is required. Surely, the graduates for whom this Taskforce came into being are not simply those who entered into the licensing process in this past year. The Taskforce is meant to address a shortage in the number of articling placements for the number of graduates that has been growing over the past few years, not just this past year. The proposed pilot scheme mentioned in the "Pathways Report" should apply to include LSUC registrants of at least three years previous.

2. I appreciate that the Taskforce opted to keep any practical 'transitional training' until after graduation from law school. The main reason is that this would more inclusive of those, such as me, who have already graduated - unless we were allowed to attend only those courses pertaining to the practice training, and without having to incur full law school semester registration fees etc.

3. On the whole, the results and recommendations of the majority of the Articling Taskforce (as contained in the “Pathways Report”) do not ultimately go much beyond the status quo with respect to the articling requirements in the LSUC lawyer-licensing process. I am in strong agreement with the Taskforce's 'minority view': that the new proposed pilot programme to satisfy 'transitional training' does not go far enough as an alternative to the current flawed system for the following reasons:

(a) First of all, when a matter is of such urgency that it compels serious consultative study with major stakeholders, why put in place a FIVE year pilot programme, to test out a new scheme? This has a further effect of STALLING change - change that is urgently required to rectify a lawyer-licensing system that simply is not working EQUITABLY for every LSUC lawyer-licensing registrant. The length of the pilot programme proposed in the “Pathways Report” (if it remains unaltered) should be shortened to at most three years.

(b) Does keeping any portion of articling (with a law firm or other organization, public or private) do away with any of the difficulties (as discussed and considered in the “Pathways Report”) that this very requirement has posed for recent graduates; and that was the raison d'etre for LSUC Articling Taskforce and what it sought to address and investigate in the first place?
(c) Having a private THIRD-PARTY provide the practical ‘transitional training’ course as part of the proposed pilot LSUC lawyer-licensing scheme will again be fraught with much of the same concerns and problems of the current licensing requirements. And there will be additional concerns of ensuring that those THIRD PARTY providers be monitored for fairness and non-discriminatory provision of services as well as fair and non-discriminatory evaluation of ALL lawyer-licensing candidates. There will be a need for stringent mechanisms and some kind of accessible oversight body or authority to ensure these third party practical training course-providers are transparent and non-discriminatory in their operations. As well, there will be a need to develop and put in place some set of uniform standards and guidelines which all such service providers must meet. In my opinion, unless such oversight mechanisms are installed, to assign licensing training responsibilities to private third party providers is highly problematic of the pilot scheme at the outset and could forebode many more years before any real and effective change to the status quo of the licensing process can be envisioned.

(d) There is a great danger that a two-tier proposed pilot ‘transitional training’ scheme for lawyer-licensing candidates, one in which articling is still a requirement (for some or for all) simply will not address the very root problems that are some of the main reasons for which the Articling Taskforce was presumably convened.

(e) Also, any two-tiered practical transitional training scheme must be carefully and thoroughly studied to ensure it does not run the risk of marginalizing, stigmatizing, and/or ghettoizing in the licensing process and in the legal marketplace those who may opt to take a practical training course in lieu of traditional articling in order to satisfy the articling requirement (assuming such an option is made available to licensing candidates). Many alternatives must be considered to see how this kind of scheme could work such that it would not have the afore-mentioned adverse impact on those who were to choose the latter path to licensing.

(f) Furthermore, in any proposed future two-tier scheme licensing candidates of ALL backgrounds must not face undue economic hardship or a more onerous cost burden simple because they opt to take a practical transitional training course rather than to obtain a traditional articling post. This may run the risk of further disadvantaging those who are already marginalized by the current system.

Thank you.

Sincerely,

Asifa Akbar, M.A., LL.B.
I am writing to express my strong support for the position taken by a minority of the Task Force.

The process of articling fails to ensure that every new call receives adequate training before being certified. While some articling programs are excellent, others are sorely lacking. Articling students receive extremely varied experiences, depending on where they article. As such, it is impossible to point to any core competencies that will necessarily be addressed by the process of articling other than those that are already addressed by the components of articling that are directly administered by the LSUC, such as the Professional Responsibility program.

Further, in a profession that already faces a mental health crisis, the majority’s proposal would – in two ways – exacerbate the stress endured by law school students and recent graduates. First, it would create a divided system of accreditation which would inevitably lead to the stigmatization of those who proceed through the LPP. In my view, this point is exceedingly obvious and it is contemptuous to suggest otherwise. Second, as is currently the case, the majority of students who article will face nearly a year of job insecurity as they wait with dread for the day on which they discover whether they will continue as lawyers at the employer at which they article, or instead must re-enter the job market and start from scratch. Having just been through this process, I can attest to the extreme level of stress that I and my colleagues were forced to endure. It makes no sense to extend the job insecurity faced by students for an extra year in the name of a practice (i.e. articling) that does not reliably train students in any single core competency. To reiterate: this is especially the case given the mental health crisis our profession currently faces.

The proposal of the minority on the Task Force addresses all of the concerns raised above. First, their proposal for a comprehensive transitional pre-licencing program would ensure that all recent law school graduates can be reliably certified as having learned a number of core competencies. Second, the removal of a two-track system would decrease the anxiety faced by law students as they wonder throughout their studies whether they will be one of the few that is relegated to the LPP process, and forced to endure the stigmatization that will inevitably result. Finally, employers will no longer have the option of extending the job insecurity faced by law students for an extra year. Rather, employers will be able to choose whether to hire or not hire as lawyers those who have completed the comprehensive transitional pre-licencing program. Instead of facing an extra year of job insecurity, recent law school graduates will know much earlier where they will engage in their first permanent full-time position, proving added social stability and decreasing the mental health burdens faced by law students and recent law school graduates.

I trust that these concerns will be considered carefully.

Yours truly,

Arden Beddoes
Dear Sir/Madam,

I wish to contribute to the debate regarding Articling in Ontario because the Province is my home.

Has anybody considered actually 'capping' or restricting the number of law school places in the Province?

While I understand this is not a decision that the LSUC would necessarily have the power to make, it could certainly lobby the provincial government and schools like the University of Ottawa that recently expanded its law program.

I imagine that if enrollments were capped or lowered, there would be less law students, which would mean that more could eventually find positions. The fact that we have a substantial number of law graduates who are unable to find articles is unfortunate, but it is bewildering that the admissions are in fact increasing, in addition to the creation of 2 new law schools.

I think that it is a worthwhile suggestion given there are roughly 1,500 students graduating each year and a significant portion of them are not findings articles. The logical solution seems to be the lowering of admissions levels and capping of admissions.

Sincerely,

Richard Campbell
Dear Sirs/Mesdames:

As a small firm practitioner for 28 years, I have had several Ontario articling students and about a dozen students from Europe.

I have not had one student who was not grateful for the experience, and the opportunity to get their hands wet without direct personal liability.

Articling is the equivalent of a real co-op experience. For many students articling provides their first contact with real clients and real files.

There is so much to be learned, and so much experienced practitioners can teach, outside of the cold textbook.

The notion that articling is an out-dated archaic process misses the value of this unique learning experience - whether the articles are with a large firm or a small one, as my own.

I question, where this approach on articling is going and why?

Do we want to be a profession, or is an LLB going to become but a component of the BA of the future?

It is widely accepted that universities make real money off their law schools – that is why there has been such a proliferation of students.

The cost of establishing and maintaining faculties of dentistry and medicine, their unprofitability, and the consequential unwillingness of many educational institutions to bear those costs has kept the numbers of doctors and dentists down.

Is the tail wagging the dog here? Do we need all these lawyers? What does it say when the growing industry can no longer absorb the ever increasing numbers of graduates?

What does the abolishment of articling say about our standards, our future insurance premiums, and the continued de-professionalization of the business?

Is the LSAT next? This is also alleged to be an out-dated archaic process imbued with bias and ambiguity.

Perhaps it is now time to dissolve the Law Society’s control of the ‘profession’, and turn legal training into another subset of any bachelor’s program – no different than a major in psychology or economics, or certification as an auto mechanic..

Regards,

Jens Drees
Allowing graduates to practice law without the benefit of articling is, in my view, dangerous. We get very high quality articling students at Blaney McMurtry. Nevertheless, I shudder at the prospect they could be representing clients without the benefit of the experience we give them in their articles. Even first year lawyers require supervision on any but the most simple files. Once licensed, a lawyer can represent anyone on any matter. There are more than enough licensed lawyers doing things they should not be doing now without compounding the problem. In my view, the requirements now for obtaining a license which allows a lawyer to do anything are not stringent enough. I often deal with lawyers in my field who clearly don’t know the basics of the area, but their clients are not sophisticated enough to detect this. Removing articling as a precondition to licensing will only make this matter worse. The profession is not responsible for the fact many Universities use law school as a money maker – turning out more LLBs or JDs than the market can bear. Perhaps the better answer is some realistic chats with the law schools about what they are doing.

Mark E. Geiger
Monday, November 19, 2012.

Re: The Pathways Report

I will condense my introductory remarks to the context and a brief summary. I am one of the unarticled. I graduated in June, 2012, and I live in Barrie Ontario. I will practice mostly legal-aid funded family law in this, my community. There are no articling positions in family law available in this, my community. Due to my personal circumstances, I am unable to re-locate. Something must be done now to solve this problem – not in two years. There is a viable interim solution for all unarticled students to begin articles within two weeks from today. The enduring solution to the articling problem needs more thought. My commendations to the LSUC Articling Task Force minority report faction. Thank you for your dissent. It has given many quiet votes the strength to stand up for what is right, rather than what is easy.

1. Articling, as it is organized now, is inequitable, unfair, discriminatory and essentially illegal as a requirement for entry to the profession.
2. The inherent inequities in the current articling system have resulted in hundreds of otherwise qualified lawyers being barred from practicing law.
3. A reasonable, realistic, affordable interim solution to this problem must be found and implemented immediately.
4. The majority’s two-stream solution to the articling crisis is unworkable, unreasonable, unfair, and should be discarded.
5. The majority’s interim solution is unreasonable and unfair and should be discarded.

An Interim Solution to the Articling Crisis

6. A fair, affordable, workable interim solution can be arranged today, if enough judges are willing to help mentor and train the currently unarticled students, and if the LSUC will support their initiative.
7. As Mr. Wise tweeted – there are 172 courts. All students who have not found articles should be permitted to apply to the LSUC for a clerkship-articling position in their closest courthouse for mentoring in their prospective area of practice. (Further details about this proposal can be found in my submissions to the Articling Task Force, available on the LSUC website.) The LSUC can undertake to complete any and all paperwork necessary (such as workplace safety insurance), and a panel of two or three judges can volunteer to train and mentor each student, exposing them to court etiquette, procedures, research, reading and writing assignments, and generally preparing them to transfer, for the second part of their articles, to a paid articling position with a senior member of the
local bar. If the risk of hiring an articling student is assumed by the LSUC as described in point 14 below, it is likely that the panel of judges in each courthouse will be able to find principals to undertake the further practical training of their mentees. In order to make this viable to the articling students, the LSUC must guarantee some combination of grants and interest-free loans to these students, immediately, to cover their living expenses while they are trained at court in the beginning of their articles. The intrepid and inventive LSUC can endeavor to raise funds to deal with this interim funding crisis (a lottery?) – perhaps the Law Foundation, the Ministry of the Attorney General, individual lawyers, and larger law firms can donate to this emergency fund so that grants can be maximized and loans minimized, and so that all currently unarticled students can begin their articles by December 1, 2012 (or with 2 weeks notice to current McJobs).

The Enduring Solution to the Articling Crisis

8. All new lawyers need dedicated mentoring and practical experience in their chosen niche of practice, in order to best serve the public. This might be re-worked into the third year of law school, as suggested by some, but this shortened, piecemeal solution is unlikely to provide the intense and dedicated practical training in a specific contextual niche of practice that intuitively seems inherently valuable, and which makes the abolishment of the articling requirement so pedagogically, if not logically, difficult to support.

9. Equity requires that there be one licensing stream applicable to all candidates.

10. The articling requirement needs to be re-invented to accommodate the diverse needs of the new faces of lawyers, and re-engineered to demonstrate that the fair, transparent and objective criteria for entry to the profession are rationally related to the required competencies.

11. It seems to me that either a) articling needs to be eliminated or b) to make articling equitable, salaries need to be regulated.

12. If articling is eliminated, the LSUC can presumably protect the public by requiring the initial files of all new lawyers to be audited by senior lawyers. If enough volunteers are not found, it can be made a requirement. The auditing lawyers can reduce their professional development or professional contribution hours by auditing, say, 9 files a year (3 files each of 3 new lawyers) and would be required to sign off on aspects of each file. They would be paid a percentage of the legal fee generated by the file (perhaps
25% of the fee, after subtracting disbursements, and 20% of the remaining fee, for the new lawyer’s overhead).

13. This solution has the value of spreading the requirement to mentor new lawyers more evenly across members of the profession—there is not a great outlay of risk and resources by a principal every few years, but rather an easily maintainable ongoing commitment to supervise a few files. In this way, new lawyers will also be exposed to the guidance and auditing skills of several different mentors that they can (and must) approach for advice, and there is more likely to be consistency in the evaluation of legal skills by the auditors, as they would be exposed to many students’ early legal skills and can learn, across the years, to more effectively identify problem areas.

14. If articling is re-invented instead of eliminated, equity considerations must be addressed, and it seems unlikely that equity issues can be dealt with adequately without some sort of financial regulation. There are inherently fewer articling positions in some areas of law, such as family law, not because there is not a need for family lawyers, but because family lawyers often work alone, and it is a significant financial risk for a single lawyer in private practice to pay a salary to a student, who may or may not generate enough revenue to earn the salary he is paid, and who is likely to become a competitor once trained and licensed. Further, there is little expected reward for undertaking this significant risk, and therefore there is no incentive to hire articling students.

15. Incentives need to be devised—manufactured—to meet the primary goal of reducing the risk of hiring an articling student for sole-practice lawyers and small law firms. If the LSUC regulated all articling salaries to $30,000 for the 10 months, and guaranteed that each student would generate $40,000 of revenue, each student could take this $40,000 risk-free stipend to whichever articling principal most suited the learning requirements of the student, thereby making articling more likely to be valuable to the student, while at the same time addressing the need for some students to be able to article in their local communities, or where their family lives. Many more practitioners would be willing to take on a student knowing that there was only reward, and no risk to the proposition—that if the student did not generate $40,000 of revenue, the shortfall would be paid to the principal at the end of the articling term by the LSUC, and the student would be required to pay this amount back to the LSUC over the next few years, on a no-to-low interest basis, in payments fixed to their level of income. Wealthy law firms with income over a certain amount, could be required to pay a surcharge for being provided with a student who they can bill out at, say $60,000 in their articling term. In such cases, the student still receives $30,000, the principal the normal
$10,000, and the excess $20,000 can be split between the principal and the LSUC to fund the guarantee across the entire candidate pool.

Finally, I would like to urge Ontario’s judges, especially those of you familiar with my proposal, to take the initiative to solve this crisis— if you and a colleague or two can come together and offer to mentor an articling student, the LSUC will not fail to support this program. Your knowledge, wisdom, and tutelage will certainly make a valuable contribution to a new lawyer’s competence, and will increase access to justice, not only for the unarticled students who are currently languishing in limbo, but for the clients they will be prepared to serve.

Respectfully,

Sheila Kerr

Sheila.Anne.Kerr@gmail.com
I have been in practice now for almost 30 years. I articulated at the time that there was 8 months of articling followed by approximately 6 months of Bar Admission Courses and exams. I articulated with a large Bay Street law firm and was re-hired. After two years of practice with the Bay Street firm, I left to practice in a smaller city in Eastern Ontario. I am currently a partner in the same Eastern Ontario firm which has 11 lawyers.

The problem identified by the Law Society seems to be that we have an articling requirement for licensing and not everyone has been able to get an articling position. It seems to me that the abolition of articling simply means that there will be the same number of candidates who will be lawyers but will be unable to find jobs. Supposedly the option is to start one’s own practice?

As a profession we cannot control the economics nor can we control the number of persons graduating from law school. Our objective as a profession should not be to make sure everyone who graduates from law school is permitted to practice law. Our objective should be that everyone who will practice law meets the professional standards established by the Law Society. Presumably in the past, the articling process was considered the method of accomplishing the latter.

Law schools have always been of the view that they do not graduate lawyers nor are they in the business of training persons for the practice of law. The objective of schools is to provide academic learning. Articling has been relied upon to provide the practical training for the practice of law.

As a smaller firm, we have been reluctant to take on articling students. Not primarily because of economics but out of a concern that we could not adequately provide a comprehensive set of articles that would properly prepare a barrister and solicitor. We currently do have an articling student who will be finishing articles shortly and we have made an offer to an articling student for next year.

It strikes me that there is little support from our Law Society for a firm providing a student a set of Articles. There are, as far as we are aware, no lists or documentation of practical objectives and expectations for a firm providing Articles. In general, I would expect the articling experience is very uneven throughout the Province.

When I think back to my articles, which, being with a Bay Street firm, were very comprehensive and organized with structured rotation through various areas of practice, I found that the six month Bar exam course and examination process to be just as beneficial for starting out in practice. The objective was to provide a comprehensive practical study of each area of law so every graduate had a basic understanding of each area (regardless of focus of articles and academic studies in law school). Therefore, notwithstanding having articulated in a Bay Street firm with focus on mergers and acquisitions and securities, I received a comprehensive review of the family law statutes, criminal law as well as tax and commercial law. As important as the materials and practical substance, was the fact that each course was presented by a practicing member of the Bar. In many cases the material was therefore supplemented by the practical experiences of the lawyer presenting the materials. My expectation is that practical approaches
to fraud prevention would likely be important additions to this education that did not exist when my generation articled.

If our objective is to ensure candidates meet basic professional standards before being licensed, the articling process as it currently exists, is not necessarily the best method to assure meeting such objectives. Simply providing a set of licensing exams to law school graduates is not in my view meeting our obligations as a profession. The Law Society recognizes and requires ongoing continuing education primarily consisting of live (webcast) presentations to licensees as an annual requirement. Surely a strong education component to those starting out is as critical.

I would support an abolition of articling as a requirement for licensing provided it is replaced by a 6 to 8 month process of practical courses and exams in all areas of law including ethics and fraud prevention taught by practicing lawyers.

William King
O'Flynn Weese LLP
I support the dissent. The majority are creating a two tier system that will disadvantage a substantial number of persons in their quest to become lawyers in Ontario.

Allan Lobel
November 2, 2012

Dear Ms. Sperdakos:

For the following reasons and many others, I fully support the task force recommendation to implement a legal practice program alongside traditional articles.

Some have commented that the same "market forces" that prevent qualified students from securing articles will also prevent them from having an economically viable practice. This fails to account for two truths:

First, many lawyers would choose to use their legal training in a not-for-profit environment, and not having a call prevents them from fulfilling that role. An "economically viable" solitary practice is of less concern for these individuals, who would otherwise meaningfully contribute to society by working in-house for charitable organizations.

Second, there is a window of time following law school graduation during which articles must be completed. A student unfortunate to graduate when law firms aren't hiring cannot, in realistic terms, go back to article in a few years when the market picks up. Without a call, a law school graduate cannot perform legal work. With a call, and even when times are economically difficult, a licensed lawyer can continue to be a member of the profession and keep his or her skills up, even providing services on a pro bono basis.

Firms that hire are firms that can afford to pay, train and mentor articling students. The training a student receives is therefore necessarily skewed towards the areas of law that bring in money for firms. While still effective training, this limits the articling students’ exposure to other areas of the law and other potential avenues to use his or her legal skills.

No one ever said a law degree was a guarantee of a job. However, I think there is a general misperception about the very real career limitations placed on a law school graduate that does not possess a call to the bar. As was said by many in earlier rounds of feedback, those without access to articles are usually highly skilled individuals who would become extraordinary advocates, given the chance.

Thank you for inviting feedback on this issue.

With best regards,

Catherine Lovering, B.A., LL.B., (University of Victoria) LL.L.
(University of Ottawa)
Hello Mr. Strawczynski:

The following is Mr. Mann’s revised article concerning the above matter.

Dear Sirs:

I have been approached by Paul Schabas of the Law Society of Upper Canada based on a letter that I wrote him about my concerns about the articling process to see whether or not I wanted to get involved in that area.

As you are probably keenly aware, my practice is just packed to the teeth and I don’t know when I’m in court, or for that matter which court or what case or what city or province. Having said all of that, I thought that I would bring my concerns and ideas to your attention.

1. There is no dispute that articling positions are hard to come by now and that probably 50% of those who graduate from Law School, after paying astronomical law school tuition in the sum of anywhere from $18,000.00 a year to $40,000.00 a year, find themselves without a job at all.

2. The second year law student program, while for second year students working for a summer in a law firm, is equally as horrible if not more so than those looking for an articling position.

3. The above two statements are absolutely factual.

4. The issue is what to do about this particular problem and why hasn’t the Law Society seen fit to do anything about this prior to this year.

Let me start first of all historically by saying that articling positions have always been available, in my experience, at least to those who are competent and well-trained (I’m not talking about law school – I’m talking about life), and those who are conscientious, bright and “go-getters”. However, for those who do not stand at the top of the class or the middle of their class who are not particularly motivated, who don’t really give a care one way or the other, articling positions are always a challenge to obtain.

Now that’s the history of it, and yet everybody seems to get a job or part of a job, or job-sharing, upon graduation.

That has not been the case for at least 10 years where some people have to do three months with a real estate lawyer and three months with a criminal lawyer and three months with a civil lawyer, etc., etc., all the while it is beyond me to know who in the world would sign their articles.

I, as a specialist in medical malpractice, do not hire articling students because it is simply unfair for them to follow me around for a year, watch a couple of trials, watch probably 15 Discoveries or 20 Discoveries, do up some pleadings, research some law and then leave, but never see the beginning, middle and end of any given case because these cases take 10 years to mature. It is also unfair for me to offer anybody an articling job and expect them after a year of spending
time with the “great Paul Mann” that they have any inkling of what’s going on in wills, real estate, municipal law, slip and falls, motor vehicle accidents, or any other area of law other than medicine and law. That is not fair.

I have given back to the law profession by lecturing at a couple of law schools, by giving lectures to the Law Society of Upper Canada, by being the Chair of the Medical Malpractice Subsection of the Ontario Trial Lawyers Association and by speaking generally to anybody who will ask so long as it fits into my schedule.

So then we come to the problems of why do we have this problem with articling students. The answer is very simply that what happened to be say 40 years ago “worth something to society” was a Grade 12 or Grade 13 education, that equates now to either getting a Masters in something or going into a professional school.

We have a lot of kids, we have a lot of kids who are go-getters, we have a lot of kids whose parents have enough money to send them to these various schools and they go there only to find out, and this is not unique to law at all, that they can’t get a job when they get out.

They can always get a job being a bag-boy at Shoppers or flipping burgers somewhere if they know someone. The reality is that we’ve got too many people in law schools, we’ve got too many people in medical schools (they’re facing the same problem with residencies) and the only ones who don’t seem to have any tremendous problem are chartered accountants because the chartered accountancy has always gone by the routine of the institute setting the standard as to how many are going to pass or fail depending on the demand of the CA market. So who are the fools? Well obviously the various professions other than the CA’s.

Kids who want to be teachers are encouraged to go to teachers’ school after they get a BA or an MA and then they find themselves over in Korea for 10 years teaching to get experience because there’s nothing here.

A person who goes through law school is not guaranteed an articling position, and there should be a mandate that that guarantee be in place. Otherwise these kids are paying more than $100,000.00 to sit and listen to some 400 year old case and some 200 year old professor tell them what’s what in real estate, but they have absolutely no clue as to what’s real in the real world.

I thought that I had a solution and I still do to some extent.

Let me give you a simple analogy. In medicine, you go through 4 years of meds, 2 to 4 years of pre-meds and then you do 2 years of residency to just become a GP (general practitioner).

If you want to specialize in anything like anaesthesiology (5 years), neurosurgery (5 years), orthopaedic surgery (4 years) – and I think you’re starting to get the idea here – you have to apply for these positions, and if they’re available, which they’re not all that much available, then you will be accepted into the program, do the specialized training and you come out a specialist, and that means that you do what you want to do. If you’re an orthopod, you go out and you crack bones and fix fractures and do things like that. If you’re a neurosurgeon, you go out and you fix brains up or attempt to. If you’re a neurologist, you’re really the brains behind the
neurosurgeon, and you’re looking at MRIs and you’re figuring out if there is any neurologic
deficit. If you’re a paediatrician, you fix kids up.

You are not a GP – you are in fact a specialist.

This has happened for over a hundred years now and it seems to have worked fairly well until
recently when they’re running into the same problems, but not to the same degree, as articling
students.

My solution to this is that we set up what is otherwise a similar program for those who want to
be trial lawyers. So for those who want to be trial lawyers, they would take 4 years under the
wing of an accredited trial lawyer and proceed on to only be a trial lawyer. Now to safeguard
that proposition and not find 800,000 other general practitioners getting into court, there has to
be some mechanism put in place whereby only barristers (the old English system) be allowed to
appear and argue cases.

The same thing can be set for wills and estates, the same thing can be said for real estate, the
same thing can be said for Family Law, and it goes down the list. I don’t know how you would
set it up, I don’t know how you would govern it. I think governance is probably the main issue
here.

During the “articling or residency period” if you were going on to be a specialist, I would think
that it would be very wise indeed to encourage the residents to receive salaries in the first year
of residency of somewhere around $35,000.00 (not much, but more than paying out $50,000.00
to live in a hovel and listen to an old professor tell them stuff that they’ll never learn as in law
school) and perhaps the second year they make $70,000.00 and the third year they make
$100,000.00 and the fourth year they make $150,000.00, and then they write their final exams
governed by the Law Society to become a specialist in that area. Thereafter, they are free to
either set up on their own or go with another lawyer or a group of barristers.

This is not a stop gap measure, it is not a surety, it is not a way of sort of dividing and conquering
if you will the articling crisis. It is merely an addition to law school which is sorely needed.

You don’t know how many times I have run up against juniors from large law firms who defend
medical malpractice cases where in fact at Examinations for Discovery, they ask questions to
which they don’t know the answers, don’t comprehend the question first of all nor the answer,
and then report back to the senior partner. The Discovery becomes a fiasco.

I have told virtually every defence house in Ontario and several outside of Ontario where I also
practice that I, Paul Mann, am not a training ground for their juniors.

If the junior is way off base, I tell them to stick to the issues and generally we get along. I much
prefer dealing with senior lawyers or lawyers who have knowledge of the subject matter than
with lawyers who are out 2 years and learning how to comb their hair appropriately according to
Toronto standards.
That would seem to me to be a fairly reasonable way of looking at this, however, I don’t know that it will receive much favour at the Law Society, but I would ask that you put forward my position.

All of which is respectfully submitted herein – Paul M. Mann”
Dear Sir/Madam:

I am writing to you in regard to the proposed changes to the lawyer licensing process that is currently under debate. I am alarmed at the significant increase in costs that would be associated with the proposed changes, which would be borne by licensing candidates. I also believe that a mandated minimum number of experiential learning hours, accumulated throughout law school and beyond, would be an adequate replacement for 10 consecutive months of articling or several months of classes.

Costs, Diversity in the Profession, and Access to Justice

I wish to express that, if these costs are borne by the licensing candidates, it would have an adverse effect on diversity in the profession and ultimately access to justice. From my own experience, the licensing process fees, which are currently in excess of $2000, were difficult to pay, particularly given that I paid between $20,000-25,000 per year as a law student at the University of Toronto. Moreover, as I will be moving to Germany for 1 year following my call to the bar for personal reasons, without any guarantee of financial security, the prospect of paying an additional $2000 in membership fees as a newly-called lawyer, are daunting to say the least. I would not wish this for any of my peers, and certainly not if the licensing fees were to double, as indicated at page 65 of the Articling Task Force’s Final Report. I stress that it is most difficult to advise young people, and particularly people from underprivileged and under-represented communities, that law is a profession open to all capable individuals, when the cost of going to law school and becoming a licensed lawyer is in excess of $50,000 in tuition fees and licensing fees alone. Understandably, this would deter individuals who do not have the resources to invest in this process, who do not know for certain how they would enjoy the practice of law, and essentially would have no safety net if they were not able to secure a job once they become lawyers. It is understandable that given these factors, many people from underprivileged and under-represented communities would not want to gamble their lives and future financial security on the idea of becoming a lawyer, as it could certainly become a recipe for financial ruin.

As you well know, there is a real problem with diversity in the legal profession and access to justice. The cost of licensing should not compound this problem and become a new obstacle to individuals attempting to enter the profession.

Recommendations

I therefore recommend that if changes are to be made, that measures be taken to ensure that articling fees do not rise, and certainly not by the quantum suggested in the Articling Task Force’s Final Report.

Another possible alternative would be to mandate a **minimum number of experiential learning hours for articling candidates**, accumulated over time from the start of law school, in order to become licensed, instead of requiring 10 consecutive months of articling or several months of
courses. This would allow law students to accumulate such hours from the moment they begin law school, through approved activities such as supervised volunteering at clinics and legal projects, through clinical opportunities offered as law school courses, through summer law positions, and so on (even after graduating from law school). If the students meet the required threshold of hours, they would be able to forego the 10-month articling requirement. This would ensure that newly called lawyers hold the required experience and competencies, accumulated in a flexible way at their own pace. This would also be far less costly than the proposals from the Articling Task Force that are being considered.

In the alternative, I suggest that more measures be taken to give incentives to lawyers to accept articling students – experiential learning is obviously preferable to a classroom substitute. Putting money in licensing candidates’ pockets while giving them real world practice experience, is preferable to taking money out and having them learn in a classroom.

Please do not hesitate to contact me to discuss this matter further.

All the best,

Matthew Oh
I realize this is a day late, and I apologize, but I hope these comments can be included in the discussion of this issue.

I was called to the bar in 1980. I articled for a two person general practice firm. In three years of law school I learned only two things of real importance to the practice of law – legal reasoning and legal research. During my articles, I learned everything else I needed to know to be a lawyer. My principals taught me the traditional values of the profession. One was a litigator from whom I learned to be resolute, the other a solicitor, from whom I learned the values of civility, good communication, compromise and humility. To this day I try to live up to their examples.

I don’t believe the important traditions of our profession can be passed on from generation to generation other than through the mentoring process that articling provides. The 10 month period is a comfortable and necessary period of time to get to know each other and develop a sufficient relationship of trust and reliance. It’s not about learning substantive law, that’s easy, it’s about being immersed in a professional atmosphere, without full responsibility for clients and outcomes, for long enough that it will carry a person through the long and difficult times of a career.

I am now senior partner of a 30 lawyer firm. Since our inception we have always hired articling students and I don’t remember a year when we did not hire at least one back. Two years ago we hired back all 3. Last year we hired back all 4. This year we will have 6 articling students. Our clients love them. They are keen and quick learners and we bill them at attractive rates. This is how we recruit lawyers for our firm. Because of our hireback record, we attract excellent candidates from the law schools. And with the bar exams out of the way before articles, the transition from student to lawyer is seamless.

In my opinion, and based on my experience from over 32 years at the bar, including successfully functioning in today’s modern, competitive environment, the loss of our traditional articling program would cause immeasurable and long-lasting harm to the profession, not to mention my firm in particular.

Thank you for considering these comments.

Yours truly,

Dan Reisler
Barrister
I write to express my deep concern about the proposed implementation of the LPP as an alternate pathway to licensing. And, I would like to suggest a variation of the approach suggested by the minority.

Proposal to Increase the Number and Variety of Articling Positions

Rather than creating a new pathway for licensing which may undermine future career prospects by exacerbating already existing differential treatment on the basis of school and place of articles, maintain only one pathway for licensure. But, concentrate on increasing the variety and number of articling positions. The increase in articling position could be accomplished through the identification of tax incentives analogous to the skilled internship tax credit that firms and organizations with established and permanent legal departments could use to subsidize the costs of hiring articling students. For example, are there any non-profit organizations such as the Law Foundation of Ontario through which firms and organizations could get a charitable tax deduction for contributing to a fund which pays to subsidize small firms and organizations to hire articling students?

If financial incentives can be identified, perhaps the law society can engage in direct marketing to secure a yearly commitment from industries and organizations with permanent legal departments to hire 1-2 articling students per year. Beyond Bay Street, the law society could approach industries or organizations such as insurance, banking, finance, legal publishing industry, government, and regulatory bodies in order to increase the number and variety of articling positions.

Proposal to Improve Candidate Preparedness for the Practice of Law

As suggested by the Minority of the Articling Task Force, after law school, and the passing of the solicitor and barrister examinations, candidates to the bar should be required to participate in a 3 month course. The course could be administered by the law society and law schools. The focus of the course should be to provide candidates with the basic skills in the provision of legal services and should as the Minority suggests, include testing competencies such as legal knowledge, skills, business, and professionalism & ethics. However, in my view, the method of instruction should not involve a great deal of online learning.
The 3 month course could be structured as follows:

**Solicitor Skills**

- **Basics of Contracts**: drafting and reviewing of contracts i.e. wills, power of attorneys agreements, purchase & sale agreements, etc...
- **Transactions**: Role play of Real estate transactions using dummy teranet accounts (including how to avoid becoming a dupe), corporate searches, registering PPSA etc., discharging liens, etc...

***This portion of the course could take the form of classroom instruction headed by certified specialists and experienced lawyers who could receive CPD credits.

**Litigation Skills**

- **Introduction to courts**: drafting pleadings to initiate and defend claims/applications, pre-trial procedures (mock discoveries, mediations etc), trial prep including drafting materials (including facta), trial strategy techniques
- **Mandatory attendance at least one trial and appeal**: with the assistance of trial coordinators who can provide lists of upcoming trials and appeals, candidates to the bar should be required to observe pre-trial proceedings (such as a motion), as well as at least one trial and appeal under the guidance of experienced counsel. Candidates can be divided into small groups headed by a lawyer who would use the trial and or appeal as a method of instruction and discussion. This would allow candidates to have the opportunity to do mock exercises such examinations in chief, cross examinations, and delivering of opening and closing statements.
- **Administrative Tribunals, Arbitration and Mediation** role play

**Sole Proprietorship & Professional Responsibility**

- **Practice management** including candidates participating in role play of client intake, bookkeeping,
- **Business skills** for the practice: including marketing, use of technology
- **Professional Responsibility & ethics**
Rationale for Proposals

The pedagogy of articling needs to adopt a more clinical approach which combines classroom instruction of the basic skills required in transactional work (solicitor component) with an exposure to courts and court processes (litigation component). In the same way that hospitals serve as teaching institutions for the training of doctors, part of the articling experience should include using our courts as a teaching institution for candidates being called to the bar. And, the advantage of using the courts as an institution of learning is both practical and economical. Our courts are open and free to the public and once documents are filed with the court, they are public record.

In its current state, legal education is too heavily focused on analytical case-study instruction with too few opportunities for students to see the procedures and contexts in which legal principles operate. In particular, law schools offer few clinical programs and little if any instruction on the business of providing legal services either as it relates to firms or sole practice.

It is through articling that candidates are expected to acquire the skills and competencies required to be licensed to practice law. But for a myriad of reasons, perhaps having to do with the specialization of the practice of law and the costs and interests involved, few candidates acquire even the most basic experiences and training that the public likely assumes they will possess before being licensed.

Once called to the bar, a new licensee can put up a shingle offering legal services to the public in virtually any practice area with an undertaking that they will acquire and maintain the necessary competencies of their chosen area(s) of practice.

The public expects, and not unreasonably, that before being licensed to provide legal services in virtually any practice area imaginable, a candidate has at least acquired certain skills, and has had the opportunity to observe common transactions and proceedings. I would venture to say that the many Ontarians would be surprised to learn that most of the candidates will be called to the bar without having had basic experiences such as drafting or reviewing a real contract. Similarly, perhaps the public would be surprised to learn that notwithstanding the availability of public and open courts, most candidates will be called to the bar without ever having seen a trial or an appeal. This shouldn’t be.
Problems with the Majority Position

The best way to ensure that candidates can become licensed is to increase the number and variety of articling positions, not to create a second pathway for licensing whose primary purpose is to accommodate candidates unable to secure articles in the traditional process. It’s obvious that such an approach creates a two-tier licensing system.

A prospective employer need not infer that a candidate licensed through the second pathway is less competitive than their peers. By virtue of the pathway through which they were licensed, it would be understood as a matter of fact, that the new licensee could or did not obtain a suitable articling position in the traditional process.

There are already additional opportunities available to those who article and practice in large/“leading” firms. For example, positions advertised in the O.R’s often state as a qualification articling/practice at a large or “leading” firm.

As I understand it, certain groups such as racialized individuals are overrepresented in the cohort of candidates who are unable to secure articles. It’s therefore entirely foreseeable that adopting a two pathway approach where it is understood that the alternate pathway for licensing is to be pursued almost exclusively by those who could not secure articles through the traditional process, would only exacerbate existing differential treatment and undermine the future career prospects for candidates licensed through the LPP.

Increasing articling positions in underserviced areas such as criminal and family should be addressed by providing incentives that make it practical to create those positions. Creating a guaranteed pipeline of already stigmatized candidates who will likely be willing to accept articling positions at very low pay and makes it more likely these candidates will be overworked and underpaid. Having the LPP primarily serve underserviced practice areas may lead to an overall lowering of the average articling salaries in those practice areas making them less attractive to the most capable and competitive candidates. Given the interests involved in criminal and family law, the focus should also be on making these underserviced areas more attractive to the highest achieving and competitive students.

Problem with Minority View

After having completed law school and passed the solicitor and barrister examinations, candidates to the bar should complete a 3 month pre-licensing program. However, rather than online learning, and administering exams testing competencies (legal knowledge, skills,
business and professionalism & ethics), the pedagogy should be a combination of classroom instruction and clinical study using our system of open Courts as outlined above.

It’s in the public interest to increase the supervision on new licensees who practice on their own but that has to be combined with better preparation during articles for being a sole practitioner. Providing instruction to all candidates on issues relating to sole practice is necessary because our licensees are entitled to provide legal services in any practice area.

Michelle Velvet
Dear Benchers:

I have been a member since 1989 and am making this submission in my personal capacity. I want to thank you and the Task Force for tackling this difficult and complex issue.

I am not writing to express a view on either option. With respect, I am, however, profoundly disappointed in what appears to be the absence of any in-depth policy research on alternative paths to licensing in other common law jurisdictions. I am also disappointed in the apparent lack of inquiry into what's working and what isn't in other professions.

The majority continues to cite the example of Australia, as though there is only one path to licensing in Australia. This leads me to believe that not much research has been done, when in fact, a small amount of research would show that there are a few different pathways, with various pros and cons, being used (and revised) in Australia. Of course, there are similar programs as well in Ireland, Scotland, UK, Singapore, Hong Kong, etc. There are also other methods emerging in the United States, eg. mandatory mentoring in the State of Georgia.

I can understand the desire not to get bogged down in research or have a lot of people drawn into discussion on tactical details. But there is valuable practical experience and even some empirical research out there, in the legal profession and others.

The consultation within the Ontario profession has been extensive and the Task Force is to be lauded for its efforts in this area. Internal consultation is, however, only one aspect of inquiry, and we are fools if we think we have nothing to learn from anyone else.

If I am incorrect, and the Task Force did indeed gather this information at some point, it should be released as an appendix to the report before a decision is made. In particular, information about the many and varied lengths and formats of practical legal training courses and methods of legal practice competency testing in other jurisdictions, and any outcomes-based research on same, should be made known before you (the Benchers) are asked to decide. Doing so would not only make for a better informed decision, it may present options that could open the door to building a consensus position.

Victoria Watkins
Sheena,

Since articling is preserved by the majority report, and since unplaced candidates is a problem, the Ministry of the Attorney General supports the majority’s position.

As discussed, the Law Society is welcome to make MAG’s position public.

We look forward to an interesting (and no doubt lively) discussion at Convocation on November 22.

SunnyKwon
November 13, 2012

SENT BY EMAIL (pathways@lsuc.on.ca)

Sophia Sperdakos
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Sperdakos:

Re: Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario

In accordance with the established procedure to respond to the Pathways Report in advance of the debate upon it, scheduled before Convocation on November 22, 2012, I am attaching for you the further submission of The Advocates’ Society. It contains a proposed compromise position (see “Recommendations”) directed towards bridging the differences between the majority and minority reports.

While The Advocates’ Society in its March 2012 submission supported, and continues to support, the abolition of articling, it recognizes that in the circumstances of the majority and minority reports that it would be in the best interests of the profession to find a compromise position which:

a) Recognizes that there is a significant number of graduates unable to qualify for practice in light of the lack of articling positions;

b) Establishes two clear alternative processes with early implementation and evaluation of their relative merits; and

c) Recognizes that a commitment by the profession to the mentoring of new members of the profession is central to achieving real progress in the implementation of change.

We would be happy to answer any questions which you have on the attached submissions and recommendations.

Yours very truly,

Peter Griffin
President

Encl.: TAS Submissions on Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario
TAS Recommendations for the Proposed Pilot Project Respecting Transitional Training

Date: November 13, 2012
Submitted to: The Law Society of Upper Canada
Submitted by: The Advocates’ Society
TAS Submissions on Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario

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Overview

1. The Advocates’ Society (“TAS”) recognizes that if it is the will of Convocation that a transitional training pilot project be approved with both an articling component and an alternative Law Practice Program (“LPP”) component, it would be in the best interests of the profession to find a compromise position of the majority and minority reports. TAS’s “Recommendations” in respect of the compromise position are set out in the appendix to these submissions. The comments that follow set out the reasons for the Recommendations.

2. TAS believes that the goals of the proposed pilot project can be accomplished and the hardships for candidates mitigated at the same time if the project is implemented sooner, its length and related costs are reduced, and the project is supplemented with a commitment to mentoring by the profession.

3. In brief, TAS recommends that the pilot project motion proposed to Convocation in the Articling Task Force Final Report, dated October 25, 2012, titled “Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario” (“Final Report”) be modified as follows:

   (a) Implement the transitional training pilot project at the earliest available date, by September 1, 2013, but no later than January 1, 2014;

   (b) Reduce the length of the pilot project from the proposed five years to two years;
(c) Reduce the length of the LPP by eliminating the proposed four month (17 week) cooperative work placement component; and

(d) Include a commitment of the profession to the mentoring of lawyers during their first year of practice with defined milestones and reporting to the LSUC as further approved by Convocation.

Continuing Hardship for Candidates Without Articling Placements

4. The LSUC’s Articling Task Force was established in June, 2011 to study the issues relating to the articling requirement, including the increasing number of unplaced candidates. In the approximately 18 months since that task force was established, the crisis has worsened and the number of candidates who are unable to find articling jobs and are adversely affected by the crisis has increased significantly.

5. The Final Report informs us that these candidates will remain without relief in the form of abridgment or exemption of this licensing requirement before the pilot project is implemented. The Final Report does not recommend the waiving of articles as a licensing condition on the ground that it would be inconsistent and contrary to the public interest to license these hundreds of candidates without such transitional training.

6. Accordingly, until the actual implementation of the pilot project, articling as a mandatory licensing requirement remains a barrier to entry to the profession for hundreds of candidates who have obtained law degrees from accredited institutions and may have otherwise demonstrated their professional competency by passing the bar admission examinations set by the LSUC.

7. Those candidates who are unable to find articling positions will continue to face this barrier to entry until the completion of the first LPP which, under the motion proposed in the Final Report, will not take place until the spring or summer of 2015 at the earliest, with no other form of relief for these candidate in that interim period.

8. In TAS’s view, this is simply too long a period for these candidates to wait for relief. This is particularly so in circumstances where we as a profession must acknowledge that these candidates are being denied entry to Ontario practice because of our own inability to provide the articling positions necessary to meet this current mandatory licensing requirement. Any unnecessary delay in providing relief to these candidates is unfair and inequitable.

9. TAS has earlier submitted that any artificial barriers to entry that are imposed by market conditions that affect existing law firms and the number of articling placements must be rejected. It is TAS’s position that fairness dictates that all candidates be given an equal opportunity to demonstrate the ability to meet all licensing requirements and that a licensing process barrier imposed by the shortage of articling positions is a fundamental access to justice issue.
Elimination of Cooperative Work Placement Component of LPP

10. From its review of the Final Report, TAS believes that the cooperative work placement component of the proposed LPP may be a significant impediment to getting the project underway. The absence of an adequate number of cooperative work placements for the LPP candidates -- and the potential for further delay in the implementation of the LPP for that reason -- appears to pose a significant impediment to the commencement of the LPP as well as adding significantly to its costs.

11. While the Final Report acknowledges that it is within the LSUC’s expertise to establish the standards for the LPP, as well as its system-wide testing and project assessment, it is clear that the Final Report does not recommend that the LSUC actually play any role in LPP candidate training. If the LSUC did so, for at least part of the project, TAS believes that it would undoubtedly assist in the earlier implementation of the project.

12. TAS is advised in the Final Report that the transitional training competencies will be taught by a third party provider, the program(s) will be implemented in the 2014-2015 licensing year, and that it is estimated that approximately 400 candidates will be required to take the LPP at that time, based on the pattern of increase in candidates seeking entry to the licensing process and the ever-increasing shortage of articling positions available for them.

13. The RFP bidders are asked not only to design the classroom setting training course, that is expected to be four months in length, but also to include, as an essential component of the LPP, an additional four month (17 week) cooperative work placement for each LPP candidate.

14. No such cooperative work program exists at present to TAS’s knowledge and no suggestions are made in the Final Report where such cooperative work placements can be found that provide settings that replicate the “experiential opportunities” that are provided by a good articling placement.

15. It is difficult to imagine that any service provider could be ready to provide that cooperative work placement component by next summer. But it is anticipated by TAS that an experienced service provider could be ready to provide classroom training by next summer for the candidates who cannot find articling positions. TAS also questions the willingness and ability of law firms to absorb short-term cooperative students (particularly if they are also hiring articling students, thereby creating an overt two-tier system within some firms) and to give them meaningful hands-on experience.

Early Assessment of Project

16. The Final Report proposes that the formal review of the pilot project shall only commence in the final year of the proposed five year project, with an assessment report to Convocation within that year, and with the continuation of the pilot project thereafter until Convocation determines that the pilot project should end, become permanent or result in a different approach. TAS sees no reason for delay in the critical assessment process.
17. In the Final Report both the majority and the minority recognize that an important consideration when determining the role of transitional training is to determine how the effectiveness of the training is measured. The Final Report states that candidates in both streams -- articling and LPP -- would be required to successfully complete a uniform final assessment of transition to practice skills as a prerequisite to licensing, and that the assessment of the comparative merits of articles and the LPP will be “evidence-based” and will be “standardized, transparent and fair”.

18. Accordingly, TAS believes that it must be the desire of Convocation, if it approves the pilot project, to take a *bona fide* look at the relative merits of articling and an alternative LLP and to objectively and impartially assess whether there are demonstrable benefits to continuing with articles as part of the licensing process.

19. The Final Report comments that the process under which the transitional training practical skills are to be measured on an objective common standard will be developed and proposed to Convocation for its approval in the period leading up to the 2014 – 2015 LPP pilot project implementation. TAS recommends that Convocation provide instructions that this be done as soon as reasonably practicable.

20. The motion proposed by the Final Report references a formal process to be introduced to assess defined learning outcomes to enable the LSUC and the profession to make evidence-based determinations about the merits of each component of the pilot project. That assessment must, of course, also assess the comparative merits of the other tier, articling, on the same objective criteria.

21. But, in section 1(c) of the motion, it is proposed that the formal review of the pilot project not commence until the final year of the project. As stated, TAS sees no purpose for any delay in assessing the merits of the two tiers. The very nature of a pilot project requires an open mind and the introduction of changes to the project throughout as the evidence is gathered and assessed on the relative merits of the two-tiers and/or each of their components.

**Classroom Training and Workplace Training Comparison and Assessment**

22. TAS also suggest that in order to conduct a proper assessment of the relative merits of the two tiers, it is important that one be workplace training based (articles) and the other classroom training based (LPP), with the candidates in each tier subjected to a common standard test of the required competencies conducted by the same testers.

23. As an example for illustration, paragraph 166 of the Final Report identifies five possible skills that be assessed (i) interview a client, (ii) draft an opinion letter, (iii) draft an affidavit, (iv) conduct a negotiation, and (v) present an analysis of an ethical problem.

24. There will be about 1700 candidates in the first year of the project in both tiers with about 400 estimated in the Final Report in the LPP and the remainder in articles. The assessors will not only have the test scores on the candidates’ skills tests to compare the candidates in the tiers, but will also have the comparative law school test scores of those same candidates. With that information, TAS believes that evidence-based decisions can be made on the relative merits of the two tiers in a
relatively short period, likely two years or less, given the size of the sample for assessment purposes of 3400 candidates.

25. This assessment process raises another concern of TAS that the proposed cooperative work placement component offers the potential of skewing any objective assessment of the relative merits of each of the classroom training and workplace training tiers. This is because the assessors may be unable to conclusively determine if the competency in the skill tested by a successful LLP candidate was the result of the classroom training component or the workplace training component of the LPP.

**Number of Candidates Affected**

26. Paragraph 18 of the Final Report states that the rising (and irreversible) statistic of unplaced candidates for articling is well-known. In March 2008, 5.8% of candidates were unplaced. By March 2011, it had risen to 12.1%. As of March 2012 and while the LSUC Articling Task Force was completing its consultation with the profession, the percentage had risen to approximately 15% of approximately 1700 candidates, and that the overall number and percentage has increased year over year and will continue to increase.

27. Based on the proposed date of introduction of the pilot project LPP in 2014-2015, the candidates who have been to date unable to secure an articling position will be given a first opportunity to become eligible to qualify through an alternative LPP process no sooner than another three years time. As stated above, TAS considers that this is an unjustifiably long period of time for these candidates to remain without relief. And also as stated above, the Final Report offers no possibility of any form of interim relief for such candidates who continue to be foreclosed from gaining entry to the profession because of market conditions unrelated to their ability to meet licensing standards.

28. The Final Report projects the number of 400 candidates in the first LPP. That number appears to be very conservative to TAS based on the statistics otherwise provided in the Final Report. Whatever the actual number turns out to be, Convocation is being advised in the Final Report that it will be greater than the current number of candidates who do not have articling placement.
TAS Recommendations for the Proposed Pilot Project Respecting Transitional Training

The Advocates’ Society recommends that the proposed pilot project respecting the transitional training component of the Law Society’s licensing process (“Project”) include the following integrated components:

1. An articling component and a Law Practice Program (“LPP”) component, the purpose of which transitional training pathways is to examine and evaluate the merits of these pathways as part of the Law Society’s licensing process.

2. In light of the continuing shortage of available articling positions, the LPP shall commence by September 1, 2013 and no later than January 1, 2014.

3. The Project shall be for two years ending on August 31, 2015.

4. During the Project, data designed to enable its evaluation shall be collected and any necessary refinements or other policy issues related to the Project shall be considered in the Professional Development & Competence (“PD & C”) Committee and, where appropriate, changes implemented during the course of the Project.

5. The final review of the Project shall commence in its final year and shall be completed, with a report and proposal by the PD & C Committee for changes to the Law Society’s licensing process provided to Convocation for its consideration, as soon as possible and no later than December 31, 2015.

6. As part of the Project, the 10-month articling program shall continue with its current administrative structure. In the period leading up to implementation of the Project, benchmarks and evaluative tools shall be established for articling principals and students to enable the effective assessment of the merits of all aspects of the articling program, with the report and proposal to be included in the final report and proposal for changes to the Law Society’s licensing process to be provided to Convocation by no later than December 31, 2015.

7. The Law Society shall issue a Request for Proposals (RFP) as soon as it is feasible to do so for interested parties to submit a Proposal to provide a transparent, fair and defensible competency-based LPP as an alternative pathway to licensing. Validated law practice skills, task and professionalism competencies as determined by the Law Society shall form the basis of the LPP. In the period leading up to implementation of the Project, benchmarks and evaluative tools shall be established to enable the effective assessment of the merits of the LPP to be implemented effective September 1, 2013.
8. The RFP shall seek proposals for the delivery of a LPP that:
   (i) Provides training on the established competencies;
   (ii) Is designed to accomplish the program goals within four months, while leaving it open to potential providers to propose a greater or lesser length of the LPP that accomplishes the objectives of the program in the most timely and cost-effective manner; and
   (iii) Incorporates the use of practicing lawyers as instructors and/or in other capacities; and
   (iv) Includes quality assurance assessments.

9. Both transitional training pathways (articling and LPP) shall address approved competencies. The Law Society shall oversee a formal process to assess defined learning outcomes necessary for entry-level practice, based on those competencies. The assessment shall be standardized, transparent and fair. All candidates for licensing, including any otherwise exempted from the LPP or articling, shall be required to successfully complete the assessment as a requirement of licensing.

10. The assessment process shall be developed by the PD & C Committee and proposed to Convocation for its approval in the period prior to implementation of the Project.

11. To enable the Law Society and the profession to make evidence-based determinations about the merits of each component of the Project, an evaluation system approved by Convocation shall be designed and implemented prior to the completion of the first LPP.

12. During the development of the Project, the Law Society shall develop a plan to provide mentoring and practice support to those licensing candidates entering practice for their first year of practice. The costs of the mentoring and the practice support system shall be subject to review and approval by Audit & Finance and by Convocation.

13. During the Project law graduates may apply for articling positions or the LPP. In the interim period between 2012 and the full implementation of the LPP alternative, those candidates who began the licensing process in the 2012-13 licensing year (commencing May 1, 2012) or earlier but are unable to find an articling placement within the three-year period provided to complete all components of the licensing process, may maintain their status as a licensing candidate until such time as they can enter and complete the LPP and all other aspects of the licensing process. The Law Society shall extend the three-year completion requirement for these candidates.

14. Following Convocation’s approval of the Project:
   (i) The RFP shall be developed and issued to permit the implementation of the Project within the timelines set out above;
   (ii) The RFP applications shall be considered in accordance with the Law Society’s established process for RFPs;
(iii) The PD &C Committee shall make recommendations to Convocation on the most appropriate approach or approaches for delivery of the LPP for Convocation’s approval;

(iv) The successful provider(s) shall be chosen in accordance with the Law Society’s established process;

(v) Steps to implement the requirements of the Project shall be undertaken by the PD & C Department;

(vi) Any additional policy matters to enable implementation shall be considered by the PD & C Committee and, where necessary, the PD & C Committee shall make recommendations to Convocation for its consideration and approval.
November 2, 2012

Mr. Thomas G. Conway
Treasurer, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Re: The CDLPA Response to Pathways to a Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario

Dear Mr. Conway,

The County and District Law Presidents’ Association (“CDLPA”) is comprised of the 46 county law associations throughout Ontario. Together with our affiliate the Toronto Lawyers’ Association, we represent over 12,000 practicing lawyers province wide.

On behalf of our Executive and the membership we serve, I want to first acknowledge the work of the Articling Task Force to date and the careful deliberation of Convocation on this matter as our profession continues to work in partnership toward a resolution. The extensive consultation that informed the Pathways to a Profession: A Roadmap for Reform of Lawyer Licensing in Ontario (“Report”), the transparent debate of Convocation on this matter and the offer to community justice partners to submit further response before a decision is made demonstrates the Law Society’s commitment to meaningful engagement on the future of articling in Ontario.

Ideally, such broad ranging consultation will guide a task force toward a consensus solution. However on this particular issue, with a number of varying interests represented, it is clear that such a solution is not likely to be achieved. This fact is best evidenced through the expression of both a majority recommendation and minority position within the Report. Ultimately Convocation must decide which direction is most likely to ensure that candidates are able to demonstrate that they possess the required competencies at an entry level to provide legal services effectively and in the public interest.

In our written submission to the Task Force in March of 2012, the CDLPA affirmed our preference to retain articling as a part of the training process for new lawyers. Practicing lawyers are on the front line of providing legal services to the public and are in the best position to assess the value of the articling process. The CDLPA advocated for the retention of articling and further suggested a limited license as a possible solution to the demand for articling placements during earlier consultations.

While the Articling Task Force did not adopt our submission, the majority recommendation represents an acceptable compromise to our organization. This position, to the benefit of our member associations...
throughout Ontario, allows for the continuation of articling in conjunction with the Law Practice Program. Further, the implementation plan associated with the majority position is robust in its detail and will provide near immediate certainty to the profession and law students as we move forward. It offers clear direction, timelines and establishes the metrics necessary to evaluate both the outcome and the process that will contribute to continuous quality improvement of the recommendation. It builds upon the principles of articling that serve to contribute to competency while seeking to address the need to modernize the process through which new lawyers are integrated into practice.

Conversely the minority position is one that is distinguished by uncertainty beyond the assertion that articling be abolished. The opinion provides a vague critical path for the implementation of an alternate structure and it is evident that if this opinion were adopted there would be further stasis within the profession as a replacement for articling was developed. The abolishment of articling is not acceptable to the CDLPA, and even less so in the absence of a considered alternative.

Convocation has two disparate options to consider, with the adoption of either position unlikely to receive unanimous support. It is becoming clear, however, that stakeholder organizations representing the greater part of the profession are inclined to endorse the majority recommendation. It is the option most likely to contribute to improved competency of new lawyers, one that best serves the public interest and as importantly one that can be acted on immediately when endorsed.

Once more, the CDLPA affirms its support of the majority recommendation of the report, and strongly encourages Convocation to adopt this direction on November 22

Yours truly,

Michael Johnston, Chair
County and District Law Presidents’ Association
PRIVATE & CONFIDENTIAL

November 15, 2012

Thomas G. Conway
Treasurer
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer:


Management at LAWPRO has read with interest the final report of the Articling Task Force. We wish to reiterate a message from our submission of March 14, 2012, as Convocation prepares to continue its debate on the issue.

We realize that there are many policy aspects to the decision with Convocation will eventually make. However, from a pure insurance perspective, we would remind you that a fundamental assumption in insurance underwriting and pricing is that the past does accurately predict the future, at least once the “law of large numbers” comes into play. Once a fundamental change is made related to the insured activity, past data is no longer as accurate in predicting the future. It is for this reason that our initial submission urged caution in adopting a model that departs radically from the current approach. If a significant change is to be made to the articling process, a gradual transition allows any risk impact to unroll over time, so it can be absorbed on an incremental basis.

Subject to that comment, we look forward to watching the debate on November 22.

Yours truly,

LAWYERS’ PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

Per:

Kathleen A. Waters
President & CEO

/kw
c.c.  Robert G.W. Lapper, Q.C., CEO, Law Society of Upper Canada
Susan T. McGrath, Bencher and Chair, LAWPRO
Alan G. Silverstein, Bencher and Director of LAWPRO
Barbara J. Murchie, Bencher and Director of LAWPRO
Robert F. Evans, Bencher and Director of LAWPRO
November 12, 2012

Via Email: pathways@lsuc.on.ca
Law Society of Upper Canada
130 Queen St. West
Toronto, Ontario
M5H 2N6

To whom it may concern:

Re: Written Submissions of the Law Union of Ontario concerning the Law Society of Upper Canada Articling Taskforce Final Report

Introduction

The Steering Committee of the Law Union of Ontario welcomes the opportunity to comment on the very important motion currently before the Law Society of Upper Canada (‘LSUC’) concerning articling reform. While we refrain from endorsing either the majority or minority viewpoint in the Pathways Report, we wish to emphasis two major problems with the proposed pilot project of the Law Practice Program (‘LPP’). Specifically, the Law Union asserts that: one, the LPP fails to adequately address issues of discrimination in the articling process and two, the LLP’s exorbitant costs pose a significant economic barrier to lower and middle class candidates.

About the Law Union of Ontario

The Law Union of Ontario, founded in 1974, is a coalition of progressive lawyers, law students and legal workers. The Law Union provides for an alternative bar in Ontario which seeks to counter the traditional protections afforded by the legal system to social, political and economic privilege. By demystifying legal procedures, attacking discriminatory legislation, arguing progressive new applications of the law, and democratizing legal practice, the Law Union strives to develop collective approaches to bring about social justice.

First Issue: LLP masks discrimination and inequality in the articling process.

As numerous submissions to the Taskforce have addressed, the articling system has not well served equality-seeking groups. However, rather than directly confronting discriminatory hiring practices in the articling process, the LLP regime effectively glosses over this issue as marginalized candidates can be channeled into the LLP route of
licensing. In effect, the LLP allows a broken and discriminatory system to remain intact. If the LSUC should adopt the LLP regime, attention and energy must also be paid to discrimination in the articling route of licensing.

Further, considering that discrimination in articling hiring practices does exist, it is quite foreseeable that equality-seeking groups would be disproportionately impacted by the articling shortage. However, citing lack of quantitative statistics, the majority of the Taskforce seems reluctant to come to the this conclusion definitively. The majority asserts the LLP can be used as a systemic evaluation of issues facing equality-seeking groups.\(^1\) With respect, this suggestion does not help candidates currently facing discrimination in their search for articling and leads to further unfairness in the licensing process for these candidates.

Overall, the LLP regime is a band-aid solution to the articling shortage as it does not effectively address issues of discrimination in articling hiring practices. As the profession has struggled with inclusivity and equality for centuries, more systemic solutions must be adopted to combat forces which threaten and impede the achievement of those principles.

**Second Issue: LLP’s Exorbitant costs are an unfair economic barrier to the profession.**

The legal profession should be representative of the communities it serves, along all lines of identity including that of class. For a myriad reasons, it is important for lower and middle class perspectives to be represented in the legal profession and the law in general. The Law Union is of the opinion that the LLP will act as an economic barrier to the licensing process in a profession that is becoming increasingly inaccessible to those not in the upper economic strata of society.

To explain, currently licensing candidates already pay a hefty fee of $2,950 for the LSUC licensing process. Under the LLP regime however, candidates will pay an increased cost of approximately $5,670.\(^2\) This is nearly \textbf{double} the costs to enter the legal profession. Further, it is worth noting that this amount has yet to be confirmed, with the potential of LLP costs being much higher.\(^3\)

Within the context of ballooning law school debt, almost $6,000 at the end of one’s legal studies may simply be financially impossible for some students. Statistics from 2008 place average law school debt at approximately $45,000.\(^4\) However, such statistics have not been updated to take into account recent tuition increases that have occurred across the province, with tuition and ancillary fees ranging from $15,000 to $28,000 per year.\(^5\)

\(^2\) Ibid at para 177-181.
\(^3\) Ibid at footnote 87.
\(^5\) Supra note 1 at para 121.
Currently, it is not unheard of for students to graduate law school with upward of a whooping $80,000 to $100,000 in educational debt.

This economic hardship is further buttressed by the possibility that the LLP co-op positions will be unpaid or underpaid. Again, for some students this may be financially impossible. Debts become due and some students no longer have credit or student loans to draw upon for daily living costs.

Finally, there appears to be no financial support for lower or middle class candidates who will face financial hardship under the LLP. They will not have an articling employer to pay their fees, a commonplace benefit to articling. The Ontario Student Assistance Program (‘OSAP’), who currently does not lend support for licensing fees, will unlikely fund LLP costs. The LSUC has also not yet proposed any grants or bursaries to offset the economic burden of the LLP.

Overall, the costs associated with the LPP are simply too high for some lower and middle class candidates to afford. This is an unfair barrier to licensing based on nothing more than one’s socio-economic class.

**Conclusion**

The Law Union thanks the LSUC for providing the opportunity to comment on such an important subject as articling reform. While we are in complete agreement with the Articling Taskforce that the articling system is in serious need of change, we strongly contend that such change must be principled in inclusivity, accessibility, and equality.

Sincerely,

The Law Union of Ontario Steering Committee
The Future of Articling

Date: November 12, 2012

Submitted to: The Law Society of Upper Canada

Submitted by: The Ontario Bar Association
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Introduction

There have been several opportunities for the bar to provide input on the future of articling.

The Ontario Bar Association (“OBA”) has been actively consulting with, surveying, and listening to the profession on this important issue since 2008.

We have provided the Law Society of Upper Canada ("Law Society") with our advice on where a consensus solution lies between the imperfect extremes of doing nothing to address the articling job gap and over-reacting to the problem by eliminating what is otherwise considered a useful transitional training process. The OBA’s approach to this growing crisis is designed to reflect and maintain the strength and honour of our highly skilled profession. We understand that the Law Society has a public protection mandate. Recognizing that the practice of law requires both specialized knowledge and a unique set of well-honed practical skills is the best way to protect the public and offer them access to high quality justice.

In terms of the breadth of our examination of this issue:

(i) In 2008, the OBA surveyed its membership. 73% of respondents who had been practicing for ten years or less characterized the articling program portion of the licensing process as essential to their training for the practice of law. 91% of respondents who had been practicing for 10 years or more either strongly agreed (80%) or agreed (11%) that the articling program portion of the licensing process is essential to training students for the practice of law. The survey was included in a 2008 OBA Submission on the future of articling, which can be found on the OBA website.

(ii) The working group that prepared the 2012 OBA Submission was composed of representation from:

(a) all eight judicial districts;

(b) The OBA Equality Committee and Feminist Legal Analysis Section;

(c) The OBA Young Lawyers Division (Central, East and Western Regions);

(d) The OBA Student Division;
(e) Practitioners working in every environment from in-house settings to clinics, from firms of fewer than five practitioners to large national firms; and

(f) Several practice areas including criminal, real estate, civil litigation and corporate commercial law.

Members of this working group and OBA Board members also attended the Law Society’s Articling Consultation Sessions to ensure that we had a broad sense of the positions taken by practitioners and the public. The 2012 OBA Submission on the future of articling can also be found on the OBA website.

**Timing**

While we always appreciate the opportunity to provide input, the consultation on this issue has already been extensive. We must bear in mind that the ability of Convocation to make efficient decisions in the interest of the public is crucial to the perception that we are a profession capable of governing itself. Delay in this decision has the potential to threaten that perception. We hope to have a timely decision on this matter so that we can work together to build a transitional training program that will best protect the public by teaching the necessary practical skills.

**Outline**

We intend to address very few issues in this additional feedback. These include:

(a) Ensuring an appropriate testing period for any recommended changes; and

(b) Ensuring a plan to truly address inequities in the legal profession, at every stage.

**(A) Pilot Period**

The initial 2012 OBA Submission cautioned against permanent changes to the current system without some additional indication that the articling gap was an enduring problem. While the idea of launching the practical training course as a pilot project goes some way in addressing that concern, it is possible that a five-year pilot is too lengthy and would effectively be an irreversible institutionalization of the program. The pilot period must be long enough to allow sufficient time to measure effectiveness, justify the set-up efforts of the providers and work out the initial kinks but not so long as to embed the program by virtue of inertia rather than need. This is not necessarily an issue that has to be dealt with by convocation but should be addressed operationally once the decision is made.
(B) Inequities

Essentially, the OBA’s position on this issue can be summarized in this way:

(i) Transitional training, including articling, is valuable. By imparting certain practical competencies to those allowed to practice law, transitional training enhances public protection;

(ii) There are two fundamental problems with transitional training as it now exists: (a) there aren’t enough positions to allow people the opportunity to fulfill this requirement; and (b) equity seeking groups are disproportionately represented among those who are not given the opportunity to receive this valuable training. Where a valuable program exists, it is bad policy to solve either shortages or inequitable application by simply eliminating the program. We have outlined our position on resolving the shortage issue extensively in the 2012 OBA Submission and do not propose to repeat it. We outline more clearly below the issue with respect to inequities.

(i) Transitional training, including articling is valuable

As the OBA indicated in the 2012 OBA Submission, articling is valuable not because it measures competency but because it teaches competency. Neither the public nor the profession will be well-served by a program that simply catches post-call incompetence by increasing post-call requirements. In our submission, transitional training makes better lawyers rather than simply providing traps for bad lawyers to get caught.

As the OBA outlined, when lawyers parse their articling experience to determine how it improved their ability to serve the public well, they identify many learned or improved competencies. Some of the competencies outlined in the 2012 OBA Submission included:

(a) They were given the practice and advice necessary to turn technical legal knowledge into effective documentation such as pleadings, contracts, deeds and other transaction documents;

(b) They were able to watch lawyers litigate, negotiate and conduct corporate deals. They had an opportunity to witness first-hand and in real-time the results of effective versus ineffective skills in adjudicative, alternative-dispute-resolution and transactional settings and were able to practice these skills to some extent;
(c) They had exposure to the many ways in which compliance with accessibility requirements are tested and resolved in practice, including accessibility for clients with mental health issues; and

(d) They experienced the pressures and rewards of meeting the expectations of principals and senior lawyers.

We also outlined the essential features of the articling process that allow for this kind of skill development. Some of the factors outlined were:

(a) Proximity/availability: Those who have worked in multidisciplinary areas where cross-pollination is essential have found that there is no replacement for co-location and the attendant ability to walk down the hall and ask a colleague a question or share an idea. Similarly, the proximity of students to their principals is crucial to practical learning;

(b) Low-risk Practice: Practice in a low-risk environment where the final product is approved by the principal not only builds skills but the confidence necessary for effective practice;

(c) Expectations and Feedback: Articling allows for immediate feedback and exposure to real-life expectations and consequences;

(d) Problem Solving: Practical training exposed future lawyers to practical problem-solving approaches. The variety of work done during articling, for example, gave them a broad base of practice areas to draw on for problem solving even if they did not continue in a particular practice area. In addition, exposure to a variety of work allows students to build networks of people they can trust for advice or referrals in areas in which they do not choose to practice; and

(e) Exposure to the Challenges and Tools of the Trade: There is no way to theoretically teach balancing simultaneous demands from multiple lawyers and clients. It is a matter of experience. In addition, practice management is increasingly about tools – software etc.-learning to effectively choose and employ those tools is a matter exposure and practice.

Similar factors have been long recognized by the Law Society, which, in 2003, approved a Task Force report that found:
Students’ connection to the bar and to mentors ought to be sedulously fostered. … the proposed new approach will strengthen the students’ connection to the profession. It will do so in the following ways:

…

iv. Articling will afford students opportunities to observe practice styles and approaches of not only their principal, but many other lawyers as well, and spend 10 months intensively with a lawyer or lawyers.

…

Articling provides a critical opportunity for candidates for admission to the bar to observe and participate in the practical application of skills, ethics and professional values, in a relatively low-risk environment. Because the candidate is under supervision, the public interest is protected while the learning process is advanced. …

In articling there is a direct, practical and perceivable relationship between skills and their application. A well-run and supervised articling experience will effectively guide the candidate from theory to practice. Articling students build upon and begin to apply the substantive law knowledge and skills to which they are introduced in law school and the BAC.

… The acquisition and application of skills are essential components of a legal education and, in our view, should continue to be part of students’ education prior to call.

Although the [2003] Task Force received some feedback that articling should be eliminated, this view is not held by most. Given the overwhelming opposition the Task Force heard to its suggestion that the skills component be eliminated, any suggestion that articling be abolished is unrealistic. Moreover, we are convinced that articling continues to play an important competence-related function in the admission process. [emphasis added]

“Report to Convocation of the Task Force on the Continuum of Legal Education”, October 23, 2003 (Taskforce members - George Hunter, Professor Constance Backhouse, Earl Cherniak, Holly Harris, Professor Vern Krishna and Harvey Strosberg), at pages 26 and 40-43.

There can be little doubt that those who acquire the skills described above are better able to safely serve the public than those who have not had an opportunity to acquire these skills. The public is better protected by a profession in which the practice competencies are passed on before someone is allowed to offer services to the public. In short, articling is a valuable program.
(ii) Elimination of articling does not truly address inequities
There have been arguments that articling should be eliminated because equity seeking groups have disproportionate difficulty accessing the program. The profession takes any inequality very seriously and there is no question that such inequities must be addressed. However, addressing the inequities in a valuable program by eliminating the program is bad policy and does not genuinely advance the cause of equality. Articling is not inherently discriminatory – it evidences inequities, it does not cause them. If inequities exist they must be targeted and addressed not swept under the carpet by eliminating the points at which they become manifest or obvious. This is particularly true where the factors that underlie the inequities have the potential to simply be passed on to the next stage of the process.

In the United States, where there is, of course, no articling requirement, the American Bar Association’s report *Miles to Go: Progress of Minorities in the Legal Profession* found that, as of August 2004:

> Minorities in general continue to face significant obstacles to “full and equal” participation in the legal profession.

...  
- Legal employers’ heavy reliance on the so-called “box credentials,” such as law school rank, class rank, law review membership, and clerkships, *disadvantages minority students in initial employment decisions, as well as in the distribution of opportunities for on-the-job training. Such training is essential for advancement in the profession. …*

- Minorities in law firms continue to suffer from a lack of access to clients and business networks outside of the firm. Among partners, minorities continue to be clustered at the bottom of the firm’s financial and status pecking order [emphasis added].

We are not suggesting that the same underlying issues plague Ontario’s legal sector and, in fact, there is some indication that even American firms have, in recent years, implemented policies that help address these problems. However, the import of these findings is that if fundamental underlying issues are not addressed, the inequities now being experienced at the articles hiring stage will persist at every stage of one’s legal career, including early stages where on the job training is advantageous.

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There does not appear to be any indication that inequities in hiring for articling positions will not simply appear at the associate hiring stage if articling is eliminated. Admittedly, this will no longer be an entry to practice issue but it will nonetheless be an issue that the profession will be called upon to address, because:

(i) if having the option to take a practical legal training course appears imperfect, it is undoubtedly less harsh than being given a license to practice and released into a system in which underlying issues of inequality have not been addressed but have, instead, been passed on to the associate stage. Being forced by the left-over inequities into hammering up your own shingle without any training is a pyrrhic victory for equality and a risk to the public; and

(ii) a failure to address inequities at any stage of a legal career is not consistent with our role as guardians of justice.

Neither the majority nor minority versions of the *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* Report outlines a plan to determine and address any underlying issues that are yielding inequities in the provision of articling opportunities. It is necessary to develop a plan to do so before any changes to transitional training are implemented. The elimination of articling is a method of hiding inequities, it is crucial that the second transitional training option not simply become another method of doing so. The OBA would be pleased to work with the Law Society on a plan to truly address inequities at any point along the professional path. It has been our experience that the profession takes their obligation to address equity issues very seriously and the Canadian Bar Association has already taken steps in this regard. Its “Measuring Diversity” project has developed the measurement tools that are key components of achieving diversity.

**Conclusion**

Once again, the OBA appreciates the opportunity to provide input on these critical issues. We look forward to continued dialogue on the issues raised and to assisting with design and implementation considerations after convocation makes its initial decision.
November 20, 2012

Sophia Sperdakos, Policy Counsel
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Sperdakos,

**Re: Articling Task Force Consultation**

The Ontario Trial Lawyers Association (OTLA) represents plaintiff lawyers throughout the province of Ontario. Our membership is diverse. It ranges from those who practice at large firms in urban settings to sole practitioners in rural settings. Our members have a vested interest in the future of articling and are pleased to have an opportunity to provide further input into this important issue.

As outlined in our submissions of March 12, 2012, OTLA is primarily concerned with the impact that any changes to the articling system would have on our client base. In the personal injury field, clients are vulnerable and often unsophisticated. Unlike any other area of practice, personal injury claims are typically funded on an outcome basis, as contingency fees are specifically permitted under the *Solicitors Act*.

Many personal injury cases are highly specialized and complex. The Statutory Accident Benefit Schedule is frequently likened to the *Income Tax Act*. If the articling process is eliminated, permitting newly licenced lawyers to act for accident victims immediately, our organization is concerned that totally unprepared, inexperienced sole-practitioners will easily end up acting beyond their abilities, which would be a disservice to the clients and bring disrepute on
our profession. Someone who is catastrophically injured in an automobile crash could potentially be represented by an inexperienced new graduate, with disastrous consequences.

The practice of personal injury is particularly vulnerable to new licensees acting without adequate training or experience. Unlike other practice areas such as complex commercial litigation, tax litigation, or insolvency, where most of the work tends to be completed by larger firms, which would inherently offer an opportunity for a graduated learning experience, personal injury, while equally as complicated, is often practiced by sole practitioners and small firms. The articling process assumes an elevated importance for these new practitioners as they do not otherwise gain the necessary practical experience from their law school education or bar admission course (in contrast to both criminal law and family law).

Therefore, OTLA strongly agrees with the unanimous opinion of the Task Force that transitional training is required to ensure entry-level competence. We also agree with the concept of a pilot project to test the efficacy of any new alternative proposed training.

Included in a pilot project could be consideration whether certain areas of law should be exempt from “direct-entry” practice. This might address competency concerns in the crowded and competitive area of injury law, while not obstructing lawyers from filling the needed positions in family and criminal law. In making this suggestion we urge the Law Society not to assume that “one size fits all”.

We recognize and share the concern of the Task Force minority about creating a two-tiered articling system. However, it is our view that quality control and the protection of vulnerable clients must take precedence over this concern. The Task Force minority has suggested that lawyers who choose to practice on their own are assisted in the first years through mentoring and other regulatory oversight. It is OTLA’s view that these measures would be inadequate to protect the public in complex injury cases.

While OTLA sympathizes with the plight of graduating students who are unable to secure articles, there is considerable evidence to suggest that the current situation stems from a steadily increasing pool of articling candidates due to increased numbers of graduates from law schools - both inside and outside of
Ontario. Asking the profession to sacrifice quality control systems, such as directed articles, to solve a problem created by other sources is not in the interest of the profession, the courts, or the public generally.

OTLA’s recommendations on articling are consistent with other recommendations that our organization has made. In particular, OTLA most recently called for greater oversight, training, and education of paralegals who engage in accident benefit work at the Financial Services Commission of Ontario. In the same way we have urged greater oversight of paralegals, as a protection for the public, we urge the continuation of a transitional training system for new lawyers, either as a stand-alone articling system, or the two-tiered system outlined in the majority position.

As a professional organization of plaintiff lawyers from across Ontario, we thank you again for the opportunity to provide our views on these matters.

Yours truly,

Andrew Murray
OTLA President
BY E-MAIL AND REGULAR MAIL

Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON

Attention: Sophia Sperdakos

Dear Sirs:

Re: Response to Articling Task Force Report “Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario” (the “Pathways Report”)

I am writing to you on behalf of the Toronto Lawyers Associations (“TLA”) and its over 3,000 members in response to the invitation from the Law Society to comment on the Pathways Report.

TLA strongly favours the retention of articling. Accordingly, as between the majority and minority reports, TLA supports the majority. TLA also encourages the benchers to vote in favour of the motion currently before Convocation.

TLA congratulates the authors of both the majority and the minority positions in the Pathways Report. They both offer persuasive and well-reasoned arguments. We also thank the Articling Task Force for the very hard work that went into the Pathways Report and the consultations that preceded it.

TLA does not wish to repeat or supplement the comments made in its submission dated March 12, 2012 (found at the following link: http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487585). In that submission, TLA urged that articling be retained and suggested strategies to reduce the need for a professional legal training program. TLA shares the concern that there may be, or may perceived to be, a two-tiered licensing system. TLA therefore urges the Law Society and other legal organizations throughout the province to encourage their members to offer articling positions and to do everything possible to ensure that the professional legal training program is a safety net rather than a replacement for articling.

Yours truly,

Christopher J. Matthews
President, Toronto Lawyers Association

c.c. Thomas G. Conway, Treasurer
Objet : Commentaires de l’Association des juristes d’expression française de l’Ontario sur le rapport final du groupe de travail sur le stage

Chère Mme Sperdakos,

L’Association des juristes d’expression française de l’Ontario (AJEFO) a fait l’étude du rapport final du groupe de travail sur le stage et plus spécifiquement la proposition de la majorité ainsi que celle de la minorité.

Tel qu’exprimé dans notre lettre du 8 mars 2012, l’AJEFO croit fermement que le stage représente une composante clé et fondamentale du processus d’accès à la profession. Le stage a une valeur essentielle pour les candidats qui cherchent l’accès à la profession ainsi que pour la communauté desservie par les juristes, en particulier, la communauté minoritaire francophone de l’Ontario.

L’AJEFO soutient la proposition de la majorité selon laquelle les candidats auraient un choix entre un programme de stage ou un programme de pratique du droit (PPD) pendant une période d’essaie de cinq ans. Néanmoins, et en plus des commentaires d’ordre général exprimés dans notre lettre du 8 mars 2012 quant au besoin d’assurer qu’on ne crée pas deux classes de candidats ainsi que prendre des mesures pour ne pas créer des barrières économiques à l’accès à la profession, l’AJEFO tient à souligner que la proposition de la majorité soulève tout de même des problématiques importantes, tout particulièrement sur le fait francophone, qui devront être adressées par le BHC avant même que le projet pilote ne soit lancé.

Premièrement, le PPD doit être offert en français et être d’une qualité équivalente au PPD anglais. Les fournisseurs retenus par le BHC pour développer et offrir le PPD devront être en
mesure d’assurer que le PPD français sera développé en même temps et en collaboration avec ceux qui développent le PPD anglais et ne soit pas une simple traduction.

Deuxièmement, les coûts associés au développement et la livraison d’un PPD français seront substantifs. Le BHC devra s’assurer que les candidats qui choisiront de suivre un PPD en français ne soient pas assujettis à des frais plus élevés.

L’AJEFO apprécie l’occasion de soumettre ses commentaires.

Veuillez agréer, Mme Sperdakos, l’expression de nos sentiments distingués.

Me Paul LeVay
Président
English translation follows
November 12, 2012

Sophia Sperdakos  
Policy Counsel, Policy and Tribunals  
130 Queen Street West  
The Law Society of Upper Canada  
Osgoode Hall  
Toronto, Ontario M5H 2N6

Dear Ms. Sperdakos,

Re: Submission from AJEFO in response to the Articling Task Force Final Report

The Association des juristes d’expression française de l’Ontario reviewed the final report from the Articling Task Force and more specifically the majority and the minority proposals.

As expressed in our March 8, 2012 letter, AJEFO firmly believes that articling represents a key component of the Licensing process. It has an essential value for the candidates who seek access to the profession as well as for the community serviced by lawyers, specifically, the French speaking minority of Ontario.

AJEFO supports the majority proposal by which the candidates would have a choice between an articling program and a Law Practice Program (LPP) for trial period of 5 years. However, adding to our general comments in our August 8, 2012 letter regarding the need to prevent creating two categories of candidates as well as taking steps to avoid creating economical barriers to accessing the profession, AJEFO insists that the majority’s proposition raises some major issues, especially regarding the Francophone issue, that must be addressed by the LSUC even before launching the pilot project.

Firstly, the LPP must be offered in French and be of equivalent quality as the English LPP. The providers retained by the LSUC to develop and offer the LPP should be able to ensure the French LPP will be developed at the same time and in collaboration with those who develop the English LPP and not be a mere translation.

Secondly, the costs associated to the development and delivery of a French LPP will be substantial. The LSUC must ensure that the candidates who will chose the French LPP will not be subject to higher costs.

AJEFO appreciates the opportunity to submit its comments.

Sincerely,

Paul Le Vay  
President
TO: Law Society of Upper Canada ("LSUC") Articling Task Force; Benchers of the Law Society

FROM: The Canadian Association of Black Lawyers/ L’Association des Avocats Noirs du Canada

DATE: November 12, 2012


1. This memorandum provides the CABL Articling Committee’s views on behalf of CABL on the Articling Task Force Report entitled Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario.

2. In ideal circumstances the benefits of articling would be available to everyone, however CABL acknowledges that the current system, where hundreds of candidates go without articles and therefore cannot be called to the Bar is not sustainable. However, CABL is of the view that if the LSUC adopts the Majority view expressed in the Articling Task Force Report as motioned to Convocation in October, the result would be an inequitable two-tiered approach to the licensing of lawyers within Ontario, with a preferred tier of articled students and an inferior tier of students enrolled in an LPP of some form. CABL believes that a two-tiered approach would negatively affect those licensing candidates students enrolled in the LPP. It is further believed that, given that black and other equity-seeking groups are currently, in our estimation, overrepresented in the group of students without articles, under the proposed two-tiered system these groups will be even
further disproportionately disadvantaged. CABL also agrees with the concerns identified with respect to the Majority’s Task Force report position, as cited in Banack’s Bencher News, Volume 5, Issue 11, November 6, 2012, that: (a) the cost of the new two tiered licensing process will increase substantially, but will be payable on an equal basis by the LPP candidates and (b) candidates in a lengthy LPP will have a greater challenge supporting themselves during the class and thereafter may be required to work for free at a co-op type placement which may require temporary relocation and possibly be of limited or no value. The inequity is compounded by the fact that some law firms pay licensing costs for their articling students.

3. CABL objects to the Majority position principally due to its enshrining, during the proposed Pilot Project, a two tiered system that will increase the disadvantage faced by black candidates. As a result, CABL prefers the Minority approach as it will allow for all candidates to have a level playing field requiring them all to take the same pathway to the Bar.

4. CABL is especially concerned with the Majority’s reliance upon a yet to be issued request for proposals. The LSUC will be seeking "interested parties" who, for profit, will provide the alternative pathway to licensing. Thus, Convocation will be asked to approve the Majority report without knowing the capacity of outside providers, the intended design of the LPP or the cost. There seems to be wholly insufficient consideration given to date to the outsourcing of the second tier of the licensing process, yet the Majority seems confident that the LPP will be equivalent to that of articling.

5. CABL’s fear is that the Majority approach will result in different access to legal positions once called to the bar. For example, it is common to commence a conversation or interview with a law student by asking where they are going to article or where they articled. To explain that a student couldn’t find articles and had to pay to get called to the Bar by completing the LPP, could have a damaging
effect. Therefore if Convocation decides to adopt the Majority approach, it must, in any event, ensure that such approach includes mechanisms to ensure that there is no negative stigma attached to pursuing an LPP. Those candidates who complete the LPP should *not* be perceived by themselves, their fellow candidates, or the legal community as having pursued an inferior path to the Bar.

6. In an attempt to reduce stigma in the event that the LSUC chooses to proceed with the Majority approach, CABL suggests:

- Making the LPP a clear and desirable option for candidates rather than a last resort requirement for those who fail to secure articles. Candidates should be given the option to elect to partake in the LPP before the end of school based on their intended career path. If some candidates choose the LPP over articles (as opposed to choosing it as a last resort), it would help alleviate the feeling of being “forced” into the program. The LSUC must ensure that the LPP is designed to be attractive to some law students, such as those wishing to become sole practitioners or work in small general practice law firms or in clinics or specialty disciplines. The training could be focused on practical subjects such as marketing/branding, accounting/book keeping, LSUC practice management as well as advanced treatment of sole practitioner staples, such as Family, Wills and Estates, Real Estate, and Criminal law.

- As an added benefit to decreasing stigma, making the LPP a value added option may reduce the number of lawyers being disciplined by better preparing new lawyers for sole practice and small firms. In this regard, the LSUC might also consider making the LPP (or a variant of it) available to newly called lawyers who desire to distinguish themselves by securing advanced training.

- As the challenge of finding a good articling position results in immense pressure on some candidates, feeling forced to complete the LPP, while the
majority of candidates go through traditional articles, will undoubtedly have a damaging psychological effect on candidates. As such, CABL suggests having counseling available to candidates who may require assistance.

- CABL is also concerned that the fee to be charged for the LPP will further disadvantage black candidates. The LPP creates a costly licensing requirement that will in itself amount to another bar to entry to the profession. We believe that equity-seeking candidates make up a significant percentage of those without articles as do candidates from lower income families. These candidates would be the ones least likely to afford the additional cost of the LPP program. There would be a clear advantage for those with articling positions receiving a salary, and perhaps having their articling principals paying for their LPP cost portion, over those who would have to pay to attend the LPP. Accordingly, the fees for the LPP should be fully subsidized not by those who elect articling, but rather by the LSUC through Members’ annual dues in accordance with past practice (i.e. the profession rather than the individual candidates), at least through to the end of the Pilot Project phase.

- CABL also strongly recommends that the LSUC track student placement statistics. More specifically, CABL suggests that all candidates electing articling or the LPP be requested to identify their race, cultural background and whether they are a part of an equity seeking group and if so, which one. The hope is that the LPP can be properly measured and assessed both during and at the completion of the pilot so that any disparate impact can be properly identified.

- CABL also recommends that there be no formal distinction in qualifications of a lawyer called to the Bar, for example there should be no notation identifying LPP or articling in any certification issued to the student on being called to the Bar.
The proposed pilot project is not complete at this time and CABL would ask that the LSUC ensure that it engage in extensive consultation with CABL and other interested parties within the Bar in designing the new program and before finally adopting and implementing a new approach.
November 12, 2012  

Ms. Sophia Sperdakos  
The Law Society of Upper Canada  
130 Queen Street West  
Toronto, M5H 2N6  

Dear Ms. Sperdakos:  

Re: Articling Task Force – “Pathways Report”  

We are pleased to make submissions to Convocation on behalf of the Federation of Asian Canadian Lawyers (“FACL”) in response to the Report released by the Articling Task Force titled “Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario” (the “Pathways Report”). As you know, FACL is a not-for-profit organization representing a diverse coalition of Asian-Canadian legal professionals. Our mandate is to foster advocacy, community involvement, legal scholarship and professional development and promote equity, justice, and opportunity for Asian-Canadian legal professionals and the community. Since the release of the Articling Task Force’s Consultation Report in December 2011, FACL has participated in various discussion forums regarding the work of the Articling Task Force, including meeting and consulting with members of the Treasurer’s Liaison Group and the Equity Advisory Group. The following submissions are made in FACL’s own capacity, and supplement the comments and contributions that we have previously made in the aforementioned forums.

FACL is pleased that the Law Society of Upper Canada is making a serious attempt to address the problem of the shortage of articling positions in Ontario. This shortage raises issues with respect to access to justice, equity, fairness, and professional mobility. FACL’s primary concern throughout has been the disproportionate impact of this state of affairs on equity-seeking individuals and groups. Nevertheless, FACL continues to recognize that improving access to the profession for equity-seeking communities must not result in any potential increased risk to clients and members of the public. Accordingly, FACL supports the recommendations in the Pathways Report of maintaining a robust transitional training component as part of the lawyer licensing regime in Ontario and a necessary requirement for entry into the profession.

However, as stated in our letter dated March 6, 2012, to the Articling Task Force, in considering and designing transitional training alternatives to articling, careful consideration must be given to the potential of creating a tiered or segregated system and a perception of incompetence or inferiority against licensing candidates from equity-seeking communities. We expressed our preference in favour of one standard requirement being applied to all lawyer licensing candidates in order to avoid a perceived or actual hierarchy developing within the profession.
After carefully reviewing and considering the Pathways Report, FACL remains of the view that this concern is real and of pressing import to equity-seeking communities, including our membership. Accordingly, and with great respect to the majority of the Articling Task Force, FACL asks Convocation to reject the recommendation to approve the 5-year pilot project that will allow traditional articling and a new Law Practice Program to operate concurrently.

Instead, FACL supports part of the recommendation of the minority of the Articling Task Force to develop a new comprehensive transitional training program, with objective, measurable standards that assess substantive legal knowledge and business, professional, and ethical issues. While there are a number of details that remain to be fleshed out regarding this model -- including how to ensure that it does not result in replicating the original concerns that precipitated the work of the Articling Task Force -- FACL submits that, in principle, implementing such a program offers a better prospect of resolving the issues with the current system.

Again, as stated in our previous submissions to the Articling Task Force, FACL believes that three important principles must inform the design of any transitional training system in Ontario:

- there must be clear, objective, and fair standards identified in order to properly assess the delivery and results of the transitional training
- considerations of access to justice, equity, and fairness must inform all aspects of the process and substance of the training, including the extent to which the program addresses the legal services needs of low-income Ontarians and/or members of equity-seeking groups
- the program must contribute to fostering an inclusive and diverse profession

Regarding the last point, FACL is concerned that the models recommended by the majority and minority of the Articling Task Force would cost more than the present licensing process. FACL submits that further study is required before implementing such programs to ensure that any proposed increase in costs is properly justified and that appropriate funding solutions -- including scholarships, bursaries, loan forgiveness options, tax credit status, etc. -- will be made available to licensing candidates, particularly those from equity-seeking communities.

In summary, FACL supports the rationale behind, and certain aspects of, the minority’s proposed changes to the licensing regime for lawyers in Ontario. More generally though, we wish to ensure that, in deciding what type of transitional training will be required and designing the specific details thereof, Convocation will pay particular attention to the implications for access to justice, equity, and fairness in the legal profession and for members of the public.

Thank you for considering our submissions.

Sincerely,

Paul Jonathan Saguil and Anna Wong
Directors, on behalf of FACL
EQUITY INITIATIVES DEPARTMENT

TO: Members of the Articling Task Force

CC: Members of the Equity and Aboriginal Issues Committee/Comité sur l’équité et les Affaires Autochtones

FROM: Members of the Aboriginal Working Group

DATE: November 12, 2012


1. Following the meeting of Convocation on October 25, 2012, the Equity and Aboriginal Issues Committee (Equity Committee) invited the Aboriginal Working Group (AWG) to provide feedback on the Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario (“Pathways report”). This memorandum provides AWG's views on the majority and minority positions in the report.

2. The AWG includes a cross-section of approximately 30 Aboriginal lawyers representing First Nations and Métis individuals from both urban as well as rural and remote communities and includes senior members of the Aboriginal bar as well as recent calls.
3. Teleconference meetings were organized and members of the AWG, Aboriginal lawyers and Licensing candidates were invited to participate. Two initial meetings were held on November 2 and 5, 2012. Final feedback on the AWG submission draft was requested from the members by November 7, 2012. The submission was provided to the members of the Equity Committee for its meeting on November 8, 2012.

4. Members of the AWG note that the invitation to provide feedback on the Pathways report to the Equity Committee was distributed to the AWG on October 31. The timeline between October 31 and November 7 was short. As a result, not all members of the AWG were able to respond. This report reflects the views of those who participated in discussions and provided feedback. Other members of the AWG may make submissions directly to the Articling Task Force by the November 12 deadline. Members of the AWG further note that the time-line of October 29 to November 12, 2012 as offered by the Law Society for feedback by the profession and the public, generally, is also short.

5. AWG members understand that their submission was requested regarding the two options outlined in the Pathways report: the majority and minority positions.

6. The members of the AWG understand the majority position as follows:
   a. Change is required for the Licensing program in recognition of the current and continuing shortage of articling positions.
   b. A pilot project will be developed and implemented for the 2014-2015 Licensing program year and will last for a period of 5 years. During the pilot project period, both articling and a Law Practice Program (LPP) will be offered to Licensing candidates at their choice and their cost.
   c. Articling will continue in the same fashion as it is offered now (10 months).
   d. The LPP will run for a period of approximately 8 months in total. Four months will be in-class instruction and 4 months will be an unpaid, co-op placement. The LPP will be run by an external 3rd party provider to be approved and accredited by
the Law Society. The LPP will be provided in Toronto (in English) and Ottawa (in French and English).

e. At the completion of articling or the LPP, all licensing candidates will be required to participate in a final assessment of their legal practice skills in addition to the 2 Licensing exams. This assessment will be conducted in person by Law Society staff.

f. The anticipated cost of Licensing and the LPP will be equalized across all Licensing candidates. An initial estimate of the cost of the Licensing program for all candidates under this pilot program will be $4,350 plus additional costs for the final assessment, estimated at $1,320 per candidate.

g. During the pilot project period, there will be interim evaluations of articling as well as the LPP. These evaluations will collect comprehensive quantitative and qualitative data on both programs; information that is not currently available to the Law Society. A report will be prepared for Convocation’s decision at the end of the 5th year of the pilot project.

7. The members of the AWG understand the minority position as follows:

a. Change is required for the Licensing program in recognition of the current and continuing shortage of articling positions.

b. For a variety of reasons, articling does not currently prepare Licensing candidates for the practice of law in Ontario. Consequently, articling should be abolished in favour of a singular path toward licensing through an LPP.

c. The LPP will last up to 4 months.

d. In terms of assessment of Licensing candidates, the exams will continue. The current 30-hour (4-module) online training course focused on professional responsibility, ethics and practice management could be expanded to assess whether applicants also have the ability to apply their legal skills to practical settings and in various contexts or factual situations, and to provide further learning modules and tests on practice management, the business of law and ethics and professionalism.
e. Formalized mentoring and supervision for lawyers choosing to practice in sole and small-firm environments will be offered post-Licensing. As well, compulsory professional development specifically designed for new licensees will be expanded.

f. The Supplementary Material to the Articling Task Force Final Report\(^1\) estimated that the final cost for the minority proposal would be approximately $4,090 per candidate, including the cost of a ten-week LPP and the exams. If the costs of mentoring are borne by candidates, the fee total would rise to approximately $4,440.

8. AWG members focused their discussion of the majority and minority positions from the perspective of issues and concerns relevant to Aboriginal law students, Licensing candidates and lawyers. Their response is summarized as follows:

9. Currently, the projected licensing fee for all candidates in 2013 is $2,950. This figure includes the cost of application fees, licensing examination fees and call to the bar fees. Compared to the projected 2013 program fee, both the majority and minority position represent a significant increase to the cost of licensing for all Licensing candidates. The potential cost increases in both options will disproportionately affect Aboriginal law students and Licensing candidates.

10. As noted in its original submission, the AWG is also very concerned about the creation of a two-tiered Licensing program, which could result in further marginalization or loss of opportunity for entry into the profession for Aboriginal lawyers. Put simply, as between articling and the LPP, unequal access to professional contacts in the profession in the area where they may choose to practice will create a greater burden on Aboriginal law students or Licensing candidates. This loss of opportunity will affect their ability to enter and stay in the legal profession. The *Aboriginal Bar Consultation Report*\(^2\) findings

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highlight the creation of professional relationships through mentoring and networking as a key factor in the ability of Aboriginal peoples to access and progress within the legal profession, particularly during Licensing and early years of practice.³

11. In support of the majority position, the members of the AWG note the following features of articling that have created advantages for Aboriginal and non-Aboriginal Licensing candidates who wish to pursue legal work in Aboriginal law and/or with Aboriginal clients:
   
a. Articling provides an opportunity for choice along the pathway to licensing to both law students and the lawyers.
   
b. Currently, law schools offer to law students opportunities to begin to make professional contacts and develop practice skills in specific areas of the law. For example, if a law student wishes to focus on legal clinic work, all Ontario law schools provide legal clinic volunteer placements and/or for-credit courses in clinic work. Alternatively, those law students who wish to explore practice experiences in corporate or international law have access to practitioners in the field through clubs, courses and terms abroad. Articling and the choice of where to article offers, with limits admittedly, this same freedom of choice to Licensing candidates.
   
c. The AWG recognizes that there is a shortage of articling positions. However, students still have options for where they article and many choose to be selective about where they article and for which firm or clinic or other legal employer. It is reasonable to assume that a law student who has identified his or her expectations about a future in practising law and who has the opportunity to article in an environment where he or she acquires practical legal skills in keeping with those expectations will create a lawyer who is likely to continue along that practice path. It is the experience of the members of the AWG that their articling experiences were very influential in their future career path choices. If articling is abolished, this opportunity for choice would be taken away.

³ Ibid at 25.
d. From the lawyers’ perspective, working in Aboriginal law and/or the providing legal services to Aboriginal clients is a very specific and specialized practice area. Comparisons of the specialization of Aboriginal practice can be drawn to other highly specialized practice areas, such as environmental, intellectual property, municipal, and health law to name but a few. For this reason, and with a particular focus on the practice of Aboriginal law and/or the provision of legal services to Aboriginal clients, articling presents an opportunity for a lawyer and/or law firm to train future lawyers in the specialized elements of this practice area. There may not be an opportunity for this type of training to occur in law school. Abolition of articling would take this opportunity away from both Licensing candidates and lawyers. Centralization and standardization of training through an LPP only would not guarantee that this specific type of training would be offered in coursework or in a co-op placement.

e. Further, in keeping with the theme of choice, articling also offers the opportunity for Licensing candidates to potentially acquire practical training in a geographic location of their choice. Again, centralization of training through an LPP-only program in Toronto or Ottawa will add additional cost burdens to Licensing candidates related to moving and re-settlement for relatively short periods of time.

12. In relation to the LPP, the members of the AWG identified the following factors as particularly important to Aboriginal law students, Licensing candidates and lawyers, whether the LPP is offered as an alternative to articling or as a stand-alone program. The AWG understands that both positions call for the LPP to be run by an external service provider. The AWG suggests that the following considerations be incorporated into the selection criteria for an external LPP provider:

a. The cost of the program must reflect the reality that many, if not most, law students graduate law school with significant debt. Every effort must be made to maintain the costs of the LPP close to current levels for the Licensing program. Further, the program should be structured such that student loan repayment requirements will not be triggered during the time that candidates attend the LPP or the unpaid co-op placement, depending on the final program format.
b. The majority position supports the equalization of the direct costs of the LPP to students. The members of the AWG suggest that a similar approach be taken in terms of spreading the burden of the cost of the LPP to articling employers. Under the current Licensing program, there is an inequality in the legal profession: those legal employers who do not currently hire articling students benefit from the training provided during articling without bearing the cost of that training when they hire newly licensed lawyers. The members of the AWG suggest that the Law Society consider options for determining how the cost of licensing, whether it be through articling and LPP or through LPP alone, be more equitably distributed across the whole profession.

c. As a core element of the potential viability of the LPP, the content of the program must be a factor that attracts candidates. If the majority position is selected, this factor will reduce the perception that an LPP is a pathway that is something less than articling.

d. The members of the AWG point out that small firm and sole practice is the predominant form of legal practice in Ontario. Taking this fact into consideration, the LPP should offer participants education and training in business development as well as practical opportunities to apply this information in a variety of practice environments.

e. The members of the AWG anticipate that job searching will continue even as participants are completing the LPP. There should be staff, either at the Law Society or through the LPP provider, who will assist candidates in their search for paid co-op placements and/or post-Licensing employment. This staff support should have demonstrated expertise in dealing with the broad cross-section of issues facing LPP participants, particularly issues around equity and diversity.

f. In recognition of the growing national support for Aboriginal law and legal issues as a basic area of competence for all lawyers, Aboriginal law and practice issues must be offered in the curriculum and available through the co-op placement program.

g. To ensure quality of instruction, faculty for the LPP must include practitioners with demonstrated experience in Aboriginal law and/or providing legal services to Aboriginal clients.

h. Consideration should be given to offering the LPP outside the GTA and Ottawa only. Available technology should be harnessed to offer participants the flexibility to study independently. This feature will enable candidates, particularly those who must pay for the program themselves, to work part-time to offset the financial burden.

i. For the majority position, consideration should be given to ensuring that co-op placements are offered in centres outside the GTA and Ottawa. Further, the LPP service provider must be able to demonstrate prior to the start of the program that all participants will have access to a co-op placement and will be able to complete the LPP within the estimated 8-month period. A delay in completion of the LPP program would place additional burdens on participants, increasing the potential that participants will perceive that the LPP is a second-tier path.
1. The Equity Advisory Group (EAG) met on October 30, 2012 to review the Articling Task Force Report entitled *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*. This memorandum provides EAG's views on the majority and minority positions in the report.

2. The EAG is composed of the following individual members: Sandra Yuko Nishikawa (Chair), Paul Jonathan Saguil (Vice-Chair), Sharan K. Basran, Julie Jai, Isfahan Merali, Kirsti Mathers McHenry, Patricia Reilly, Tariq Remtulla, Paul Scotland, Renée Maria Tremblay
3. The EAG is also composed of the following organizational members: Aboriginal Law Students' Association, University of Toronto Faculty of Law, ARCH Disability Law Centre, Association des juristes d'expression française de l'Ontario, Arab Canadian Lawyers Association, Canadian Association of Black Lawyers, Federation of Asian Canadian Lawyers, Hispanic Ontario Lawyers Association, Paralegal Society of Ontario, South Asian Bar Association, Women's Law Association of Ontario, Women’s Equity Advisory Group.

4. It should be noted that individual or organizational members of EAG may make individual submissions to the Articling Task Force.

5. EAG members held the consensual view that the creation of a two-tiered approach would create disproportionate disadvantages for lawyers from equality-seeking communities. If the Law Society adopts an approach that provides different streams to completing the Licensing Process, it should also develop mechanisms to alleviate any stigma or inequality that may be created by such an approach.

6. EAG members were also concerned about the cost of the proposed options. Both the majority and the minority reports indicate that their model would cost significantly more than the cost of the present Licensing Process. The majority option also creates additional concerns, as it exacerbates inequality by advantaging those with articling positions and a salary over those who would have to pay to attend the LPP. Concerns were raised that in addition to paying to attend the LPP, those candidates may be stigmatized and as a result may not have the same access to legal positions once called to the bar. This is combined with the high cost of legal education and high debts.

7. It was also noted that any approach adopted by the Law Society would have to include a transitional approach that is available and of equal quality in French.
Notwithstanding those comments, a number of members were in favour of the majority position. The following reasons were raised:

Members believed that there is value in maintaining articling as it allows candidates to acquire the practical experience necessary to practise as a lawyer. Members also recognized that articling allows candidates to develop relationships in the legal profession that would otherwise be difficult to make. Those relationships are also developed during a critical period in one's career when candidates need the advice of experienced lawyers.

Members noted that the articling experience and the LPP/co-op approach may be more similar than expected and achieve similar results. The LPP approach includes practical experiential learning combined with a practical experience through a coop placement in a law firm or legal organization and the articling process provides practical experiences in a law firm or legal organization context.

The competency examination at the end of articling or the LPP will ensure that candidates that complete either stream are equally competent to enter the legal profession. Members were of the view that, should this approach be adopted, co-op placements should be guaranteed. If that is not the case, the approach would replicate the issues raised by the insufficiency of articling positions.

Members emphasized that one of the factors that makes the majority position attractive is the fact that it is proposed as a pilot program. It will be important, at the end of the pilot, to assess the effectiveness of the program, including any disproportionate negative impact on candidates and lawyers from equality-seeking communities.

A number of participants are in favour of the minority position. The following comments were raised:
14. Those members were particularly concerned with the creation of a two-tiered system. They saw the majority position as taking an already existing two-tiered system and institutionalizing it. They were of the view that there should be only one transitional system: articling or an LPP.

15. Equality-seeking candidates are overly represented in the group of candidates that face challenges in finding articling positions. In addition, members commented that articling does not necessarily lead to good experiences or learning opportunities. As there are no standardized processes to ensure that articling experiences are equally valuable, equality-seeking candidates are often disadvantaged in their articling experiences.
November 12, 2012

VIA E-MAIL TCONWAY@CAVANAGH.CA

Thomas G. Conway, Law Society Treasurer
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Mr. Conway:

RE: ARTICLING TASK FORCE REPORT

On behalf of the Council of Canadian Law Deans, I would like to thank you for taking the time to meet with us at our meeting in Kingston on Friday. I know that my colleagues appreciated the opportunity to discuss the proposed reform of the articling process in Ontario.

As we indicated at our meeting, we have a number of concerns with the proposals currently before the Law Society of Upper Canada. Various law deans have written to you individually through submissions made within the Consultation process, and others may still do so. I do not mean to repeat them here, nor to endorse those submissions as representing the consensus of all Canadian law deans. Rather, I want to emphasize that collectively, as a Council, we are of the view that any reform of the articling process must be consistent with the key values that are at the heart of our mission as leaders of academic institutions. Changes to the articling process must serve the public interest, first and foremost. From this perspective, our shared concerns relate to two dimensions: the impact of the reform on our students, and its impact on our academic programs.

On the first aspect, the Council of Canadian Law Deans invites the LSUC to consider carefully the impact of the proposed reforms on the situation of those graduates of Canadian law schools who are currently most affected by the shortage of articling positions in Ontario. One of the most significant dimensions relates to the inability of students in equity-seeking groups (in particular, racialized students, students with disabilities, and mature students) to gain access to the profession on a merit-based standard. The reform must address this crucial concern. Considerations related to costs and to the relative availability, prestige and value of different points of entry into the profession should be addressed with this concern in mind.

On the second aspect, we are of course mindful of the fact that reform of the articling process in Ontario may and most likely will have an impact on legal education both in Ontario and in other Canadian provinces. The proposals in the report of the Task Force indirectly affect the structure of our programs, and carry the risk of significantly changing the face of legal education in Canada, particularly if the line between the content of university programs and the LSUC’s requirements with respect to experiential learning is blurred. Law schools across Canada have the primary jurisdiction and responsibility to define and deliver university-based legal education. The Council of Canadian Law Deans invites the LSUC to acknowledge the primacy of this jurisdiction in its deliberations on the articling program in Ontario.
Once again, thank you for taking the time to join us in Kingston for this fruitful discussion.

Yours truly,

Bill Flanagan
President, CCLD
Dean of Law
Queen’s University
An Open Letter to the Articling Task Force

November 12, 2012

Tom Conway, Treasurer & Members of the Articling Reform Task Force

Law Society of Upper Canada

An Open Letter on Articling Reform

The Osgoode community has been engaged in the debate around articling reform in a variety of settings. We welcomed you in your role as Chair of the Articling Task Force and Laurie Pawlitza, then Treasurer, in February 2012 for a Town Hall on articling reform. As was apparent on that day and in the months since as the discussion of this issue has unfolded, there is a broad diversity of views at Osgoode on this issue. Osgoode’s Student Caucus has been engaged in developing its position on articling reform this Fall, and other members of the Osgoode community have provided submissions or joined in submissions from other groups and organizations. I have been struck how this issue has sparked passionate input, both about the status quo and how to improve it, and about the respective roles of the Law Society and law schools.

I have waded into the articling reform question twice before through my blog (at http://deansblog.osgoode.yorku.ca/) In these earlier posts, I set out what I take to be the problems that need to be addressed – first, that the status quo of articling as the exclusive gateway to licensing means that qualified law graduates are barred from access to the profession if they cannot find a position (which could be and often is due to the economic vagaries or other challenges which students who need greater supports or are from non-traditional backgrounds might face). While better empirical data is needed in this regard, the Law Society has indicated those unable to find articles include a disproportionately large number of students from equity seeking groups or who are mature students or students with complex personal circumstances. In other words, we now face a two-tier system of access to the profession that is not principled and, in my view, neither desirable nor tenable.

The other mischief on which others have written extensively is the uneven nature of the substantive elements which comprise the current articling requirement. What substantive competencies unite the experience of clerking for the Court of Appeal, working for a sole real estate or family law practitioner, and articling at a 700 lawyer national firm?

In October, the Task Force has brought to Convocation a majority report and minority report. The Task Force has recommended a pilot project that will provide an alternative to articling through a new Law Practice Program (LPP).

The recommendation contemplates a 5 year transitional plan, which provides:

- The pilot project is to begin in the 2014-2015 licensing year;
- The current ten month articling program will continue;
The LPP, expected to be about 8 months long, will be an alternative path for those who do not participate in the traditional articling program;

- A “final assessment” is to be introduced to test that candidates who either articled or took the LPP have the required practice competencies before being licensed;

- The two paths to licensing will be monitored, assessed, compared and a final report for Convocation’s consideration is due by the end of the fifth year.

The minority view called for the end of articling and dismissed the two tier licensing process on the basis that it is unfair and unworkable for the following reasons:

A disproportionate number of person who are unable to obtain articling positions appear to be from equality-seeking groups.

- The Two tier system will create two classes of lawyers with the preferred group being those who articled.
- Candidates in the lengthy LPP must be able to support themselves and thereafter work for free at a co-op type placement which may require temporary relocation and possibly be of limited or no value.
- The cost of the new two tiered licensing process will increase substantially, but will be payable on an equal basis by the LPP candidates who will not be receiving articling income. As well, some law firms pay those costs for their articling students. The pilot project simply puts off needed change;
- The Law Society has numerous prior reports and examples of past bar admission programs and evaluations that could be adapted and provided online.
- The ten month articling program and eight month LPP could be replaced with a comprehensive transitional pre-licensing program of two to three months with objective, measurable standards that assess substantive legal knowledge and business, professional and ethical issues.
- Newly licensed lawyers who practice on their own will be better assisted in their first years through mentoring and other regulatory oversight to ensure public protection.
- Convocation was not provided with a realistic estimate of the significant costs to be incurred to administer two streams of licensing candidates instead of one.

(I am grateful to Larry Banack’s always lively “Bencher News” for this handy snapshot summary of the two proposals).

I believe the shared elements between the majority and minority report are far more significant than the areas which divide the two perspectives. Most importantly, both contemplate addressing the mischief referred to above – if either proposal became reality, articling would no longer be the exclusive gatekeeper for access to the legal profession in Ontario. Second, both proposals acknowledge the need for an objectively verifiable, merit-based transitional program from law school to licensing. Third, both proposals value and support the move at Osgoode and elsewhere to integrate more experiential education in law school in order to enrich our academic program.

That said, each proposal has generated concerns. There is legitimate anxiety accompanying the prospect of a “two-tier” track to licensing – one well-remunerated and well-regarded, the other
leading to greater student debt, uncertain career prospects and stigma. I share the anxiety. I also see this outcome, however, as in no way an inevitable consequence of adopting the majority report. An LPP model, for example, need not provide a pathway only for those unable to obtain articles. LPP providers may work with firms, governments and clinics to blend on-line, in-person, and placements in order to provide a more effective and higher quality training/education than articling now provides, with a variety of funding models in mind. LPPs may create innovative new legal service delivery models for placements which will have a positive impact on access to justice. Far from stigma, LPPs if developed and delivered successfully to respond to the needs of students and the legal community, may grow to overtake articling as the transitional pathway of choice.

With respect to the minority report, there is legitimate anxiety accompanying the prospect of turning our backs on articling and the generations of Canadian lawyers who have benefitted from this mentorship and transition from legal study to legal practice. Adopting the minority report, however, does not preclude the development of new transitional programs where they are warranted, or integrating robust mentoring programs into the early years of practice, particularly for junior lawyers at risk due to the absence of other resources and supports. Further, the same potential innovations discussed above in the context of LPPs could accompany the pre-licensing transitional program envisioned by the minority as a prelude to the licensing exams.

As I have stressed in the past, LSUC should nurture innovation, and I believe both the majority and minority reports share the benefit of creating new space for ideas, new approaches and new solutions to the pathways to practice. The question is whether and how the LSUC should limit or constrain the development of such pathways.

In my view, the role of the LSUC should be to establish the outcomes that candidates need to demonstrate in order to qualify for licensing, and to support opportunities for all qualified candidates to achieve those outcomes. Both articling and its alternatives would have to meet such standards. Determining whether those outcomes are best achieved through articling (or expanding the availability of articling), an LPP or analogous program (involving co-op placements, internships, etc), other types of pre-licensing transitional programs, or initiatives to provide training based on new service delivery models and access to justice goals, etc, seems to me to be a task to which the LSUC is far less well suited.

Beyond establishing what competencies candidates need to demonstrate, the other role that the LSUC must undertake, as noted above, is ensuring access. To regulate the profession in the public interest, I would argue that it is unacceptable for the Law Society to shut the door to those who cannot afford the cost of the pathways to practice. The Law Society also has a leadership role in to play in ensuring pathways to practice are inclusive, fair and address the needs of diverse candidates. I believe the Law Society needs to make a substantial contribution to the start-up costs of this new era, and to ensuring it is a sustainable for those most in need, but how this contribution is funded, in my view, merits more consideration.

Under both proposals, there is a “one-size-fits-all” stage in the progress toward licensing represented by the Bar Admission exams. How graduates move from academic study in law school to these exams, however, need not come through a single cookie-cutter solution. Let as
many flowers bloom as can thrive in this new regulatory environment. I could go on, but fear I have mixed enough metaphors as it is.

Some important voices have called for more study and to delay any decision on articling reform for at least another year. I would support further study and reflection on which pathways to practice will be the most effective, and the most accessible, or as to what lessons we should learn from the Australian or UK experience. I have learned a great deal from following the consultative process in which the Law Society has been engaged and reviewing the various submissions, and there is no doubt more to learn, but I would emphasize that the time to address the mischief we face with the status quo is now. Ideally, I would be keen to see the majority and minority members of the Task Force find sufficient common ground to move forward with a consensus position.

I should add I also endorse the submission coming from the Canadian Council of Law Deans which asks Convocation to focus on the issues of fairness/access for students and the impact of the proposed reforms on law school programs. That submission also underscores the many ways in which this has become a national issue and not simply one with relevance for Ontario.

Sincerely,

Lorne Sossin
Dean
Osgoode Hall Law School
Dear Treasurer and Members of Convocation:

On Thursday November 1, 2012 an Open House was held at uOttawa for members of Faculty to discuss the task force report. Approximately half the faculty, 30 or so, attended. Serious concerns about the majority report emerged, but also a strong commitment to work as partners with the profession to address our mutual concerns for the students and the profession. I summarize the views expressed below:

- There was general acceptance of the difficulties faced by the task force and the profession with regard to articling.
- There was general approval for any initiative that removed articling as a barrier to entry for otherwise qualified applicants.
- Everyone present objected to the majority report either on the grounds that it discriminated against a group of vulnerable students and would create a stigmatizing second tier of new lawyers, or that on the evidence presently available there was no assurance that this would not happen.
- In addition, there was widespread concern that the risks of the pilot project were being allocated to a small and vulnerable group of students.
- More generally there was concern about the considerable cost of the LPP option and how it was proposed to allocate those costs.
- Many members of faculty believe that students from vulnerable minority communities will be disproportionally forced into the LLP stream, and some believed that such an outcome would constitute unlawful discrimination.
- Many fear that the cooperative work placement aspect would direct similar resources away from the law schools where they presently flourish.
- On a more positive note there was enthusiastic support for our faculty turning its mind to how it could improve and expand its already extensive experiential learning offerings.
- There was a genuine willingness to work in partnership with the profession to improve legal education broadly defined, to improve access to the bar and the quality of legal service at the bar, to deliver increased access to justice for citizens of Ontario, and to preserve innovative and critical legal education. The faculty sees a separation of the so-called “academic” and so-called “practical” aspects of legal education as a false dichotomy. They look forward to working with the LSUC as equal partners whatever option is eventually adopted.
- Many present supported the propositions that any law school involvement in LPP should be on a not-for-profit, cost recovery basis, with a strong social justice component.
I hope these remarks are of some assistance.

Bruce Feldthusen
Doyen/Dean Common Law
uOttawa
November 15, 2012

Articling Task Force
c/o Sophia Sperdakos, Policy Counsel
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

Dear Articling Task Force Members:

Re: Articling Task Force Motion
November 22, 2012

We write further to our letter of October 22, 2012, in which we raised concerns about the final report of the Task Force. We requested a deferral of the intended October 25 vote because the complexity and ramifications of the majority’s proposal required more careful consideration and input from all stakeholders, especially students and law schools. We called attention to several issues that were not addressed in the lengthy consultation period (between December 2011 and the release of the Final Report): costs, Australian models and learning objectives. We wish to put our views on the record for consideration on November 22.

Cost. The estimated costs of the Law Practice Program (LPP) were provided for the first time in the Final Report. These costs are very high, and their impact on students needs to be addressed, especially in the context of an articling reform process that was triggered by a concern that the lack of articling positions constituted an inequitable barrier to the profession. How will students of limited means afford the new fees? Will financial aid be available? Further, the costs of the complex evaluation scheme described in the Report were not provided. Will these costs also fall on the shoulders of students?

The various ramifications of cost are best addressed by students; more than anyone they understand the impacts of additional costs on their financial and emotional well-being, and on the kind of legal practice they may ultimately be able to afford to pursue. From our conversations with some of our students, we know that there are already significant economic pressures to pursue very traditional legal practice, rather than public interest work and other social justice careers. Further economic barriers to practice may well exacerbate the disincentives to practice in non-traditional and less lucrative areas of the law. At a time when our Chief Justice, among others, views access to justice for low- and middle-income Canadian communities as in crisis, any disincentives to provide legal services to these communities created by the majority proposal should be of great concern to Benchers on November 22nd.

Australian models. The LPP option appears to be based on very limited investigation of one Australian practical legal training program. As we pointed out in our October letter, there are
various pre-licensing programs in operation in Australia, offered by a variety of third party providers. As we also pointed out, there is some evidence to support the view that the model proposed by the majority can operate as a two-tier model. We called on the majority to conduct better research regarding the strengths and weaknesses of the Australian experiences before transplanting one particular practical legal training model to a different Ontario context. We are not aware of any additional research undertaken since October 22\textsuperscript{nd}. We urge the Task Force to more fully investigate and consider the various models of practical legal training in use in Australia and, for that matter, elsewhere.

**Learning Objectives.** In our earlier letter, we stressed the importance of addressing perhaps the most important question in this reform initiative: what are the objectives of any pre-licensing program, be it traditional articles or a third-party LPP? Neither the Consultation Report nor the Final Report focuses on the particular skills and competencies that must be mastered by a graduate before being licensed. It is not enough to refer to the “Articling Goals and Objectives” that for years have been provided by the LSUC to articling principals. These goals and objectives have never been tested or assessed. Many licensed lawyers practising today were not even exposed to the lengthy list of learning objectives contained in this document. The list is impractical on its face and there are no principled reasons to retain it. How, then, can Benchers be reasonably expected to vote in support of a two-stream system that unrealistically purports to achieve those objectives? And if not those objectives, which ones?

In conclusion, we suggest that the lack of clarity around learning objectives, the need for research about the strengths and weaknesses of Australian models, and uncertainty about the distribution and impacts of cost, are reasons enough not to vote for the majority proposal at this time, until better information is available.

Sincerely,

Camille Cameron  
Dean, Windsor Law School  
for the Academic Planning Committee
November 12, 2012

Sophia Sperdakos
Policy Counsel, Policy and Tribunals
130 Queen Street West
The Law Society of Upper Canada
Osgoode Hall
Toronto, Ontario M5H 2N6

RE: Articling Task Force Final Report Comments

Dear Ms. Sperdakos,

We write to you in our capacity as the Students’ Law Society at the University of Toronto, Faculty of Law. The Students’ Law Society, as elected representatives, advocates on behalf of students at the University of Toronto, Faculty of Law. We have reviewed the final report of the Articling Task Force and have the following comments.

First, we respectfully request the Articling Task Force to postpone a determination on this issue beyond November 22, 2012. Throughout the articling review, the Articling Task Force has demonstrated its commitment to a transparent and fair decision making process that included consultation with students across Ontario. The final report received by Convocation on October 25, 2012 includes new and material information. We are deeply concerned that students, a most impacted stakeholder group in the proposed reform, have not received the adequate time and opportunity to review and be consulted on the proposals found in the final report. Accordingly, we ask the Law Society to postpone its determination on this issue to January, in order to allow more time for students to provide feedback.

Second, if the majority report’s recommendation were to be implemented, we respectfully request the Articling Task Force to seek financial contribution from the membership of the Law Society of Upper Canada to defray the significant increased costs to licensing candidates. The current articling crisis is a systemic problem and ought to be the shared responsibility of the profession. Furthermore, students who are about to enter the legal profession are not as well positioned financially as the collective membership of the Law Society of Upper Canada to bear the burden of the proposed reform. Accordingly, we ask the Law Society to seek financial contribution from members of the Law Society of Upper Canada to affect a more equitable funding structure.

Thank you for considering our submission. Please do not hesitate to contact the Students’ Law Society at sls.law@utoronto.ca should you have any questions.

Sincerely,

Students’ Law Society
University of Toronto
Executives
Albert Lin, President
Sierra Yates Robart, Vice-President (Student Affairs and Governance)
Danielle Glatt, Vice-President (Social Affairs)
Re: Submission to the Law Society of Upper Canada in response to the *Pathways Report*

November 12, 2012

**EXECUTIVE SUMMARY**

This memorandum is submitted on behalf of the Student Caucus of Faculty Council of Osgoode Hall Law School - an elected body of JD students. Student Caucus is the administrative and academic planning arm of Osgoode Hall Law School’s student government, the Legal and Literary Society. In drafting this response, Student Caucus consulted the Osgoode student body and has benefited from their written submissions. Unless otherwise indicated, italicized quotes contained in this document are taken from the submissions of Osgoode JD students.

With respect, before outlining our response to the *Pathways Report*, we feel it is important to note the following:

1. Benchers are removed from the lived experiences, needs, and concerns of law students in today’s economic climate. Because law students are critical stakeholders in this debate and are able to give unique insights by virtue of their position, student input should be closely considered in the LSUC’s deliberations.

2. The discussion to date appears to be focused on the experience of larger firms and has not adequately considered practice areas that serve vulnerable communities, including the family, criminal, and immigration law bars. Both the majority and Minority Proposals put these communities at increased risk.

**Overall, feedback from Osgoode JD students indicates an overwhelming opposition to the Majority Proposal.** While students agree that the status quo is untenable, and that the current licensing system is not “transparent, objective, impartial or fair”,¹ we have many concerns regarding the Majority’s recommended two-streamed, two-tiered solution. These concerns include, but are not limited to, the following:

- **The Majority Proposal will create a steep divide between students who article and students who are licensed through the LPP, particularly disadvantaging members of equity seeking groups.**

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“As a member of the 2014 class, I object to being a guinea pig for an untested second-track process in lieu of articling. This process is grossly unfair and prejudices future employers against any students in this track.”

“All the [LSUC and legal profession] diversity talk is merely disingenuous and self-congratulatory. This is a proposal for a two-tiered system, which will perpetuate basic inequities in the legal profession.”

- The Majority Proposal increases licensing fees for all students, adding more debt to an already historically debt-burdened cohort of law school graduates.

“There are brutal hidden costs in this proposed regime. It forces already debt ridden students to stare down another 8 months of extraordinary costs: LPP tuition PLUS moving costs for non GTA/Ottawa students PLUS the cost of living in either Toronto or Ottawa for that time without work. It’s easily another $20,000 to $25,000 on top of what, for many, is around $100,000 [off] debt.”

- The Majority Proposal only postpones a conversation that addresses the root causes of the articling crisis: the unwillingness or inability of small firms and sole practitioners to hire articling students, unsustainable enrollment increases at Canadian law schools, and the steady influx of foreign-trained NCA candidates to Ontario.

“I fail to see any benefit from this proposition. It ignores the real problems - articling as an unsustainable practice, excessive law school enrolment numbers - and just shifts the solution to more student debt. The hidden costs of adding an effective fourth year to law school are profound and reprehensible in the current cost environment of entry to the profession.”

The Minority Proposal is not ideal. However, it is preferable to the Majority's. It is the opinion of Student Caucus, that the Minority Proposal adequately protects the public while providing a level playing field for licensing candidates, furthering the profession's commitment to access to justice and equity. As a result, we respectfully request that the LSUC adopt the Minority Proposal.

The remainder of this memorandum closely examines elements of the Majority and Minority Proposals and identifies additional related concerns of Student Caucus.
A) THE MAJORITY PROPOSAL

Unfavourable Aspects of the Majority Proposal

1. A two-track licensing system is, in fact, two-tiered and inequitable.

As recognized by the Majority, a separate but equal approach to licensing only serves to perpetuate systemic inequalities. One student, echoing the position of many, remarked to Student Caucus that “the LPP will create a 2-tier articling system whereby equally qualified candidates will undoubtedly experience employer discrimination based on which training program they attend.” The potential stigmatization of LPP-licensed lawyers will divide the profession and disadvantage many new calls.

Furthermore, the Majority approach will have disproportionately negative effects on licensing candidates who are members of equity seeking groups – students who are already disadvantaged under the current licensing regime. One student noted that the Majority Proposal is a two-tiered system “which will perpetuate basic inequities in the legal profession.” The same student opined that the reputation of the Law Society would suffer “when a disproportionate number of LPP students are found to be minorities, racialized groups, etc.” The LPP will perpetuate the systemic disadvantages that already face students from equity seeking groups. This approach unfairly stigmatizes members of historically disadvantaged groups in the infancy of their careers for failing to secure paid articling positions.

2. Increasing licensing fees will magnify socio-economic barriers to entry into the profession.

Students are entering and leaving law school with historically high levels of debt. Increasing licensing fees increases student debt which, in turn, reduces diversity in the legal profession and restricts access to justice by increasing the downstream cost of legal services. Furthermore, additional fees negatively affect students considering a career in social justice: “Most of us are in debt. Personally, I’m going into social law, where I won’t make a lot of money. The thought of supporting this program is frustrating to me.” Despite advances in the remote delivery of curriculum, students remain concerned about possible relocation costs if the LPP is offered only in Toronto and Ottawa.

Students are divided as to whether or not the costs of the LPP should be borne by all candidates entering the licensing process. Some believe it is unacceptable to expect students who have secured articling positions to pay for the LPP, while others agree that the costs of licensing should be shared by all candidates, particularly those who are gainfully employed and best able to pay. This difference of opinion further suggests that a two-tiered licensing system will divide the profession and stigmatize students unable to secure an articling position.

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2 Ibid at para 85.
3. The Majority approach postpones or defers dealing with the underlying causes of the articling crisis.

Articling reform must seek to minimize the racialized, gendered, and socio-economic inequalities and inequities that are underlying and prevalent factors in the articling crisis. Law school and the licensing process should be student-centric – focusing on student learning and skills-development – rather than increasing enrollment solely for the purpose of growing law schools. The skills acquired during articling can be developed at law school through the implementation of mandatory practical and experiential learning programs. These programs provide important hands-on experiences and help ensure that new calls are confident and competent lawyers.

There is reason to believe that firms, operating as businesses, will have little incentive to hire articling students if the LPP existed as an alternative. This would increase the number of students entering the LPP, which would further increase licensing fees.

Furthermore, the Majority fails to address most of the problems it identified with the articling system, a system it recommends continuing.

4. It is unclear how those who are licensed through the LPP will be received if they decide to practice in a jurisdiction outside of Ontario.

Students are concerned that legal professions outside Ontario might not recognize the training candidates receive through the LPP.

Favourable Aspects of the Majority Proposal

The LPP would alleviate students’ fears of being unable to become licensed after 3 years of legal education. The LPP would ensure that all law school graduates are able to practice law in Ontario, assuming other licensing requirements are met.

B) THE MINORITY PROPOSAL

Favourable Aspects of the Minority Proposal

1. The 2-3 month pre-licensing program levels the playing field for all law students.

The one-track licensing process advanced by the Minority ensures that all students start their careers on an equal footing. The Minority Proposal eliminates the prejudicial effect a two-tiered

\[\text{\textsuperscript{3} Ibid at para 66.}\]}
licensing system might have on equity seeking groups. The effect of the Minority Proposal is to further the legal profession's commitment to equity and access to justice.

2. The Minority Proposal puts less financial strain on students.

Unlike the Majority, the Minority Proposal does not download the cost of a solution to the articling crisis onto students. The proposed pre-licensing program is shorter than the proposed 8-month LPP, allowing students to start their careers earlier. A pre-licensing program would not require students to relocate to Toronto or Ottawa, further reducing costs. In passing, law societies in many common law jurisdictions – like in the United States, where the JD is also a second-entry degree – are able to protect the public without relying on a 10-month articling program.

Unfavourable Aspects of the Minority Proposal

Students are concerned that if articling were abolished it might reduce the willingness of law firms to pay students' licensing fees. Abolishing articling would reduce mentoring and experiential education opportunities for students. However, as already mentioned, lawyering experiences can, and should, be delivered through the law school curriculum.

C) SUPPLEMENTAL POINTS AND CONCERNS

1. Insufficient time to respond to the October 25, 2012 report

Although the Law Society should be credited for webcasting its most recent convocation, given that students are critical stakeholders in this debate, students felt that there has been inadequate time for consultation. The November 12, 2012 deadline to submit responses to the Pathways Report and October convocation left little time to solicit feedback from students, especially as this season in the academic year includes reading week for upper year students, in-firm interviews, and exam preparation. Irrespective of the outcome of the November 22, 2012 convocation, students believe that further options should be considered and request a voice in deliberations and the implementation of any new program.

2. Law school enrollment and international accreditation

While it is understood that law school enrollment is beyond the regulatory powers of the LSUC, students believe this issue must be revisited. The LSUC, in its broader management of the profession, should open a dialogue with law schools to determine what enrollment numbers are sustainable – an issue at the heart of the articling crisis.

Secondly, it may be in the interest of the profession to analyze the actual impact of foreign-trained law students coming to Ontario at the early stages of their careers. Can the number of entry-level NCA candidates be managed without restricting access for experienced foreign-trained lawyers immigrating to Canada?
These are larger issues that the LSUC appears unwilling to address. However, in our opinion, these realities must be faced if the articling crisis in Ontario is to be fully resolved.

3. Alternative ways to pay for the licensing of lawyers

Students recognize that implementing a new licensing regime will involve many risks and, possibly, new costs. The question is, as always, who should pay? Could licensing fees be carried by a combination of students and all practicing lawyers? Expanding the base of payers would have the advantage of lowering costs for those least able to pay – highly indebted students. Again, this alternative was not sufficiently considered in the Pathways Report.

CONCLUSION

The Majority Proposal should be rejected because it creates a two-tiered licensing system – separate, but not equal. Furthermore, it adds financial stress to already indebted students in a way that will reduce diversity in the legal profession and restrict access to justice and lawyering in the public interest. Finally, because students are critical stakeholders in this debate and have a unique and vital perspective, the LSUC is urged to consider student responses carefully when deciding the future of the legal profession in an area that directly impacts emerging and aspiring lawyers.
MEMBERS OF THE 2012-2013 STUDENT CAUCUS

Thomas Wilson – Chair
James Stevenson – Vice Chair
Oyinkan Akinyele – Communications Director
Elena Iosef – President of the Legal and Literary Society
Leeanne Footman – Vice-President Internal, Legal and Literary Society
Camille Dunbar – Equity Officer
Jenn Aubrey – 3L Representative
Kasia Kmiec – 3L Representative
Martin Hui – 2L Representative
Jeffrey Mitchell – 2L Representative
Melanie Thomas – 2L Representative
Yuxi Yu – 2L Representative
Davina Finn – 1L Representative
Jeffrey Hernaez – 1L Representative
Yousaf Khan – 2L Representative
Sabrina Lyon – 1L Representative
Semhar Woldai – 1L Representative
As a current Osgoode Hall law student I would like to express my concern re: the proposal for reform that would see licensing fees increased. After completing an undergraduate degree without financial support, the debt I will have incurred after completing my JD/MBA will be approximately $150,000.

I feel that increasing costs may lead more students to feel pressured to practice law in the more lucrative corporate setting rather than applying their degree to perhaps less lucrative areas such as human rights. I feel that this would be a detriment to the justice of our country.

Ultimately, I think there must be a solution that does not cost the average student more debt on top of an already intimidating load.

Best regards,

Christian Ferraro
(Osgoode Hall Law School)
To whom it may concern,

I am a 2nd year law student. I vehemently oppose the majority proposal from the task force. Mainly because for students graduating with a significant debt load, the LPP poses a crippling threat. We cannot afford to finance further education after law school. I also agree with the minority's perspective that the majority proposal would create a two-tiered system.

Though I think the minority's proposal is also problematic, I would support it as a better alternative to the majority's proposal.

Best,
Erica Jean Keating
Good day,

After considering the topic I was wondering if the possible would be at all possible:

Since the experiences of articling students vary so widely, depending on the firm they article with, and the firms are paying for articling, why not consider the following:
1. Remove articling from the requirement to qualify as a lawyer.
2. Allow firms who would like to continue accepting and training articling students, make articling a part of their probationary period- thus incoming employees have to complete a probationary period of articling before being hired.
3. Allow for an incrementally increasing bar association fee for new lawyers that increases to the regular admission fee over the course of 2 years while they establish their practices or develop as lawyers (loan repayment). In year 3, they pay a surplus fee (regular admission + 50%) that gets reduced to the regular rate in year 4 and beyond.

This would remove the mandatory element (that seems to be creating the 'crisis') but still keep the firms happy by allowing them to still screen the work of their potential candidates. Additionally the fees paid to the LSUC would be not be so heavily impacted.

Hopefully this makes sense

Regards,

Mark Lawrence
To: "articlingdiscussion@lsuc.on.ca" <articlingdiscussion@lsuc.on.ca>
From: Lee Nur
Date: 10/25/2012 01:11PM
Subject: Articling Discussion

Dear Convocation:

I endorse the minority view from the Articling Task Force, because it doesn't further perpetuate the disadvantages among articling students, in particular visible minority law students. Furthermore, the Report does not address the root causes of discrimination in terms of the selection process. The LSUC needs to provide an oversight mechanism to review the selection process for articling.

As a visible minority law student, I experienced a lot of problems securing an articling position notwithstanding my law school grades and extra-curricular activities. Unfortunately, I believe that some of those problems were rooted in discriminatory hiring practices contrary to the Human Rights Code and the Rules of Professional Conduct. As you are aware, the articling selection process is not a meritocracy and many qualified students are not hired or even selected for interviews. Conversely, many unqualified law students obtain articling positions at coveted firms based on nepotism or referrals from family friends. This silent practice undermines the integrity of the legal profession and perpetuates a form of systemic discrimination where the more socially advantaged students receive added benefits while the less socially advantaged students are further disadvantaged.

Based on my experiences and the experiences of many of my colleagues, the screening/selection phase of the articling process by prospective law firms and government departments is a large contributor to the problems facing visible minority law students and other disadvantaged law students. For example, when law students submit articling applications, a proxy indicator of someone's ethnic origin can be inferred by their name. Similarly, a proxy indicator of someone's age can be inferred based on the year of their undergraduate graduation (which is indicated on their academic transcript).

However, because of the nature of the legal profession (which is rooted in reputation), it is extremely risky professionally for law students, particularly visible minority law students, to either file a human rights or Law Society complaint against a prospective legal employer. Therefore, the Law Society of Upper Canada has to ensure that law firms and government departments are abiding by their obligations to hire articling students in a manner that is consistent with the Code and the Rules. From my understanding, the Law Society does not audit or oversee the selection process for articling students. This has to change.

One solution would be to require law schools to: 1) collect all articling applications on behalf of their students, 2) redact the identifiable information that would disclose a law student's ethnicity or age from their applications and 3) distribute those applications to the students' chosen prospective employer(s). That system could alleviate the current form of systemic discrimination that affects many law students because prospective employers would not have access to this identifiable information (name, date of graduation etc.) until the prospective employer selects the student for an interview.

Thanks

Lee Nur
The majority opinion of the Law Society of Upper Canada does not appear in any discernable way a solution to the articling crisis in Ontario. It is plain that instituting the alternative to articling – the Law Practice Program (LPP) – could have two direct and foreseeable consequences:

1) administering the program in Toronto and Ottawa (two already saturated markets) could have the effect of further limiting the availability of articling positions and

2) increasing the cost of admission to the bar by almost double adds further inequity by burdening those students from socio-economic backgrounds that are not able to add a further period of idleness following what is already the financially crippling process of attending law school.

While the intent of the LPP is to theoretically create more opportunities in the social justice sector, the reality is that increasing the cost of licensing (or any part of the process of becoming a lawyer) will negatively impact those who wish to pursue a career in social justice. The notion that increasing the cost of the program or extending the amount of time that an individual is precluded from potentially making any salary reflects an extremely poor understanding of the burden borne by those from a diversity of socio-economic backgrounds.

The LPP still requires that potential licensees shoulder the ultimate burden of finding their own co-op placement, which would presumably be as difficult as finding a place to article while also swallowing the cost of administering the program. The proposal does not address in any way the real problem of licensees finding paid work after they are finished their training.

I appreciate the opportunity to respond to the proposal put forward by the Law Society of Upper Canada.

Sincerely,

Robyn Schleihauf
To whom it may concern:

I apologize that this is slightly past the deadline, but I request that you hear my response.

After reading the highlights of the Pathways Report and discussing it with others, here are my thoughts on the subject:

(1) The proposal does not provide data supporting its conclusions;
(2) The proposal does not address equity concerns; and
(3) The proposal does not present an adequate alternative.

(1) Data

The Report provides no breakdown of data for analysis relating to equity, the articling process, success rates, etc.

Regarding equity: what percentage of minority students apply to law school, make it into law school, through law school, through articling/the bar, through associate-level and then on to partner or higher up in the government? Probably no one has this data and it might be related to the fact that not enough people think the disproportionate number of minorities participating in the legal world (nevermind the upper echelons) problematic. Government data certainly reveals a poor representation of females and minorities anywhere near the top. One has to observe - merely from the list of hurdles above - that at each hurdle, minorities and often females fall behind their white, male counterparts.

Regarding the process: what are the success rates of students who take other types of assessments? What problems do those law societies report or what industry critiques are there in those systems? Why were other disciplines left unexamined seeing as how many of them have placement requirements as well (teaching, engineering, trades, social work, etc.)? Certainly we could learn things from examining how those systems work. Even though we have examined many systems, where is the data from students about whether the process prepared them for law? What did articling enable them to do? For those who have become sole practitioners particularly, what kind of problems did they face in solo practice that articling or law school might have addressed?

The problem is not just the lack of articling placements, the problem is the lack of monitoring and evaluating that goes on all the way through. That LSUC has created a Task Force now to get limited feedback on a crisis we are already in the middle of sheds some light on the deeper issue at hand. Information drives decisions - decisions to change, to create, to improve - and we cannot do those things without information. Why is no data provided? Certainly the success of articling programs, law schools, and lawyers matters to LSUC and to the legal world, so why have we not taken steps to create a more comprehensive evaluation scheme in order to improve the system (for surely we can always improve).
Trying to make a decision now about which we have little information is not advisable. Why should we overhaul an entire system when we have only a patchwork of feedback with little in terms of hard data to back up our estimates of future success of entirely different systems? Of course, the push will be for immediate action, but the classroom refrain that "hard cases make bad law" can apply equally to other decisions - we want articling placements and we want them now, but where is the data that says this will work better and that the articling students hard done by now will be better off at the end of this? Concerning especially as this report comes on the heels of the announcement of a new law school in Ontario, one that wants to engage more with Aboriginal students.

(2) Equity Concerns

As a white student, I often find myself missing things or being challenged by others because of my privileged status. To illustrate my point, I often tell people about the time I needed to buy makeup for a diverse group of young girls for a party we were having. I went to a Walmart in a very diverse area in order to make my purchase. There was only white makeup. Five years ago, in Scarborough, in Malvern, at Walmart, there was only white makeup. I do not believe this has changed. Even though it was a small thing, this upset me, and made me wonder what other things I missed simply because I never needed to see them.

We have many people offering ideas about law school and articling - but we also have conflicting stories told by students, lawyers and recruiters about how standards today are outrageous compared to what they were, how articling programs are more diverse and can range in difficulty and requirements and how law schools offer much more in terms of practical skills training. I spoke with an articling student who informed me she did much more substantive work than her counterparts at bigger firms and she told me she was just about to do an incorporation on her own. Working for the Queen's Business Law Clinic, I had already completed six business and non-profit incorporations. Queen's University alone has six clinical programs in business, correctional, criminal and administrative, elder, and family law which allow students to perform incorporations, write contracts, represent prisoners and legal aid clients before tribunals or in court, draft claims, draft wills, consult on legal issues for large corporate projects, and to shadow counsel, judges or other organizations. Opportunities also abound for clinical externships and creativity in putting together programs with outside organizations. I know other schools have clinical programs in tax and environmental law, and others likely exist beyond that.

Since these programs clearly demonstrate law schools' abilities to provide the necessary clinical training to students - at least on a smaller scale - we should look back to the articling process. As it was designed back when law schools simply provided theory, we might say that law schools already share this process with firms, and it is not so much a matter of the necessity of articling, as a matter of HOW to structure the clinical practice of students. Lawyers say that students need to have experience, but most of the big firms hire summer students - some even in first year. So experience is ultimately not that important for firms to hire people. Ultimately, this means that law firms have little to no stake in the articling process as they will hire and train their employees regardless. The critical focus here is on students who will not work at big firms but as sole practitioners - so it is their needs that should be at the forefront of the discussion.
Law School and the Job Application Process

As outlined above, the practice of law presents many hurdles to students. Articling constitutes a large one. Throughout our school careers, each new "process" or "stage" divides students into the successful and the unsuccessful, with the status and opportunities that flow from each.

To give this some context, allow me to use my own and others' stories as an example. Throughout law school, I have worked in order to help pay for school. I come from a single-parent family, and I have paid at least 50% of my costs of law school, in addition to paying for my entire undergraduate degree from working during the summer and during the year. I am on track to be debt-free by the time I finish articling, even though I spent one summer doing an internship.

But more broadly, undergraduate degrees in Canada cost between $6,000/year and $14,000/year (higher for some specialized programs or private schools). Ontario law school tuition ranges from $8,000/year up to $26,000/year. Over the three years I was in law school, tuition at my school rose by about 20%, and that number is even higher at other schools. Of course, the pay offered on NALP profiles stayed the same, and Ontario government wages are facing freezes, cutbacks and reduced pension contributions. Undergraduate tuition has also risen by about 20% (at York, where I attended), although that number is much smaller in terms of dollars. (This is in STARK contrast to the tuition Quebec students pay - students who are not even required to have an undergraduate degree - which can start as low as $1,500/year.) Add to this books, rent, food, relocation expenses, travel and exchange programs for much higher totals (all of which are also increasing with static pay at firms, the government and the law school).

Now, to give even more context, an average law school student needs 90 credits to graduate, or to take roughly 5 courses per semester per year. I have heard it said that for every hour spent in class, students are supposed to spend between two and three hours studying material and preparing for class. A liberal estimate would put students at 45 hours of studying per week, if they are not doing a heavier course load. No student will get a job without extracurriculars. So students sign up for something, generally requiring between 3 and 5 hours of commitment per week. So we are at 50 hours. If you are me, you still need to work to afford school, so add in another 3 to 5 hours of part-time shifts on campus to take us to 55 hours. Then you join an intramurals team or drop in for 2 or 3 more hours in order to stay healthy. We are now at 58 hours. Other interesting things can come up like conferences, workshops, one-credit courses of interest, or other activities on the side.

So a law school student is expected to put in something like 50 hours per week doing essential activities, and up to another 10 doing activities essential for health and finances. In addition to this, we have to start adding in job applications.

Fortunately, with the online system, the preparation of applications does not require printing, envelopes, stamps, etc. anymore. But I find that a decent cover letter requires around 30 minutes to craft (and this is using a template of my cover letters which I have already). The resumes
generally stay the same, but applications can require up to 3 reference names or letters, one or two writing samples (usually of at least 500 words), lists of courses, transcripts of all your schools and exchange programs (sometimes official, mostly copies), and occasionally other documents. Altogether, creating a package can take between 45 minutes to an hour. There are about 10 firms and a couple other positions in first year to apply for. I sent out around 20 (20 hours). OCIs usually see between 30 and 50 firms participate. I did something like 35 applications (35 hours). Interviews and preparation require much of the OCI day and at least a few hours per firm, including speaking with people at the firm so they know who you are, and reviewing the (often challenging) websites trying to glean information. If you have 2 interviews, you might lose 5 hours on interview day and 8-10 hours preparing for those interviews. Government interviews add at least another 2 - 5 hours in preparation for the substantive law questions, reading and preparing and discussing your case in advance, etc. So a liberal estimate might bring us to 25 hours here.

If you receive an in-firm interview, you must travel to the firms. This could require almost no time to up to a 10-hour roundtrip if you are coming from an Ontario law school (bus fare and TTC fare), potentially a hotel, food during the day as it is hard to carry around all of your things and food (if you have time to eat), and you lose between 2 to 5 days on interviews. You might get some work done in between preparing for interviews depending on how many you have. We could ballpark this at 30 hours (10 hour travel, 2x2 hour interviews, a 2 hour dinner, 2 hour travel between events and interviews, 12 hours preparation or other lost time). Worst case scenario, you do not receive a job at the end of this. Occasionally, firms even engage in misconduct, which can make the process further upsetting. You might then apply to jobs throughout the year. Those can be as many as 50. This is 50 more hours.

Now repeat all of this with articling applications, except double or even triple the amount of firms. And many students apply to different cities (as many as three or four different major cities or even smaller ones). This multiplies the time and applications even further. Articling applications could take a student to 100 hours for applications alone because double checking has to be done on all the information and it is difficult to communicate with that many firms and not constantly have to review information again. Clerkship applications also factor in and take much longer to do (2-5 hours per, depending on whether you have all the requirements already), along with the interview processes sometimes requiring travel during the school year as well. Interviews for articling might require 50-100 hours including preparation, travel and other events. Clerkship applications and interviews could add another 25 hours of preparation and 10-50 hours depending on which court, how many interviews and where they take place. Worst case scenario is this process is not successful, and the whole final year is spent doing more applications. This could amount to another 50+ hours.

So for a law student who is at the end of law school who has been unsuccessful in every avenue of finding a position, the totals are:

L1: 20 hours (general applicationss) + firm tours (time not included in total)
L2: 35 hours (OCI applicationss) + 25 hours (first round) + 30 hours (second round) + 50 hours (other applications) + 40 hours (clerkships) + firm tours (time not included in total)
L3: 100 hours (Toronto articling applications) + 50 hours (interviews) + 50 hours (more applications) + / - hours depending on the amount of interviews, amount of travel (which law school), and additional cities for each year/process

Altogether, a student who has not found an articling job has likely spent **400 HOURS** throughout law school looking for work, unsuccessfully (sometimes we find summer work and simply find no articling position). This is more than two semesters worth of classes in law school spent finding a job. And that is JUST Toronto and various other Ontario locations. That does not show the work done by students who apply to Vancouver, Calgary or Ottawa - some processes even occur at the same time or within a relatively short time of each other.

I want you to understand how taxing this is! Finding a job in law school can amount to more than an entire year's worth of school done "on the side" of full-time school. I hope this helps you see why students are upset by this and why this is such a problem. Former law students may not be able to appreciate the sheer amount of work that goes into all of these applications, or the amount of applications that students do if they are not one of the few who obtain first or second year employment at a firm which keeps them on. These students may have spent 20 or 50 hours finding a job, and then have no pressure of grades to worry about, little financial pressures, and no other applications to do unless they want to move somewhere else. And, again, this is IN ADDITION TO the 55-60 hours a week already expected of law students (and the $20,000-$40,000 undergraduate and $50,000-$100,000 law school tuition). This says nothing of the stress, anxiety and status issues that play into who gets a "Bay Street" job and who will end up jobless.

Again, if we are concerned with equity, we need to be concerned with the processes of applying to law school, law schools and how they treat different groups, the application process, how employers treat different groups and look at everything together. It is nearly impossible to make any analysis about the equity of all of these without any statistical data and without the context I have just provided (which the report does not provide).

**3) Alternative to Current System**

As I stated in some of my original comments to the Task Force, much could be gained by a restructuring of this process. But there is also room for other parties to lose, and I fear that the students do not have the loudest voice in this arena. A dual-system is a big compromise - it provides for the firms who want student labour, and it solves the needs of other students. It also makes the Professional Development field very happy as they now have a new captive market. But it only nods a head to the deep-seated inequities already apparent in the law school system (if only we had information on them) and otherwise ignores it. So we find that the firms win, private institutions win, successful students win and other students, particularly minorities, lose (the ones the Task Force is designed to assist).

As a student who has not taken a very traditional path through law school, I have seen the politics of law school unfold from a slightly different angle. I saw the struggles of students in
upper years, I hear from friends who now practice, I see those in my own class articling or not articling, and I see those heading into their articles at the end of this year (as I will myself). Based on my own observations, those left at the end of the articling process were and are often racialized minorities (which means that the ratio of minorities to white students is drastically higher than the ratio within the student population), and the articling students not hired back or the ones who leave their firms at the end of articling are more likely minorities, as are those still searching for work or setting up on their own. But again, we have no data on that, and we have no reason to think that this system will not make the gap even more obvious and political.

On the contrary, a clinical system designed by schools for the benefit of the community would benefit students, institutions, the community, the disadvantaged, and the legal system. Students would gain valuable clinical experience, as well as a greater knowledge of their school's community, the issues that it faces along with individuals they serve and the problems in the system itself. This critical insight helps to lay the groundwork for a lawyer in her career, and encourages a culture of volunteerism and giving back to the community - as the lack of that is a critique often levelled at lawyers. It would relieve students of having to find a job which causes marks and morale to suffer all the way through school, and it relieves LSUC of having to referee all of the job processes through all the different years of law school. It creates a stream-lined process which all students could apply to after the practical period and relieves firms of a lot of effort they spend on recruiting at different levels at different times of year. It also benefits students by giving them a taste of what they want to do as a lawyer which can help to legitimize options with smaller firms who have a hard time competing with larger firms for students the way things are now.

This system benefits the schools as they could use student labour, and they could administer the program at a low-cost or even low-wage rate through grants (instead of private institutions doing this for profit). It might also mean firm involvement and a better connection between firms and schools as many firms sponsor these programs and provide review counsel for the work. I believe some jurisdictions require pro bono hours from practicing lawyers every year - this could be a way to underpin the system and contribute to its success, as well as ensuring that our lawyers are in the habit of giving back to schools and their communities.

This system benefits the community and the disadvantaged by creating a stronger connection between them and the students as well as the university institution. This kind of a connection can spark all kinds of creativity and support good work, enhancing efficiency of small businesses and non-profits, and assisting those who need help, which can relieve some of the demand for legal services from the government's legal aid office and duty counsel. I have seen the positive impact of my own clinical work and nothing can describe how wonderful it is to assist someone in receiving the benefits they are rightfully owed, or in helping a client build her dream organization.

This system would also bring "goodwill" to the perception of the legal system in Ontario. It would show that corporate interests were not the only factor in decision-making, but would demonstrate our interest in connecting communities, in investing in students, in creating equality, in promoting volunteerism and in educating lawyers not just in law but in justice and fairness. How can we do that in a system unconcerned with fairness and riddled with inequities?
In Summary

In conclusion, I would state that I think the fundamental issues at play are a lack of data collection, which has led to little information on which to base a decision of such importance. We need to first look to creating a robust system of monitoring and evaluating the process in place now in a systematic way before we throw out the entire system.

The Report did not satisfactorily address equity concerns and the extreme amount of work involved in the application processes which creates systemic inequity, often landing most squarely on the shoulders of minority students. This also demands a broader analysis of not simply a step in the process of becoming a lawyer, but all of the steps.

The Report seems to address corporate interests rather than focus on the needs of students. I think the Task Force needs to take more seriously the concerns of the "minority", the law schools, the greater community and the disadvantaged in order to promote a fair system which emphasizes the importance of giving back to the community and justice for students. A system of clinical practice expanded throughout law schools would create a process that treats students equally, gives them a more equal opportunity at jobs coming out of school, reduces somewhat the impact of systemic racism, benefits schools, communities, disadvantaged groups and even firms, prepares them more for the job application process itself, and would still offer students an excellent learning experience.

Thank you for your patience and consideration. I give my permission for this email to be made available to anyone who wishes to read it.

Sincerely,

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Joy Wakefield