



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

## **ARTICLING TASK FORCE**

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### **SUMMARY OF COMMENTS RECEIVED BY THE ARTICLING TASK FORCE FOLLOWING OCTOBER 25, 2012 CONVOCATION**

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## **OVERVIEW OF COMMENTS**

At October 25, 2012 Convocation, the Articling Task Force (“Task Force”) introduced its final report, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* (“Final Report”). The debate and a decision regarding the Final Report’s motion were deferred until November 22, 2012 to allow time for more feedback from the profession. From October 25, 2012 to the date of this summary the Task Force received 36 public comments from individuals, legal organizations, equality-seeking groups, law schools, law student organizations and law students, which are summarized in this report.

## **LIST OF COMMENTS ON ARTICLING TASK FORCE REPORT**

### **INDIVIDUALS**

Asifa Akbar  
Arden Beddoes  
Richard Campbell  
Jens Drees  
Mark E. Geiger  
William King  
Allan Lobel  
Catherine Lovering  
Paul Mann  
Mathew Oh  
Daniel Reisler  
Michelle Velvet  
Victoria Watkins

### **GOVERNMENT AND LEGAL ORGANIZATIONS**

#### Government

Ministry of the Attorney General

#### Legal Organizations

County and District Law Presidents' Association ("CDPLA")  
Law Union of Ontario  
Ontario Bar Association ("OBA")  
The Advocates Society ("TAS")  
Toronto Lawyers Association

### **EQUALITY-SEEKING GROUPS**

Association des juristes d'expression française de l'Ontario ("AJEFO")  
Canadian Association of Black Lawyers ("CABL")  
Law Society of Upper Canada - Aboriginal Working Group ("AWG")  
Law Society of Upper Canada - Equity Advisory Group ("EAG")  
Federation of Asian Canadian Lawyers ("FACL")

### **LAW SCHOOLS**

Council of Canadian Law Deans ("CCLD")  
University of Ottawa Faculty of Law  
Dean Lorne Sossin, Osgoode Hall Law School

## **LAW STUDENT ORGANIZATIONS AND LAW STUDENTS**

### Law Student Organizations

University of Toronto Students' Law Society ("SLS")  
Student Caucus of Faculty Council of Osgoode Hall Law School

### Law Students

Christian Ferraro  
Erica Jean Keating  
Mark Lawrence  
Lee Nur  
Robyn Schleihauf  
Joy Wakefield

## INDIVIDUALS

The Task Force received comments from individuals supporting both the recommendations of the majority and minority positions reflected in the Final Report.<sup>1</sup>

One lawyer (Catherine Lovering) who supports the majority's pathways approach notes that articling placements are not available in all practise areas, and that meritorious individuals are being excluded from being called to the bar, but that the LPP will enable those without articling positions to seek to be admitted to the bar. Without such an option, those without articling placements see their chances of being able to seek admission to the profession diminish over time, whereas under the pathways approach, these candidates may gain entry into the profession.

Another lawyer (Daniel Reisler) expressed his support for the continuation of articling on the basis that it provides invaluable on-the-job training, irreplaceable mentoring that teaches the values of civility, good communication, compromise and humility, and a means for employers to recruit the next generation of lawyers.

The Task Force also received several comments supporting the minority view. These submissions raise the following points:

- The minority's proposal would establish uniform admission requirements, develop core entry level competencies, and remove the risk of a two-tier system emerging.
- Articling should not be continued, given the shortcomings identified by the Task Force with the articling system. Moreover, the articling hiring process adds significant stress to licensing students, which contributes to mental health concerns facing the profession (Arden Beddoes).
- The majority's proposal will create a two-tiered licensing system, which will disadvantage many future lawyers (Allan Lobel).
- The majority's proposal contains several other deficiencies, including:
  - a retroactive grace period that is too short;
  - downloading of responsibilities to a third party provider, which will need to be monitored to ensure that it provides fairness to all licensing candidates; and
  - a pilot program that defers major changes that are needed now (Asifa Akbar).

The Task Force also received the following other comments from individuals:

- One lawyer (William King) would support the abolition of articling on the condition that it is replaced by a 6-8 month program of practical courses in all areas of law, including legal ethics and fraud, and that such courses be taught by practising lawyers.
- One lawyer (Michelle Velvet) suggests focusing on increasing the number and range of articling positions through the development of tax deductions and financial incentives, which could subsidize the costs of hiring articling students. If the minority view is adopted, the licensing program should not have much of an online component. Instead, it

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<sup>1</sup> The Task Force received a few comments from individuals who sought to remain anonymous. Their comments are included in general terms in this summary.

should focus on practical skills taught by specialist lawyers, and should use our courts as teaching institutions in a manner similar to how hospitals are used to train health professionals. Instruction should also focus on skills for sole practitioners.

- One individual (Victoria Watkins) comments that the Task Force should have engaged in more in-depth research and analysis of licensing programs in other common law jurisdictions, and of practises used in other professions.
- Another lawyer (Mark E. Geiger) submits that permitting law school graduates to practise law without first having articles would be “dangerous” and that further dialogue with law schools is necessary.
- A current articling student (Mathew Oh) is concerned that major increases in licensing fees will have an adverse impact on the diversity of the legal profession and access to justice. This commentator recommends keeping licensing costs level for the licensing candidates, mandating a minimum number of experiential hours for these candidates to be accumulated from the start of law school in place of articling, and, in the alternative, developing incentives to create more articling positions.
- One lawyer (Paul Mann) suggests that there are too many students in law school. He proposes that the Law Society develop multi-year specialist training for lawyers, similar to what is done in medical residencies, with students receiving salaries that annually increase, but with their scope of practise limited to their areas of expertise.
- Richard Campbell suggests considering capping the number of law school placements in Ontario law schools, although he recognizes that this option falls outside of the Law Society’s jurisdiction.
- One lawyer (Jens Drees) strongly supports articling, questions the need for the increased number of law students entering into Ontario’s licensing system, and regards removing articling as a pre-call requirement as an erosion of lawyer standards and professional ethics, and a risk to insurance premiums.

## **GOVERNMENT AND LEGAL ORGANIZATIONS**

### (1) Government

The Ministry of the Attorney General advises the Task Force that “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.”

## (2) Legal Organizations

The Task Force received the following comments from legal organizations:

- The County and District Law Presidents' Association ("CDPLA") advises that the majority's recommendation "represents an acceptable compromise" as it builds upon articling, and provides clear direction for implementation. CDLPA is of the view that stakeholder organizations representing most of the profession prefer the majority's recommendation as the most likely option to improve entry level competency of lawyers, and being an option that can be developed immediately.
- The Law Union of Ontario, while not endorsing either proposed option, submits that the dual track system fails to adequately address discrimination in the articling process. It also notes that the LPP pathway's costs will act as a barrier to lower and middle class licensing candidates on the following grounds:
  - The nearly doubling of costs of the licensing program will exclude individuals from these backgrounds.
  - These increased costs are even more onerous when placed in the context of increased tuition and student debt loads.
  - The unpaid co-op component of the LPP adds further cost to licensing candidates.
  - There is a lack of financial support available for lower and middle class licensing candidates, given that no scholarships have been announced, and, according to this group, Ontario's student aid program ("OSAP") will not likely extend grants or bursaries to students enrolled in the licensing program.
- The Ontario Bar Association ("OBA") comments as follows:
  - The Law Society has consulted extensively regarding articling, and Convocation should now make its decision so that an improved transitional training system can be developed to protect the public interest.
  - The Law Society should act in a manner that does not simply maintain the status quo, but similarly does not over-react by eliminating articling.
  - As noted by the OBA in its surveys of its members, and prior Law Society studies, articling provides a useful transitional training process.
  - Articling allows for skills development in low-risk practise settings, and enhances public protection as practise competencies are passed on before a licensing candidate is permitted to offer services to the public.
  - Abolishing articling would be a bad policy decision, and would not advance equality. The OBA notes that, "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."
  - Although articling "evidences inequities, it does not cause them." If the root causes of inequality are not addressed, then they may impact individuals at any stage of a legal career. The Law Society should develop a plan to identify and address the underlying issues causing inequities.

- The pilot period does not necessarily need to last five years. It must be long enough to measure effectiveness, but not enshrine the program due to the passage of time. The OBA suggests that the duration of the pilot does not need to necessarily be determined by Convocation at this stage, as this can be addressed at the operational level once a decision in principle is made.
- The Advocates Society (“TAS”) maintains its view that articling ought to be abolished, but, recognizing the findings contained in the Task Force Final Report, recommends a pilot project that would assess both the articling and LPP pathways to licensing. TAS seeks to bridge the gap between the minority and majority proposals by making several recommendations, including:
  - that the LPP:
    - start ideally by September 2013, and no later than January 2014;
    - be developed by third party providers on the basis of a Request for Proposal that will state that the program should be designed to achieve its goals within four months, although providers may propose a different timeframe; and
    - not include a co-op placement on the grounds that:
      - there may not be sufficient co-op placements for all LPP students;
      - placements may not provide valuable experiential learning opportunities that replicates a good articling experience; and
      - the co-op placement scheme risks “skewing” the assessment of the two pathways.
  - that the proposed pilot project will:
    - run for two years, on the basis that, in TAS’s view, sufficient assessments of the relative merits of articling and LPP programs should be obtainable by this time;
    - be developed to permit the Law Society to implement changes where appropriate during the life of the pilot; and
    - result in a report to Convocation, including the assessment of both pathways, by no later than December 31, 2015;
  - that during the pilot project period, the Law Society develop a plan to provide mentoring and practise supports to licensing candidates entering their first year of practise; and,
  - that interim relief be accorded to current candidates who are unable to pursue entry into the profession due to a lack of articling placements by permitting candidates who began the licensing process in the 2012-2013 licensing year or earlier, but who are unable to find an articling placement within the three-year period provided to complete all components of the licensing process, to retain their licensing candidate status until they can enter and complete the LPP and all other aspects of the licensing process. TAS submits that the Law Society should

extend the three-year completion requirement for these candidates.

- The Toronto Lawyers Association “strongly favours” retaining articling, and prefers the Task Force majority position to that of the minority. The majority’s proposal encourages practitioners to offer articling positions “and to do everything to ensure that the professional legal training program is a safety net rather than a replacement for articling.”

## **EQUALITY-SEEKING GROUPS**

The Task Force heard from numerous organizations representing equality-seeking groups:

- Members of the Aboriginal Working Group (“AWG”) comment as follows:
  - There was insufficient time to comment on the Task Force’s Final Report.
  - The potential cost increases in both proposals will disproportionately affect Aboriginal law students and licensing candidates.
  - There is a concern that a dual track system will lead to a two-tiered system developing, which could further marginalize Aboriginal lawyers, including limiting their access to professional contacts in the profession.
  - However, the AWG notes several positive elements to maintaining articling, including, among others, that articling:
    - provides students with an opportunity to gain specialized training;
    - gives licensing candidates an opportunity to meet other practitioners; and,
    - offers an opportunity for licensing candidates to seek training outside of major urban areas.
  - The AWG made several comments regarding an LPP, including that:
    - the Law Society should attempt to maintain licensing costs as close to their current level as possible;
    - consideration should be given to distributing the costs of the licensing regime across the profession;
    - the content of an LPP must be attractive to candidates, and should offer candidates training regarding business development and practical skills relevant to lawyers practicing in sole or small firm environments;
    - the LPP should include training (and if the majority’s option is adopted, field placements) dedicated to Aboriginal law and practise issues, and LPP instructors should include practitioners with expertise in Aboriginal law and/or backgrounds providing legal services to Aboriginal clients; and
    - the Law Society should consider offering the LPP outside of Toronto and Ottawa (and if the majority’s option is adopted, field placements as well).
- The Association des juristes d’expression française de l’Ontario (“AJEFO”) supports the majority’s proposal on the grounds that it provides licensing candidates with the option of articling or pursuing the LPP. AJEFO re-iterates that a French language LPP must be developed at the same time as the English program is developed to create a French LPP that is as strong as the English one, and that licensing students studying in French should not be subject to higher program costs.

- The Canadian Association of Black Lawyers (“CABL”) endorses the minority’s proposal on the following basis:
  - The Request for Proposal process provided by the majority does not provide Convocation with sufficient information to make an informed decision about the majority proposal.
  - The majority’s two path system would result in a two-tiered system, with licensing candidates enrolled in the LPP being considered inferior.
  - Black licensing candidates, and members of other equality-seeking groups are overrepresented in the group of licensing candidates without articling, and would be disadvantaged under the majority’s proposal.
  - There is a risk that those who enter the profession through the LPP will face limited career prospects going forward.
  - The costs of the LPP, the costs which will need to be incurred by candidates while completing co-op placements which may be unpaid, the value of such co-op placements, and the risk of further inequities between those licensing candidates being paid to articling and those paying for placements also lead CABL to support the minority position, which contemplates a single pathway to the practise of law.

However, if Convocation adopts the majority approach, CABL recommends that Convocation:

- make the LPP a desirable option rather than one of last resort;
  - avoid creating a formal distinction in qualifications with respect to the two pathways;
  - focus on the skills required for sole and small practitioners;
  - provide counselling for licensing candidates within the LPP;
  - subsidize the costs of the LPP through fees to the profession as a whole, at least through the end of the pilot phase;
  - track student placement trends, and request that licensing candidates identify their race, cultural background, and membership in any equality-seeking groups; and
  - consult extensively with CABL and others in designing the proposed pilot project before it is finally adopted and implemented.
- Members of the Equity Advisory Group (“EAG”) were divided over support for the majority and minority proposals. Those supporting the majority position note that:
    - articling provides certain benefits, including practical training and an opportunity for a licensing candidate to develop relationships in the legal profession;
    - the proposed LPP seeks to extract the strengths of the articling system to develop a new pathway to licensing; and
    - the majority’s proposal would maintain competency of candidates in both streams, and study the pathways through a pilot program.

Those supporting the minority expressed concern that articling lacks standardized processes to ensure quality experiences for licensing candidates, and that the majority's proposal risks institutionalizing a two-tiered system.

EAG was unanimous that if multiple pathways to licensing are approved, the Law Society must take steps to alleviate stigma or inequality. EAG also raised concerns regarding the cost of an LPP, and the disparity between paid articling students and LPP students paying to obtain practical training.

- The Federation of Asian Canadian Lawyers (“FACL”) reiterated its preference for a single pathway to licensing for all licensing candidates, and supported the recommendations of the minority proposal. FACL is concerned that both the majority and minority recommended options would cost more than the current licensing system, and submitted that further study is required to ensure that any cost increase is justified. Moreover funding mechanisms should be developed to assist licensing candidates, particularly those from equality-seeking groups.

## **LAW SCHOOLS**

The Council of Canadian Law Deans (“CCLD”) noted that the impact of any changes to the licensing system on students as well as legal education in Canada must be considered. The CCLD expressed concern over the risk that university content and Law Society experiential requirements become “blurred”.

The Task Force received a comment from Faculty at the University of Ottawa based on a meeting of approximately thirty Faculty to consider the Task Force's Final Report. University of Ottawa Law Faculty members:

- generally support removing articling as a barrier to entry for otherwise qualified licensing candidates;
- object to the majority's recommendations out of concerns that this option would discriminate against vulnerable students, would develop a two-tiered system, or that there is no guarantee that this would not happen; and,
- generally supports considering how the law school could improve on its experiential learning opportunities.

Some Faculty:

- expressed concerns about the nature of the pilot project, costs of the LPP option, and fear that co-op placements would divert resources from law school placement efforts; and,
- suggested that any law school involvement in an LPP should be on a “not-for-profit, cost recovery basis, with a strong social justice component.”

Dean Lorne Sossin of Osgoode Hall Law School's open letter on this issue:

- recognizes that the status quo is untenable due to the uneven nature of articling, and the two-tiered nature of the current regime;

- maintains that the majority’s two-pathway system need not inevitably become a two-tiered system, and that, similarly, although there may be “legitimate anxiety” caused by the minority’s recommendation to abolish articling, the proposal does not preclude the development of new transitional training programs;
- suggests that the common features of the majority and minority proposals are more significant than their differences, and expresses hope for consensus being achieved;
- asserts that the Law Society’s roles are to:
  1. establish the outcomes that licensing candidates must be able to demonstrate in order to become a lawyer, although Dean Sossin questions whether the Law Society is well suited to determining which licensing training program would develop these outcomes; and
  2. ensure access, which includes making a “substantial” contribution to the start-up costs of the new licensing regime, and assisting those most in need.
- Dean Sossin encourages further study on the various pathways, fairness and access issues for law students, and the impacts of the proposed changes on law schools.

## **LAW STUDENT ORGANIZATIONS AND LAW STUDENTS**

The Task Force received comments from the University of Toronto Students’ Law Society (“SLS”). SLS requests that Convocation defer its decision regarding the Task Force Final Report beyond November 22<sup>nd</sup> so that students and others could further consider the issues. In the alternative, SLS submits that if Convocation adopts the option developed by the Task Force majority, then Law Society members should contribute to the costs of the new licensing program to defray significant increased costs to licensing candidates.

The Student Caucus of Faculty Council of Osgoode Hall Law School claims that there was insufficient time to respond to the Task Force Final Report, but provides the following comments:

- Although the minority proposal is not ideal, it is preferable to that of the majority proposal, and should be adopted.
- The single pathway to licensing removes the risk of a prejudicial two-tiered licensing system and its negative implications for members of equality-seeking groups.
- The minority’s proposal is shorter and less costly, and therefore puts less of a financial strain on students.
- “The skills acquired during articling can be developed at law school through the implementation of mandatory practical and experiential learning programs.”

Although this group recognizes that the introduction of an LPP would ensure that all law school student would have the opportunity to meet Ontario’s licensing requirements, these students

generally oppose the majority's proposal because:

- the majority proposal is two-tiered and inequitable;
- the increased costs of the licensing program will increase debt loads of already indebted law students;
- this option does not address the core causes of the articling crisis, namely the lack of articling placements in sole and small firms, "unsustainable" increases in enrollment at Canadian law schools, and an influx of foreign-trained NCA candidates to Ontario;
- the introduction of an LPP will act as a disincentive to firms contemplating hiring an articling student;
- the majority view does not sufficiently address problems within the articling system identified by the Task Force; and
- the mobility of LPP graduates who gain the right to practise law in Ontario remains unclear.

The Task Force also received several comments from individual law students:

- One individual (Lee Nur), who self-identified as a visible minority law student expressed support for the minority view. This student re-iterated concern first expressed in a prior submission<sup>2</sup> that the Law Society must address discriminatory practises in the articling hiring process.<sup>3</sup>
- Several law students expressed a strong preference for the minority's recommendations. Generally these students express the concerns regarding:
  - (1) The limited training that may be offered through articling;
  - (2) A fear that candidates in the LPP system will be unable to find work upon being called to the bar;
  - (3) Concerns that the majority's proposed two path system would be perceived as a two-tiered system, and would disproportionately negatively impact on members of equality-seeking groups; and
  - (4) Concerns regarding the costs of the proposed new licensing program.
- Students were generally critical of increased costs of any new licensing program. They suggest that any changes to the licensing program should not lead to increased costs incurred by lawyer licensing candidates on the grounds that:

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<sup>2</sup> <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487883>.

<sup>3</sup> These comments were sent to [articlingdiscussion@lsuc.on.ca](mailto:articlingdiscussion@lsuc.on.ca) during the October 25th live blog, but the comments were received too late to post.

- Law students would be unable to finance further education after law school were costs to increase (Erica Jean Keating). The costs of attending the LPP and not being paid for doing so would be prohibitively expensive.
- A major increase in costs, coupled with high law school tuition and student debt loads, may make it financially unviable for students to enter into practise areas dedicated to promoting access to justice or pursuing social justice (Christian Ferraro, Robyn Schleihauf); and,
- Increased costs to the licensing program should not be incurred by licensing candidates, as this would further exacerbate inter-generational inequalities.
- One law student (Mark Lawrence) suggests abolishing articling as a pre-requisite to being called to the bar, but permitting firms to maintain articling as an optional pathway. This individual also recommends that the Law Society develop reduced fees for entry level lawyers, or deferred fees for newly called lawyers, to assist new lawyers in transitioning into the profession.
- One law student (Joy Wakefield) comments that:
  - the Task Force did not have sufficient data (related to articling numbers and quality of placements, the number of members of equality-seeking groups who were unable to find placements, the experiences in other professions with experiential learning requirements and other indicators) before reaching its conclusions;
  - the Task Force recommendations do not adequately address underlying factors affecting members of equality-seeking groups, including barriers that must be overcome to gain entry into law school, barriers within law school, obstacles to finding an articling placement, and the very demanding time commitments through law school to find summer employment and articling; and
  - recommends as an alternative pathway, developing clinical legal education at the law school setting as this would:
    - benefit students, law schools and the community;
    - increase access to justice;
    - offer a relatively lower cost option for delivering practical legal training to law students;
    - introduce students to *pro bono* and professionalism; and
    - prepare students to enter into a broad range of legal workplace settings.