



**ARTICLING TASK FORCE  
FINAL REPORT  
October 25, 2012**

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**PATHWAYS TO THE PROFESSION: A ROADMAP FOR THE  
REFORM OF LAWYER LICENSING IN ONTARIO**

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**Purpose of Report: Decision**

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## EXECUTIVE SUMMARY

### **The Articling Task Force**

The Articling Task Force was established in May 2011 as a result of the rising number of unplaced articling candidates seeking access to the licensing process in Ontario. Although this trend was the impetus for Convocation's decision to establish the Task Force, it was given a broad mandate to consider the competence-related goals that articling is intended to address, its effectiveness, its place in the licensing process and additional or alternative approaches to fulfilling transitional training requirements.

Since 2008, when the lawyer licensing process and transitional training were last examined, the number of unplaced articling candidates has continued to rise. The Task Force concludes that for the foreseeable future, the articling program as currently structured will be unable to meet the ever-increasing demand for article placements.

The issues raised by the current system do not lend themselves to easy answers. The Task Force has devoted over a year to its in-depth review of the many subjects that fall under its mandate. It undertook a broad-reaching consultation process, including dozens of consultation sessions for the profession and law schools, which were conducted at numerous locations throughout Ontario. The Task Force received 125 public submissions from individuals, legal organizations, law schools, law students, the judiciary and law societies. The depth and thoughtfulness of the discussion and submissions were remarkable and provided important input to the Task Force's work. The Task Force also considered the licensing regimes in a number of other jurisdictions, some of which have implemented legal skills-training programs to satisfy transitional training requirements. It also sought input from the Federation of Law Societies of Canada ("the Federation").

After extensive consideration of the issues raised by the current licensing system, the Task Force is unanimous in concluding that the system requires change.

### **Pathways to Licensing**

The majority of the Task Force recommends that Convocation approve a pilot project that will allow articling and a new Law Practice Program (LPP) to operate side by side for five years. While articling would continue to be the route through which most candidates become licensed, the LPP, which would include both a skills-training program and a co-operative work placement, would provide an alternative path to licensing.

Providing these two pathways to licensing would directly address the issue of access to the licensing process in an environment where there are insufficient articling positions. Doing so in a pilot project provides a measured, incremental way to move forward with a comparison of these alternatives routes to licensing while protecting the public through a competence-based evaluation system for all candidates. This approach also enables the Law Society to take into account the Federation's ongoing National Admissions Standards Project, recognizing the potential impact of that Project on the licensing process.

Four members of the Task Force take a different view. They have concluded that articling can no longer be justified from a regulatory standpoint and should be abolished. Further, they object to a two-track process and prefer to adopt a single path to licensing applicable to all candidates. Their proposal is to have a comprehensive transitional pre-licensing program lasting two to three months that includes on-line learning and exams assessing core competencies in legal knowledge and skills, business, professionalism and ethics. For new licensees who choose to practise on their own, they propose mentoring and increased supervision and scrutiny to assist those in their first few years of practice, to ensure public protection.

### **The Recommended Pilot Project**

The majority of the Task Force recommends a five-year transitional training pilot project with the following main elements:

- The pilot project would begin in the 2014-15 licensing year.
- The current 10-month articling program would continue, with additional measures designed to enhance regulatory oversight and provide a more systematic evaluation of articling as transitional training.
- The LPP would be developed and offered as an alternative path to licensing for the five-year period.
- A culminating final assessment would be introduced to ensure that each candidate, whether the candidate articulated or took the LPP, has successfully completed the required transition to practice competencies before being licensed.
- The two paths to licensing would be monitored, assessed and compared, with a final report to Convocation on the pilot project due by the end of the fifth year.

The LPP would be delivered through a third-party provider or providers. It is an innovative step, best undertaken by those whose primary expertise is in the development and delivery of professional experiential programs, adult learning and use of technology in advanced education. A Request for Proposals would be issued by the Law Society, which would mandate the practice skills, professionalism and other competencies to be mastered in the LPP. Although the pilot project incorporates flexibility to refine the precise structure of the LPP as the pilot unfolds, it is currently expected that the LPP would be about eight months long, divided between course work and a co-op work placement.

One of the goals of the co-op work placement program would be to provide the co-op placements in areas where access to justice needs can also be served. This would include, for example, sole and small law firms providing services in areas such as family law and criminal law, and not-for-profit legal organizations that provide access to justice. Third party providers would be encouraged to seek out paid co-op placements wherever possible; however, it is not practical to require them to guarantee paid placements. Work placements embedded in educational training programs are often unpaid. With respect to the additional costs of the LPP, it is recommended

that those costs be equalized across all candidates, not imposed only on those candidates taking the LPP.

Candidates in both streams would be required to successfully complete a uniform final assessment of transition to practice skills, as a prerequisite to licensing. To ensure that the most appropriate and cost-effective assessment process is used, the process will be developed and proposed to Convocation for its approval in the period leading up to the implementation of the pilot project.

The pilot project will provide not only enhanced access to the licensing process but also a wealth of information. This information will be analyzed and used not only to compare the two methods of transitional training, but also to continue to address a wide range of issues that arose during the consultation process, such as the challenges confronted by equality-seeking groups. The Task Force received numerous submissions from equality-seeking groups, nearly all of which rejected the status quo out of concern that it fails to solve the articling placement shortages that are believed to disproportionately affect these groups.

As an interim measure, a transitional provision is recommended for those who have already entered into the licensing process. Candidates who entered into the licensing process in the 2012-2013 licensing year, but who are unable to find an articling placement within the three-year period provided to complete all components of the licensing process, would be permitted to 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, on condition that each candidate must register and complete the LPP at the first available offering.

The recommended pilot project is intended to measure competence through a fair process that provides access to the profession, fosters access to justice and does so while protecting the public interest.

### **Minority View**

The four members of the Task Force in the minority suggest a different approach. They call for the end of articling and oppose what they see as a two-tier licensing process proposed by the majority that they believe will be unfair and unworkable. They are concerned that the pilot project simply puts off needed change to licensing and legal education, and propose one track to licensing, applicable to all. The minority therefore proposes a comprehensive transitional pre-licensing program, two to three months long, with objective, measurable standards that assess substantive legal knowledge and business, professional and ethical issues. They note that the Law Society has numerous examples of past admission programs and evaluations that they believe could be readily adapted and provided online. Post-call, the minority suggests that new lawyers who choose to practise on their own are assisted in their first years through mentoring and other regulatory oversight, in order to ensure public protection.

### **Conclusion**

The majority of the Task Force believes that its two-pronged pilot project affords the best opportunity to change and improve the licensing process in a fair and measured way, while meeting the Law Society's key objective of ensuring entry-level competence. It builds on the

experience of lawyers in Ontario who, based on their own observations as students, principals and employers, are confident that articling is an effective transitional training program. It provides for enhanced regulatory oversight of the articling process and introduces the ability to assess articling in a more systematic way. And, finally, this approach moves forward to assess innovative practices from jurisdictions that have introduced law practice programs. In doing so, the pilot project will enhance access to the licensing process, while ensuring the competence of those who seek admission to the legal profession, which must be the Law Society's primary goal for its licensing process.

## REPORT

### Motion

1. **That Convocation approve the following pilot project respecting the transitional training component of the Law Society’s licensing process, the integrated components of which are as follows and the details of which are set out in this Report:**
  - a. **There will be a five-year transitional training pilot project, proposed to begin in 2014-15, with an articling component and a Law Practice Program (“LPP”) component.**
  - b. **During the pilot project data designed to enable an evaluation of the project will be collected and any necessary refinements or other policy issues related to this will be considered in the Professional Development & Competence (“PD & C”) Committee.**
  - c. **The formal review of the pilot project will commence in the final year of the pilot and be completed by the end of that year with a proposal for next steps provided to Convocation for its consideration. The implementation of the pilot project will continue during the course of the review. Convocation will then determine whether the pilot project should end, become permanent or result in a different approach.**
  - d. **During the pilot project the 10-month articling program will continue, in general with its current administrative structure and with a focus on measures designed to enable the evaluation of the program merits at the end of the pilot project, including enhanced documentation for Principals and students to complete.**
  - e. **The Law Society will issue a Request for Proposals (RFP) for interested parties to submit a proposal to provide a transparent, fair and defensible competency-based LPP to the Law Society as an alternative pathway to licensing. Validated law practice skills, task and professionalism competencies determined by the Law Society will form the basis of the LPP.**
  - f. **The RFP will seek proposals for the delivery of an LPP that,**
    - i. **provides training on the established competencies;**
    - ii. **is designed to accomplish the program goals within approximately four months, but permits potential providers to suggest a length of program they determine is most effective to accomplish the objectives;**

- iii. **includes an additional four (4) month (17 week) cooperative work placement. The establishment of work placements will be the responsibility of the provider(s) and the provider(s) will assist and support candidates in choosing and completing the placements. To the extent possible, the successful provider will seek placements in settings that offer a wide range of experiential opportunities, including in settings that offer relevant transitional training while also supporting access to justice in areas for which there are unmet civil legal needs;**
- iv. **incorporates the use of practising lawyers as instructors and/or in other capacities; and**
- v. **includes quality assurance assessments.**
  
- g. **The experiential components of both transitional training pathways (articling and LPP) will address approved competencies. The Law Society will oversee a formal process to assess defined learning outcomes necessary for entry-level practice, based on those competencies (“the assessment”). The assessment will be standardized, transparent and fair. All candidates for licensing, including any otherwise exempted from the LPP or articling, will be required to successfully complete the assessment as a requirement of licensing.**
- h. **The assessment process, applying at a minimum the components and considerations set out in paragraph 165 of this Report, will be developed and proposed to Convocation for its approval in the period prior to implementation of the pilot project.**
- i. **To enable the Law Society and the profession to make evidence-based determinations about the merits of each component of the pilot project, an evaluation system, described in paragraphs 170-175 of this Report, will be designed and implemented.**
- j. **During the pilot 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) 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 will extend the three-year completion requirement for this period with the condition that each candidate must register and complete the LPP at the first available offering.**
- k. **Following Convocation’s approval of the pilot project,**



- i. the RFP will be developed and issued;**
- ii. the RFP applications will be considered in accordance with the Law Society's established process for RFPs;**
- iii. the PD & C Committee will 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) will be chosen in accordance with the Law Society's established process;**
- v. steps to implement the requirements of the pilot project, including the development of the assessment process set out (g) and (h) above will be undertaken by the PD & C Department;**
- vi. any additional policy matters to enable implementation, including approval of the assessment process set out in (g) and (h) above, will be considered by the PD & C Committee and, where necessary, the Committee will make recommendations to Convocation for its consideration and approval.**

### **Context of the Task Force Report**

2. Lawyer licensing is an integral part of the Law Society's mandate to regulate the profession in the public interest. Over the years, the Law Society has considered reforms to its licensing process to adapt to a changing legal landscape, while continuing to ensure that those licensed in Ontario have demonstrated entry-level competence. This Task Force was established to consider issues affecting the licensing process's transitional training requirements and make recommendations to address them.
3. This is the Articling Task Force's final report. In establishing the Task Force in May 2011, Convocation gave it a broad mandate. In addition to considering the challenges facing the current articling program, including the increasing number of unplaced candidates, the Task Force was to consider the competence-related principles that articling is intended to address, its effectiveness, its place in the licensing process overall and additional or alternative approaches to articling.
4. The Task Force's work has been challenging, attracting much interest and input. The Task Force has considered a wealth of information, including the numerous submissions

it received from the profession and others on the issue of transitional training (both articling and alternative approaches) and the most appropriate path forward for licensing candidates in Ontario. The issues are complex and nuanced and have required the Task Force to consider and distill many different perspectives and weigh the pros and cons of a variety of possible solutions it might propose.

5. This Report makes recommendations respecting a path forward for the Law Society's licensing process. It reflects the views of the majority of the Task Force, which considers that its proposed approach offers an opportunity to address the challenges the Law Society faces with its lawyer licensing process, while at the same time proceeding incrementally to balance change with protection of the public through a competence-based licensing process.
6. Four members of the Task Force do not agree with the Task Force's recommended approach. Their analysis of the issues has led them to a different proposal, which is reflected in their Minority Report, set out at page 70 of this Report.
7. The Task Force does, however, unanimously agree on four important principles that have emerged from its deliberations:
  - a. **A call for change:** Of the options considered by the Task Force, the first was to maintain the status quo. Under this option, the Law Society would continue the current licensing approach, with no major changes to the articling system. The Task Force concludes that the status quo is no longer an option for the future. Change is required.
  - b. **Support for "transition to practice" training as a prerequisite to licensing:** There should continue to be a licensing requirement focused on transition to practice. This should be a pre-licensing step. The Task Force agrees that the replacement of a pre-licensing transition requirement with a post-licensing transition requirement (Option 3 in the Consultation Report) is not the approach to take.

The Task Force has also agreed on the five goals of these transitional steps, and on the two principles under which those goals would be founded, as set out in the Task Force's Consultation Report.<sup>1</sup>

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<sup>1</sup> Also found at paragraph 55 of this Report.

- c. **The role of skills training:** A skills-training program can play a significant role satisfying the pre-licensing requirement regarding transition to practice. The Task Force agrees that at least a significant part of this training can be conducted in an education, rather than a workplace, environment.
  - d. **Introduction of a pre-licensing skills training program will address the gap:** The introduction of a new training program (whether as an alternative track to articling or as a replacement for it) will directly address the issue of access to the licensing process in an environment where there are insufficient articling positions. In doing so, it addresses the issue that was the impetus for the Task Force.
8. There is significant disagreement between the majority and minority of the Task Force about the nature and scope of the transitional training, including whether it must include a practice placement, as described in the majority and minority reports.
9. Most lawyers and legal and other organizations that participated in the consultation process support the need for change to the Law Society's training component of the licensing process. While most submissions the Task Force received continue to approve articling as a component of that process, the majority of those submissions also agree both that some improvements are needed to articling and that alternative approaches should be introduced to provide greater flexibility in transitional training. The submissions also reflect a strong belief that pre-licensing training, whether in the form of articling or an alternative that includes work placements, is essential to producing competent entry-level lawyers.

### **Overview to the Task Force's Recommendations**

10. In December 2011 Convocation approved the Articling Task Force's Consultation Report ("Consultation Report") for dissemination to the profession. The Consultation Report recognized that an increasing number of students are effectively being denied entry into the profession because they cannot find articling positions. It examined the need for transitional training as a legitimate requirement for licensing lawyers and confirmed that ensuring entry-level competence was the paramount consideration. It examined the adequacy and fairness of articling to fulfill the entry-level competence requirement. It considered possible changes as well as alternatives to the articling program.

11. In the Consultation Report, the Task Force outlined five possible options<sup>2</sup> for transitional training in the future, one of which provided for maintaining the current articling program. In meetings across the province, the Task Force has discussed those options and other findings and concerns identified in the Consultation Report with lawyers, law school students and faculty and legal organizations.
12. In the Consultation Report, the Task Force was unanimous that transitional training is required to ensure entry-level competence. Consultation with the profession revealed that the overwhelming majority agreed. That majority of the profession also thought that articling should continue either as the only or one stream of the transitional training program. Although a minority was of the view that the current articling program should not be changed in any way, the majority accepted that changes were required to ensure fairness and consistency to the candidates and enhance the role of articling in ensuring entry-level competence. The majority also agreed that alternatives in addition to articling were properly considered.
13. There were other members of the profession, including four members of the Task Force, who accepted the need for transitional training, but reject the continuation of articling in any form.
14. The Task Force recognizes that there is no perfect solution to the current situation. The numbers of graduates from domestic law schools and recipients of Certificates of

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<sup>2</sup> **Option 1** - The Status Quo: Under this option the Law Society would continue its current approach, with no major changes to the articling system.

**Option 2** -The Status Quo with Quality Assurance Improvements: This option adds to Option 1 by accepting that there should be systemic assessments or benchmarks against which to evaluate articling students' competence.

**Option 3** - The Replacement of a Pre-licensing Transition Requirement with a Post-licensing Transition Requirement: Option 3 is premised on a view that successful completion of the Law Society's licensing examinations is a sufficient threshold for licensing, *if* coupled with specific transitional training for the newly-licensed lawyer based on the employment or practice structure the newly-licensed lawyer enters.

**Option 4** - A Choice of either an Articling Requirement or a Practical Legal Training Course (PLTC) Requirement ("after law school" model or "during law school" model): This option continues articling but, recognizing that increasing placement shortages may pose an unreasonable barrier to licensing, provides a two-pronged approach to meet transitional training goals, using a PLTC as the alternative.

**Option 5** - Only a PLTC Requirement: Under this option, articling would be abolished and replaced with a PLTC requirement (whether after or during law school) for *all* candidates for licensing.

Qualification from the National Committee on Accreditation (NCA)<sup>3</sup> continue to increase. Although the profession has in fact created additional articling positions, the number has been insufficient to address the volume of that demand. At the same time, legal practice has become increasingly complex and the demands of practice more onerous.

15. With all of this in mind, with helpful input from the profession and while recognizing that there are no easy answers, the Task Force recommends that Convocation approve a pilot project that will allow articling and a Law Practice Program (LPP)<sup>4</sup> to operate side by side for a period of five years. The two streams of the pilot project will each be designed to achieve defined learning outcomes necessary for entry-level practice. All candidates for licensing will be formally assessed as part of the licensing requirement.<sup>5</sup> The Task Force is satisfied that the terms upon which the pilot project will operate will protect the public interest and maintain entry-level competence.<sup>6</sup>
16. The Task Force is satisfied that the introduction of a dual-stream pilot project in conjunction with individual assessments for entry-level practical skills is the most appropriate course to pursue. The continuation of the articling option builds on, rather than rejects, the experience of lawyers in Ontario who, based on their own observations as students, principals and employers, are confident that articling is an effective

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<sup>3</sup> The National Committee on Accreditation (NCA) is a standing committee of the Federation. The mandate of the NCA is to help Canada's law societies protect the public interest by assessing the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program. The assessment is done before these individuals apply for admission to a common law bar in Canada, and is based on the academic and professional profile of each individual applicant. The NCA applies a uniform standard on a national basis so that applicants with common law qualifications obtained outside of Canada do not need to satisfy different entrance standards to practise law in the different provinces and territories of Canada.

<sup>4</sup> In the Task Force's Consultation Report it described a "practical legal training course" in Options 4 and 5, using the language Australia has adopted for its PLTC. In this report the Task Force uses the name "Legal Practice Program" (LPP) for Ontario's pilot project for a number of reasons, including the importance of using a term specific to Ontario's context and to emphasize the *practice-based* underpinnings that will include both simulated experiential practice and work placements.

<sup>5</sup> This will include those exempted from the LPP and articling. (e.g. lawyers from other common law jurisdictions who have worked for at least ten months in that jurisdiction).

<sup>6</sup> To some degree, the Law Society already allows multiple pathways to licensing. These provide flexibility, but also protect the public interest. They include permitting judicial clerkships to satisfy the articling requirement (other Canadian jurisdictions do not permit this), permitting lawyers from other common law jurisdictions who have worked for at least ten months in that jurisdiction to be exempted from articling, and permitting lawyers from other Canadian jurisdictions to become members without re-qualifying - before 2002 these lawyers were required to write examinations.

transitional training program. The introduction of an LPP option builds on the success of similar programs for lawyers in other jurisdictions and similar programs in Canada, for other professions. The combination of both streams plus the assessment provides the consistency and fairness that is lacking in the current program. In particular, the approach focuses on the Law Society's obligation to address entry-level competence as part of its licensing process. At the same time the pilot project framework reflects the Task Force's understanding of the need to proceed cautiously and evaluate the two program streams against the competence requirements.

### **Background**

17. The Consultation Report described the longstanding tradition of articling, noting the dedication of many thousands of lawyers who have sustained the program over decades by supervising students, taking their roles as mentors and teachers seriously. The report also identified, however, a practical reality facing the articling system that had caused Convocation to create the Articling Task Force in June 2011. Articling, as a required component of the licensing process in Ontario, is beyond the reach of an increasing number of candidates.
18. The rising 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, while the Task Force was completing its consultation with the profession, the percentage had risen to approximately 15%. Although the actual number of unplaced candidates fluctuates throughout the year, the overall number has increased year over year, despite increases in the overall number of articling positions available.
19. In its Consultation Report the Task Force noted that the number of articling positions appeared to be static, but that in its view shortages have not been grounded in the economic uncertainties that have occurred since 2008. Further research has shown that the number of articling placements overall has increased somewhat, not decreased, but that the principal cause of articling shortages is an increased number of applicants compounded by a decreased number of articling positions in large firms. While the

number of articling positions has increased, the number of candidates has increased more quickly.<sup>7</sup>

20. From 1980 to 1990, the number of students increased from approximately 1,000 to approximately 1,200. There was essentially no significant increase in the number of students during the 1990s. During this period there were no new Canadian law schools and the size of the Canadian law school classes was stable. Moreover, relatively few graduates came to Ontario from non-Canadian law schools or were internationally-trained lawyers.
21. During the last decade, however, the number of candidates for articling positions increased substantially, from approximately 1,200 to 1,700 by 2010. The largest contribution to this rapid increase has been a dramatic increase in the number of graduates from foreign law schools seeking articles, many of whom are Canadian, and increased admissions to two Ontario law schools. The number of articling positions grew by approximately 300, despite decreased hiring by large law firms, but there remained a shortfall of approximately 200 positions. This trend continues to date and is likely to do so in the future.
22. Although the rising number of unplaced candidates was the impetus for the Task Force, Convocation gave it a broad mandate to consider first principles underlying the licensing process. The Task Force's analysis has included consideration of the adequacy of articling in fostering practical competence, the fairness (legitimacy) of articling as a requirement for entry into the profession, and the public interest in having access to lawyers with relevant transitional training in the areas of legal practice for which the public requires service.
23. As part of its effort to canvass views on the five options discussed in the Consultation Report the Task Force undertook an in-depth consultation over three months. Its members travelled to cities around the province, holding 25 consultation sessions for the profession and in each law school. It received 125 public submissions, 70 from individuals and 55 institutional responses from legal organizations, law schools, the

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<sup>7</sup>LSUC. Annual Articling Placement Reports. Professional Development & Competence Department.

judiciary and law societies.<sup>8</sup> The Task Force also sought input from the Federation.<sup>9</sup> The report sparked commentary in the legal press and “blawgs,” bringing the issues to the attention of members who were unable to attend meetings.<sup>10</sup>

24. The depth and thoughtfulness of the submissions the Task Force received was remarkable. The potential solutions offered were as diverse as the groups and individuals who have provided them. The passion with which people offered their views has made it clear that there are no easy answers to the issues the profession in Ontario faces. The views about articling expressed in the submissions are nuanced and complex and reflect both the historic role of articling in the profession’s history in Ontario and an effort to consider it, and transitional training in general, in the 21<sup>st</sup> century context.
25. There has been a marked change in the profession’s appreciation of the issues since they were last examined in 2008. Few continue to believe, as they did in 2008, that if the Law Society simply “tries harder” to find more articling placements the shortages will disappear.<sup>11</sup> More are prepared to consider the introduction of alternatives to articling as a way of dealing with the placement issue than was previously the case. Even more agree that if articling is to continue, there should be quality assurance measures incorporated into the requirement.
26. Articling has been the subject of regular consideration at the Law Society over many decades. The particular focus of discussions has varied with each examination, but over

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<sup>8</sup> The submissions are available on the Law Society’s website at <http://www.lsuc.on.ca/articling-task-force/>.

<sup>9</sup> At the request of the Chair and with the full support of the Articling Task Force, the Federation was asked to participate in the Task Force’s deliberations. The Federation was frequently represented at the Task Force meetings by Federation President, Mr. John Hunter, Q.C. and/or Ms. Frederica Wilson, Director Policy and Public Affairs and/or Mr. Don Thompson, CEO, Law Society of Alberta.

<sup>10</sup> The Law Society also disseminated information about the report by e-mail and placed notices in the *Ontario Reports*.

<sup>11</sup> In 2008 the Licensing & Accreditation Task Force concluded the following:

...while the enthusiasm with which the profession supported articling in this consultation process is heartening, it will be of limited value if not accompanied by a commitment among those who have not traditionally hired students to now do so. The willingness of more lawyers to play a role in training the next generation is essential to a re-vitalized articling program.

L&A Task Force Report, September 25, 2008. Executive Summary. Following the L&A Task Force’s report the Law Society undertook a survey of the profession to consider the placement numbers and the possibility of an increase in placements among the province’s law firms. Of the 8,209 firms in the province 7,749 participated in the survey, no additional jobs emerged from that process, although additional jobs have nonetheless been created.



the years most issues relevant to the topic have been addressed, including standards, requirements to be met by Principals, evaluation of candidates, placement numbers, shortages, equity-related issues and the possibility of abolishing the requirement. In all these reports articling has been praised and criticized and there have been numerous ideas for changes to it. Some proposed changes have been implemented; a number of these have been subsequently reversed. Others have been rejected. Changes have been piecemeal and have not resulted in significant alteration to the system over many decades. Criticisms continue. At the same time, the system has many strong proponents and defenders as well as others who have been reluctant to alter an approach of such longevity without sufficient assurance that a viable alternative exists that will be successful.

27. While it has been suggested that the profession's overwhelming endorsement of articling is based largely on emotion, the Task Force is of the view that the profession's response is more complex than that. The submissions reflect many things: the experience of a large number of lawyers who have offered the program for many years and consider it effective in preparing candidates, genuine commitment to the experiential learning that articling offers, real concern about abolishing the program without replacing it with experiential training and, indeed, an emotional connection to the program and its longstanding place in the profession's culture.
28. A fair and effective licensing process that is grounded in the achievement of entry-level competence is essential to the profession's renewal. Moreover, that licensing process is an integral part of the Law Society's mandate to regulate the profession in the public interest.
29. In the Task Force's view the competence of those who seek admission must be the Law Society's primary substantive concern. The fairness of the requirement must be its primary process concern. In this context fairness means the removal of unreasonable process barriers, but the objective of the process remains: ensuring the competence of those who are licensed.

30. The Task Force's recommendations are grounded in those two principles. They provide what the Task Force views as a roadmap for the Law Society to move cautiously forward to address the concerns raised in the Consultation Report, reflecting the context within which the Law Society operates, an appreciation and respect for the views it heard over the last ten months and a commitment to the responsibility to govern the profession in the public interest.
31. The Task Force is convinced that changes to the transitional training component of the licensing process are necessary. As discussed above the number of applicants for articling placements, both domestically and internationally trained, continues to rise. The market for legal services is changing beyond recognition and with it the type of work available for lawyers, once licensed, is altering. There continue to be insufficient articling positions in areas of practice such as criminal and family law, yet there is a need for additional legal services. The demographics of the profession are in flux, with members of some equality-seeking groups facing unique challenges. Increasing numbers of candidates for licensing have not received any legal training in Canada. They have no networks in the Ontario legal profession and have had limited exposure to the Canadian legal process or the profession's rules of ethics and professional responsibility. Access to justice remains an issue for the public of Ontario with fewer articling positions available in certain practice areas for which the public requires legal services. The articling status quo is buffeted by all these challenges.
32. Should the Law Society abolish articling, replace it with some other form of transitional training or partner it with alternatives? These are not easy questions to answer. As evidenced in the submissions the Task Force received, many of the profession's organizations and individuals believe firmly that articling should continue. Many accept that articling will need to change and that quality assurance and consistency is required. A small minority supports the status quo with no change. Another small minority suggests strongly that articling should be abolished completely, while others propose that it be replaced with a practical legal training program alone. Many submissions suggest that the time has come to consider alternative routes to licensing.

33. At the same time, what has been clear from the consultation process is that there are many challenges that accompany change, particularly when change includes new approaches that have not previously been tried. To the extent that the proposed reform is irrevocable, there is even more caution about moving forward without sufficient evidentiary basis for doing so.
34. The consultations and submissions raised a number of questions about the details of the various options, in particular an option that introduces an LPP either on its own or as an alternative to articling. Given that some aspects of the options have no Canadian or even North American equivalent against which to evaluate them, it is obviously difficult to provide cogent evidence of the likely effectiveness of an LPP in the Ontario context. At the same time, however, experiential learning in a classroom context with work placements is common to other professions and a program similar to the proposed LPP is well-established in various jurisdictions in Australia.
35. Moreover, uncertainty should not preclude the Law Society from taking action it considers appropriate in the public interest to address a changing legal landscape. At the same time, however, the Task Force believes that the best way to move forward and to allow the necessary time for questions to be answered based on evidence is to recommend an incremental approach.
36. The Task Force is satisfied that the terms upon which its proposed pilot project will operate will protect the public interest and maintain entry-level competence during the life of the pilot project. The two components of the pilot project will each be designed to achieve prescribed competence-based outcomes.
37. Such a pilot project lends itself to an analysis of issues that have dominated the consultation. These include,
- a. the effectiveness of each of articling and an LPP and in comparison to the other;
  - b. whether those who complete an LPP will be treated differently in the profession from those who article, solely because of their different path to licensing and, if so, how this might be addressed and mitigated;
  - c. cost issues; and

- d. equity issues.
38. A pilot project will also allow for evaluation and adjustment during the life of the pilot. Finally, it will enable the Law Society to work with its Federation partners as the Federation's National Admissions Standards Project continues.
39. The Task Force's gradual approach also lends itself to consideration of the pros and cons of the two streams and enables the collection of evidence on which to continue to develop best practices for transitional training designed to develop entry-level competence. The proposed pilot project is a lengthy one, but the Task Force believes that such time is required to determine whether the pathways chosen best serve the public interest.
40. This approach will also provide an opportunity to continue to examine the external factors that influence the profession and the opportunities available to new graduates. Better and more detailed information about available opportunities would be valuable to enable those in the profession to consider their options and to assist those who are considering a career in the law to weigh fully the risks and benefits of the choices they make for which they are ultimately responsible.
41. Some conclude that articling is indefensible and cannot be validated. The Task Force does not accept the proposition that the only way forward at this point in time is to abolish articling. Indeed, acceptance of the Task Force's recommendation that alternative transitional training approaches are worth developing provides a unique opportunity to consider articling in conjunction with another approach.

## **CONSIDERATIONS UNDERLYING THE TASK FORCE'S RECOMMENDATIONS**

### **a. Lawyer Licensing – A Contextual Process**

42. The Law Society's lawyer licensing process marks the last phase of a candidate's road to entering the profession. It is directed toward assessing entry-level competence and is one of many regulatory evaluations and requirements<sup>12</sup> that will occur during a lawyer's career.

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<sup>12</sup> Others include annual reporting, spot audits, practice reviews, compulsory insurance and CPD requirements.

43. The process is neither designed nor operates in a vacuum, unaffected by external forces. Rather it reflects and is at least partly defined by its context, which constantly shifts and changes to address the public interest, the refinement of competence standards, the market and need for legal services, the realities of law school education, demographics, technology, globalization and myriad other influences.
44. In the last 40 years the licensing process, formerly called the bar admission course, has undergone numerous reviews and revisions in an effort to respond to, as well as anticipate, the effect of a changing legal context. But the rapidity of that change has not always made it possible to fashion long term solutions or to predict the challenges to come. To make matters more complex, as the last player in the legal education and qualification process, the Law Society has limited influence on some of the aspects of that changing context that come before licensing.<sup>13</sup> This reality has an effect on the Law Society's own decision-making process.
45. Convocation gave the Articling Task Force a broad mandate. In addition to considering the challenges facing the current articling program, including the increasing number of unplaced candidates, it was to consider,
- a. the competency-related principles that articling is intended to address and its effectiveness in doing so;
  - b. the articling program in the context of the licensing process overall; and
  - c. additional or alternative approaches to articling.
46. Throughout its discussions the Task Force has also been aware of a number of pressures on the legal profession beyond Ontario's borders and of the number of national and international reviews respecting legal education, accreditation and regulation that are underway. All of these are part of the "context" discussed above. These include the following:

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<sup>13</sup> Throughout the consultations, for example, it was suggested that the Law Society advise law schools to limit enrolment. In fact, the Law Society has no authority over law school enrolment numbers.

- a. There are increasingly serious employment challenges for law school graduates around the world.<sup>14</sup> A number of realities contribute to a fraught future for young lawyers with no clear way forward yet identified. These include,
  - i. changing law firm business structures;
  - ii. shrinking economies;
  - iii. off shore legal services;
  - iv. an aging bar that is continuing to practise past the traditional “retirement” age, for a variety of reasons;
  - v. increased law student debt loads;
  - vi. inflated expectations among some law graduates of the type and location of work they expect to find;
  - vii. international mobility of lawyers;
  - viii. consumer demands; and
  - ix. law school and professional structures that in some cases resist change.

At the same time unmet civil legal needs persist, suggesting that lawyer services are in demand, but not always available in the locations or practice areas they are needed and often not affordable.

- b. Other jurisdictions are undertaking analysis and reform of their legal education and/or licensing processes:
  - i. The Federation of Law Societies of Canada is developing national admission standards for use by all law societies across Canada to ensure that those licensed to practise law meet uniform competence standards.
  - ii. England’s Legal Education and Training Review, jointly commissioned by the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and the Institute of Legal Executives Professional Standards (IPS), was established in November 2010 and is expected to report in December 2012. The mandate is to “examine the requirements of legal education and training in the delivery of the regulatory objectives set out in the Legal Services Act 2007.”
  - iii. In September 2008 the American Bar Association, through the Council of the Section of the Legal Education and Admissions to the Bar, began a comprehensive review of the *ABA Standards and Rules of Procedure for the Approval of Law Schools*. In July 2012, the New York City Bar Association announced a Task Force to examine the future for new

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<sup>14</sup> During the course of the Task Force’s work employment problems for American law graduates have become a regular topic of newspaper and magazine articles. (e.g. <http://www.nalp.org/2011selectedfindingsrelease>.)

The American law school system has come under attack for unreasonably raising expectations and inaccurately reporting job placement statistics of their graduates. On the other side of the argument, graduates have been criticized for laying the blame on third parties rather than entering law school fully informed about the employment risks. It is not just the legal profession that is facing employment challenges in Canada. Recent teaching, engineering, medical graduates are also experiencing difficulty.

<http://www.nationalpost.com/related/topics/Closed+doors+ahead/6866306/story.html>

lawyers in a changing profession. In August 2012, the American Bar Association also established an 18-member Task Force on the Future of Legal Education to examine how well law schools are meeting the needs of the legal profession.

- iv. Australia has continued to move forward with National Legal Profession Reforms whose goal is to reduce regulatory barriers to practice and create a “national” set of standards that should apply across geographic borders.<sup>15</sup>
  - v. Law schools across the United States<sup>16</sup> are continuing to increase their clinical and professionalism programs in the face of calls for greater graduate hands-on experience. In July 2012 the ABA published its “A Survey of Law School Curricula: 2002-2010.”<sup>17</sup> This trend is by no means confined to the United States. Canadian law schools have expanded both their clinical education offerings and in some schools increased the number of credits available to students in these areas. Osgoode Hall Law School has recently introduced an experiential education requirement into its JD curriculum and opened an Office of Experiential Education.
47. The current number and breadth of studies and commentaries directed at examining better ways to educate and accredit lawyers, the importance of uniform standards and the challenges affecting lawyers reflect,
- a. a changing legal landscape affected by market forces;
  - b. increased external scrutiny on the profession, particularly in other parts of the world; and
  - c. a desire by the profession to address the challenges.
48. Currently, candidates for entry to the Law Society’s licensing process must have either completed an approved Canadian JD/LL.B degree that, beginning in 2015, meets the Federation’s national requirement, or obtained a Certificate of Qualification from the NCA.
49. Upon entry into the licensing process the candidate must,

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<sup>15</sup> [http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file\\_uuid=EA88A84F-E61E-20B4-76F6-E0650A76BA79&siteName=lca](http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=EA88A84F-E61E-20B4-76F6-E0650A76BA79&siteName=lca)

<sup>16</sup> [http://www.abajournal.com/news/article/us\\_law\\_schools\\_expanding\\_clinical\\_professionalism\\_offerings\\_survey\\_s](http://www.abajournal.com/news/article/us_law_schools_expanding_clinical_professionalism_offerings_survey_s)

<sup>17</sup> [http://www.abanow.org/wordpress/wp-content/files\\_flutter/1341346391LawSchoolCurriculaSurveyExecSummary.pdf](http://www.abanow.org/wordpress/wp-content/files_flutter/1341346391LawSchoolCurriculaSurveyExecSummary.pdf).

- a. successfully complete two licensing examinations – a Barristers’ examination and a Solicitors’ examination;
  - b. unless otherwise exempted, article for 10 months, including completion of the online Professional Responsibility and Practice course and assessment, and
  - c. be of good character.<sup>18</sup>
50. Requirements for entry to legal professions differ across jurisdictions and to some degree across Canadian law societies:
- a. The legal profession in the United States relies entirely on the law degree and individual state bar and in some cases multi-state uniform qualifying examinations to determine who should be licensed.<sup>19</sup> There is no apprenticeship requirement and no skills-based pre-call training. In some jurisdictions, particularly in states such as California where many of those who seek to qualify have graduated from non-ABA accredited law schools, the examinations are used as a “weeding out” mechanism, with very high failure rates.<sup>20</sup>
  - b. The SRA in England and Wales permits multiple access routes to becoming licensed as a solicitor, including one for those with a law degree, another for those with a university degree but no law degree and a third for those who qualify through the Institute of Legal Executives (ILEX). Regardless of educational route, all candidates must then complete vocational training in the form of a Legal Practice Course, a training contract that runs for two years and a professional skills course completed during the period of the training contract.<sup>21</sup> A different qualifying structure is in place for those who wish to become barristers.
  - c. In Australia the law degree has historically been an undergraduate degree, but some law schools are now offering it as a JD for those who already have an undergraduate degree. Some Australian states, such as New South Wales, have no

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<sup>18</sup> The licensing framework has evolved over decades and its length, composite parts, required competencies, chosen emphasis on substantive versus skills-based learning and the kind of assessments used to evaluate candidates have changed significantly as the legal landscape has changed.

<sup>19</sup> In the July 2011 sitting of the NY State Bar examination 11,182 candidates wrote the examinations. The passage rate for those graduating from ABA approved schools was 86.1 % on the first writing. The passage rate for internationally educated candidates (2,838 wrote the examination) was 35.4%.

<sup>20</sup> In the February 2012 sitting of the California Bar Examination, 4382 candidates wrote the General Bar Examination, with only 1849 candidates passing, a pass rate of 42.2%. A further 438 candidates wrote the Attorneys’ Examination, which is available to certain attorneys admitted in other American jurisdictions for four or more years. Of these candidates, 201 (45.9%) passed. The total pass rate for the General Bar Examination and Attorney’s Examination was 42.5%, which rises to 52.6% of first time candidates only. State Bar of California, “General Statistics Report February 2012 California Bar Examination” online: <http://admissions.calbar.ca.gov/Portals/4/documents/Statistics/FEBRUARY2012STATS.pdf>.

<sup>21</sup> Those without a law degree take a preparatory course to prepare non-law graduates for the Legal Practice Course. It covers the foundation subjects and is one year. Participants must have a three year degree in any subject. <http://www.lawsociety.org.uk/new/documents/careers/becomingasolicitor.pdf>. As mentioned above a legal education review is currently underway that may affect this approach.



training contract requirement, but all candidates complete what the Task Force has referred to in its Consultation Report as transitional training through a practical legal training requirement. Other jurisdictions, such as Victoria, allow candidates to complete either a training contract (articling) or a practical legal training requirement. On attaining a license all lawyers must work under supervision for a specified period, often a year, before they can acquire their own practising certificate.

51. The Task Force is not aware of studies that demonstrate that there is a single proven method by which lawyers are best educated, trained and licensed. Nor is the Task Force aware of evidence that any one of the many training approaches produces lawyers who are by virtue only of their training superior to those in other jurisdictions.
52. In the Task Force's view this variety of approaches to licensing demonstrates that entry requirements to the legal profession reflect, at least to some degree, subjective conclusions about what preparation is important for entry-level competence and at what stage in a licensing process the requirements should be met. Jurisdictions undertake deliberate and ongoing evaluations and studies of what they believe will accomplish the goal of competence within the context of their education system, the culture of the profession in that jurisdiction, legislative requirements and public expectations. These conclusions change as values and norms change. For example, it once was unthinkable in Ontario to leave a substantial portion of legal training to academic institutions.<sup>22</sup> Today the important role that multi-layered legal education plays in developing a sophisticated, well-rounded profession is accepted.
53. Moreover, the development of a competent lawyer is an ongoing career-long process that begins in law school, or before, and continues after licensing to include continued learning, personal development, increasing skill that accompanies the mastery of tasks

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<sup>22</sup> For most of Ontario's history, apprenticeships rather than classrooms have served as the main approach to law student learning. Prior to 1889, aspiring lawyers completed articles with a practising lawyer, while also engaging in self-study. Classroom education was formally introduced when the Law Society opened a law school in Osgoode Hall in October 1889. However, the early Osgoode Hall program was based primarily on apprenticeship, with students only attending classes for a few hours per day. When the first LLB degree was offered in Ontario by the University of Toronto in 1949, its graduates were exempted from two years of study at Osgoode Hall, but were still required to complete two years of practice-focused programs through Osgoode Hall. In 1957 the Law Society agreed with Ontario's universities that it would recognize LLB programs subject to certain conditions, including that graduates of these programs would be required to complete articles of clerkships and a bar admission course prior to being eligible to be called to the bar. Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1791-1997*, (Toronto: University of Toronto Press, 1997) at 162-164, 169, 253-254 and 259.

and experience, mentoring and regulatory oversight. Entry to the profession is a single moment in time and although it is a critical moment, it must be understood as part of a long continuum of learning and experience.

54. A minority of submissions expressed the view that articling is the only way to make sure that law graduates develop entry-level competence. Having heard a wide range of opinions and considered a number of studies on development of competence, the Task Force is of the view that a single evidence-based “right” approach to licensing has not, in fact, been identified and likely does not exist. The reality is more nuanced. The approach a jurisdiction uses to license its new lawyers appears to reflect an amalgam of subjective conclusions as to the components thought to establish entry-level competence and the context in which the legal profession in that jurisdiction operates.

**b. A Role for Transitional Training in the Law Society’s Licensing Process**

55. In the Task Force’s Consultation Report (“Consultation Report”) it noted the following:

As a component of th[e] licensing process, articling is presumed to contribute to the acquisition of entry level competencies, as part of necessary “transitional training” between law school and practice.

In the Task Force’s view, transitional training is intended to address at least the following five goals (“the five goals”):

1. Application of defined practice and problem solving skills through contextual or experiential learning.
2. Consideration of practice management issues, including the business of law.
3. Application of ethical and professionalism principles in professional, practical and transactional contexts.
4. Socialization from student to practitioner.
5. Introduction to systemic mentoring.

...what is paramount for the Law Society is ensuring that any transitional training that is part of its licensing process contributes demonstrably and significantly to the development of competent

and ethical entry level lawyers who have practical problem-solving skills, in addition to academic and analytical ability.

The Task Force's discussion and the options it has developed in this report for consultation emerge from two principles:

1. Transitional training...has a valid regulatory *purpose*.
2. For transitional training to be a valid regulatory *requirement*, its design, implementation and measurement should be transparent, objective, impartial and fair.<sup>23</sup>

56. The Task Force has debated whether transitional training should continue to be a Law Society requirement. Should it be abolished in favour of more stringent post-license requirements? This idea is not new and was recommended in 1972 by a Law Society Committee whose recommendations Convocation ultimately rejected. The key arguments in favour of abolition are as follows:
- a. Other jurisdictions, most notably in the United States, do not require articling and the Task Force is unaware of any studies that conclude that lawyers in the United States are any less competent than lawyers in Ontario.
  - b. A one-size fits all pre-licensing approach amounts to over-regulation. If articling were abolished, firms with entrenched quality assurance programs for educating their students would use those same approaches to ensure the competence of their first year associates. The Law Society's focus should be on the remaining candidates who could benefit more from post-licensing requirements.
  - c. Placement shortages have made articling an unreasonable barrier to entry.
  - d. There is no concrete evidence that articling is effective.
57. A majority of submissions the Task Force received took the position that the public interest is protected by a licensing system that affords *some* opportunity for the practical application of knowledge, skills and attitudes in a supervised environment as part of an iterative process before licensing. This is a "low-risk" way to assist the novice along the continuum toward independent practice. Moreover, submissions noted that from the law graduate's perspective, transitional training provides an opportunity for hands-on training, socialization and mentoring that may not occur in law school or that in any

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<sup>23</sup> Consultation Document. pp. 5-7.

event is of a different quality following graduation. This facilitates the new lawyer's assimilation into the professional world. Some submissions suggested that transitional training is essential because law school does not (and perhaps cannot) fully prepare a candidate for the practice of law. Transitional training, properly developed, is an integrative process, taking the law school learning and experiences and folding them into a practical context.

58. Many of the submissions made in favour of abolition of articling actually speak to the need for changes to transitional training as it currently exists in Ontario, but not necessarily to the need for abolition *per se*.
59. The numerous submissions the Task Force received on the importance of transitional training before licensing persuades it that transitional training with the five goals and two principles set out above, properly designed and delivered, has a significant role to play in enhancing the competence of those who experience it. Indeed, as the numbers of candidates for licensing who have received none of their training or education in Canada increases transitional training may be more important than ever before to facilitate their adjustment and better prepare them for practising law.
60. This is by no means, however, the end of the discussion. Indeed, the “abolition” discussion and the Task Force’s overall mandate have led it to consider a number of questions, including the following:
  - a. Must transitional training follow a single approach? Are there viable alternatives to articling? What determines viability?
  - b. If transitional training is a required component of the licensing process what criteria should determine whether candidates have the opportunity to complete that requirement?
  - c. As part of a regulatory requirement, should there be measurable standards for what is to be accomplished in transitional training?

**(a) Alternative Pathways for Transitional Training**

61. Articling has been the method by which law societies across Canada have traditionally implemented their requirement for transitional training. The Task Force asked itself

whether articling is the only viable transitional training approach for licensing lawyers in Ontario. Given placement shortages an affirmative answer would mean that an increasing number of law school graduates and internationally-trained candidates would be unable to meet the regulatory requirement for entry to the profession in Ontario, largely as a result of market-driven forces rather than competence-based ones.

62. The Task Force first considered the issue on its merits. There is a large degree of supposition in this analysis since no Canadian law society has yet provided an alternative form of transitional training to replace or supplement articling. The Task Force understands the concern that some submissions have raised about the risks to the profession's reputation of untried alternatives and whether they should be introduced to replace or even supplement a well-entrenched status quo.
63. Those who support articling, whether as the only or as an essential approach, focus primarily on the value of the "real world" setting in which law graduates apply and interpret knowledge, skills and attitudes that until that point they may have understood largely in a theoretical context. The day-to-day intensity of an articling placement, it is said, provides the law graduate with the most realistic measure of what "being a lawyer" is about. For law graduates, another advantage of an articling experience is that it feels, often for the first time, that they are behaving like lawyers. They are working in the profession, typically being paid for doing that work,<sup>24</sup> making some decisions, however limited, in real-time and observing what lawyers do in a work setting.
64. The Task Force has noted the excellent analysis that many of the submissions provide on what "good articling experiences" are capable of providing.<sup>25</sup> It agrees with many of the factors cited, but observes that few actual articling placements are capable of, or even try, to accomplish *all* these factors.
65. To some degree the description of what the ideal articling experience addresses is a theoretical construct that is not reflected in the reality of the current profile of

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<sup>24</sup> Unpaid articling positions continue to be offered and, as students become more pressured to find a placement, accepted.

<sup>25</sup> e.g. Law Society Articling Task Force Consultation Submissions: Ontario Bar Association.  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487583>

placements. This is not intended as a criticism of placements, but rather a recognition that as the practice of law has become increasingly specialized and as the types, size and location of firms that hire students has narrowed, the “generalist” approach to the articling experience has lessened and articling must be evaluated based on the needs of the 21<sup>st</sup> century practice of law.

66. To illustrate the challenges to articling the Task Force notes the following:
- a. Whereas students in small firms may be exposed to practice management training on such skills as books and records keeping, students in large firms are less likely to receive such training.
  - b. Students in large firms may be exposed to more than one practice area rotation, while students in specialty firms will work in only one area.
  - c. The more limited range of employment opportunities means that students may be exposed to “real life” practice situations in particular areas of law and for particular types of clients, but if their ultimate practice as lawyers is not in a comparable context articling will have contributed little to their ability to apply legal knowledge in their practice area. Criminal and family lawyers, in particular, noted the increasing inability of such practices to afford to hire students.
  - d. Clerking for the courts, while valuable on many levels, has no “practice setting” component.<sup>26</sup>
  - e. Increasingly, articling students are employed to conduct research assignments, which give them few practical skills beyond researching and analyzing a legal problem.
  - f. While feedback from Principals is an essential part of the process, the pressures on busy Principals may in fact minimize the availability of this feature and the Principal’s merit as a teacher or mentor may render this feature more or less useful.
  - g. Finally, although approximately 50% of lawyers in private practice work in firms of 5 or fewer practitioners, the number of articling jobs in such firms is approximately 10% of the total.<sup>27</sup>
67. That being said, the reality is that a substantial portion of licensed lawyers commences and continues to practise in contexts similar to their articles. And while some lawyers

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<sup>26</sup> Although the Law Society’s articling term requirement is 10 months, the courts’ clerking term is typically 12 months.

<sup>27</sup> There are 22,115 lawyers in private practice. Of those 6,789 are sole practitioners and 4,237 are in firms of 2-5 members.

commence practice in contexts different than their articles (for example some lawyers who article in larger firms commence practice as sole practitioners or in small firms), this does not appear to create risk for clients, based on available data.

68. While the Task Force accepts that articling may have limitations, even a specialized articling experience can assist students in developing useful practical skills.<sup>28</sup> Specialized research still requires problem-solving skills in a client context. Working for a senior articling principal or a judge accustoms a student to the kinds of demands that are often made by in-house counsel and other clients. And all of these experiences give students an opportunity to develop a network of colleagues and mentors.
69. In the course of its analysis, the Task Force returned to the five goals of transitional training it articulated in its Consultation Report,<sup>29</sup> with which most submissions agreed. While it believes that articling can and in many cases does address those goals, the five goals *per se* do not preclude an alternative path to articling, provided such an alternative also meets outcome measurements and provides some “real world” socialization and mentoring.
70. The implication of a number of submissions is that more “school” cannot replicate working in the real world setting, which is integral to articling. The Task Force is of the view that a transitional training approach that interweaves focused simulated training with workplace interaction and placement can provide valuable training that is rigorous and relevant. This is particularly true if it is designed to address particular areas of law for which fewer and fewer articles are currently available.
71. One of the arguments made against alternative pathways to licensing is that having never been tried in Canada they are an unknown entity. As the Task Force’s recommendations conclude, this is an argument for proceeding cautiously, but not a reason for taking no action at all.

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<sup>28</sup> One of the submissions noted that articling plays an “essential role” for labour law firms as (1) it familiarizes students with a unique practice area that can only be learned on the ground; (2) it creates the pool from which first-year associates are hired; and (3) students play a critical role in case preparation thereby keeping costs down and contributing to access to justice. Law Society Articling Task Force Consultation Submissions: Sack Goldblatt Mitchell LLP, <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487546>.

<sup>29</sup> See paragraph 55 above.

72. The Task Force considers that well-designed alternatives to articling, which meet rigorous standards and address the five goals and two principles of transitional training, will provide an effective approach to licensing competent entry-level lawyers. Indeed for some this approach may be more relevant and effective than the available articling placements.

**(b) Process Fairness**

73. The Task Force agrees that simply because alternative pathways to transitional training may be viable, it does not follow that a jurisdiction must adopt them. As identified above, however, the consideration of alternative pathways for transitional training does not exist in a vacuum, but rather in the context of,
- a. articling placement shortages that have become endemic to the system in Ontario;<sup>30</sup> and
  - b. a narrowing of the available placement options that militates against candidates being able to satisfy the requirement in settings that best reflect the kind of law they wish to practise.
74. The Task Force accepts that the profession has a strong commitment to articling. Moreover, in recent years the profession has created new positions. It remains true, nonetheless, that the vast majority of placements come only from government and a small percentage of practitioners and firms. The Task Force accepts that for many lawyers there are practical and perhaps insurmountable reasons why they do not offer jobs, but given this reality, in the face of ongoing placement shortages process fairness necessitates that serious consideration be given to alternative approaches. If it could be properly concluded that significant articling placement shortages were about to disappear, process fairness in this respect might not be an issue. But the Task Force does not think that this is so.

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<sup>30</sup> It is difficult to determine the extent to which other Canadian law societies are experiencing a shortage of placements because unlike the Law Society of Upper Canada, which registers candidates into its licensing process upon graduation from law school whether they have an articling position or not, other law societies register only those with articling positions as students in their bar admission programs.



75. The Consultation Report sets out in some detail the nature, location and shortages of articling placements.<sup>31</sup> The issue of numbers is a complex one. An ever-increasing volume of registrations in the licensing process has been the norm over the last decade. This trend is expected to continue for at least the next several years, reflecting an increased number of Canadian law schools and law school classes together with the significantly increasing number of internationally-trained candidates entering the licensing process through the NCA.
76. Since 1997 the number of first year law students admitted to Ontario law schools has increased from 1,091 in 1997 to 1,376 in 2011 for an average increase over the entire period of 23 students annually. Over the last five years the number of first-year Ontario law students has increased by an average of 32 students annually.<sup>32</sup> This does not include admissions that will soon take place at the new Lakehead University law school.<sup>33</sup> Thompson Rivers University in British Columbia admitted its first class of approximately 80 in 2011 and another university in British Columbia is applying for approval of a law school. The Université de Montréal's new common law program will graduate its first candidates in 2016. A number of these graduates may eventually seek admission in Ontario.
77. The number of NCA certificates issued has increased significantly from 89 in 1998/99 to 709 in 2011/12. Currently three quarters of these certificates are issued to graduates of Australia, England and the United States, many of whom are Canadians who have studied outside the country and are returning home. Traditionally, a significant percentage of NCA applicants will seek to enter the profession in Canada through Ontario's licensing process. As a percentage of each cohort of Law Society candidates for licensing, internationally-trained candidates now represent close to 20% of the annual registrants in the licensing process, in comparison to only 6.5% in 2008.

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<sup>31</sup> Consultation Report. pp. 9-10.

<sup>32</sup> The University of Ottawa increased its class size over a two year period by approximately 100 students. The first of these candidates has graduated and is currently in the licensing process.

<sup>33</sup> Lakehead University's Faculty of Law is expected to accept a first year class of approximately 55 students in the fall of 2013. These graduates will be applying for articling positions in 2015 to article in 2016.

78. The Task Force recognizes the difficulty in predicting the future pattern of placements. Despite this, the above discussion strongly suggests that the placement problem is likely to continue at least for the near term and as currently structured, the articling program will continue to be unable to meet an ever-increasing demand, despite increases in the number of placements.
79. Both in 2008 and during this Task Force’s consultation suggestions were made for ways to reduce the number of articling placements needed, by creating different classes of licenses. Two such examples proposed creating,
- a. two pathways to law school graduation – one for those who wish to be called to the bar and another for those who do not; or
  - b. a limited license for those not in “private” practice, but who provide legal services in certain specified areas, such as in-house counsel or for government, and an unrestricted license for those in private practice. To obtain the unrestricted license for private practice the candidate would have to article. Those with a limited license would not.
80. There are a number of reasons for being cautious about either of these approaches,<sup>34</sup> but in any event the Task Force is satisfied that the overwhelming majority of graduates are interested in an unrestricted license both because they do not know what kind of law they wish to practise or what kind of job offers they might receive and because in general it is easier to do all one’s qualifying up front, than have to undertake re-qualification at a future date.
81. The implication of the rising placement shortages is an entrenched status quo in which a significant percentage of candidates for licensing will be excluded based on factors that are not related to competence, but rather flow from market factors that determine how many and what kind of placements exist. Moreover, because there is only one path to qualification (articling), everyone who wants to qualify must be pigeon-holed into that single path.

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<sup>34</sup> The limited license as proposed would include many who practise law, but are not in *private* practice. This distinction is problematic. Moreover, it creates a potentially complicated system for obtaining unrestricted licenses.

82. The Task Force received numerous submissions from equality-seeking groups, nearly all of which rejected the status quo out of concern that it fails to address shortages that are believed to disproportionately affect them. The submissions focused on the particular impact that these groups believe articling placement shortages and other transitional training issues have on diverse groups.<sup>35</sup>
83. These include concerns that equality-seeking groups,
- a. may be disproportionately represented among those unable to find articling positions;
  - b. may be proportionately less represented among those who obtain articling positions in large firms;
  - c. may be more likely to become sole or small firm practitioners following licensing, but have difficulty finding articling positions directed at this type of training;
  - d. may have fewer networks in the legal profession to assist them in finding job opportunities; and
  - e. may be more likely to have significant law school debt than other groups.
84. Although the identification of issues affecting equality-seeking groups was similar across the range of submissions, the recommendations for action were not. Representatives of equality-seeking groups demonstrated the same breadth of views on possible next steps as the submissions overall, including the following:
- a. Develop temporary measures to assist currently unplaced students, and thereafter caution incoming students that attending law school does not guarantee students' ability to article or practise law.
  - b. Increase measurement tools against which students and articling students are assessed.
  - c. Actively encourage diverse hiring and retention practices, and further study issues of systemic barriers.

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<sup>35</sup> See the submissions from the African Canadian Legal Clinic, ARCH Disability Law Centre, Association des juristes d'expression française de l'Ontario, Canadian Association of Black Lawyers, Hispanic Lawyers Association, Law Society Articling Task Force Consultation Submissions. <http://www.lsuc.on.ca/articling-task-force/>.

- d. Maintain articling as the sole pathway through transitional training, but ensure that articling positions are made available to all candidates by capping articling salaries, and providing subsidies to certain types of firms and non-profit organizations to hire articling students.
  - e. Develop the “welcome innovation” of a PLTC through Option 4 for students who do not have articling positions.
  - f. Abolish articling and replace it with Option 5, either within law school or after law school, as this creates a single, universal transitional training program.
  - g. Combine a PLTC with a shorter articling requirement, which would develop a universal, fair system, with increased quality assurance mechanisms.
85. Many of the submissions from equality-seeking groups concluded that given the issues surrounding placements for equality-seeking groups any proposal for alternative pathways that retained articling as an option would be problematic for a number of reasons. These include the possibility of creating two classes of lawyers with the preferred group being those who articulated, the difficulty of adding debt to those already bearing a burden from law school expenses, and the belief that by providing an alternative to articling the profession would be able to mask the uneven treatment of equality-seeking groups.<sup>36</sup>
86. The Task Force has considered the issue of the possible unequal treatment of those who take an LPP. While attention must be paid to this issue in the course of the pilot project and will require special attention on the part of the Law Society, the providers and the profession to address it, it is inaccurate to suggest that this would be a new issue caused only by the introduction of an LPP. To use this as a reason to oppose an LPP ignores current reasons used to treat candidates and lawyers differently, based on where they went to law school, articulated and practised and indeed the size of community in which they practise. In the Task Force’s view the pilot project may in fact afford a head-on opportunity to challenge these types of views and stereotypes directly, rather than pretending they don’t exist.

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<sup>36</sup> The Task Force has concerns that replacing one single-path approach with another single-path approach may continue to exacerbate issues, rather than providing flexibility in the manner in which licensing candidates can meet their requirements.

87. The submissions of equality-seeking groups provide useful qualitative information that the Task Force has taken into consideration. As the same time, however, it has been difficult to develop an accurate statistical analysis of the placement issue as it affects equality-seeking groups. It appears that only a minority of members of equality-seeking groups self-identify, making both positive and negative information respecting placements incomplete at best. The Consultation Report cited statistics that point to moderately greater difficulty among self-identified members of equality-seeking groups to find articling positions, but the statistics do not reveal,
- a. the nature and quality of articles ultimately obtained;
  - b. the debt level of students from equality-seeking groups as compared with others;
  - c. their salaries; or
  - d. their satisfaction with their articles.
88. In addition, from the available data, the increased difficulty in finding articling positions does not appear to be experienced by all equality-seeking groups. The increased number of unplaced francophone candidates correlates with increased graduation from the University of Ottawa French Common Law and National Programs. The increased number of unplaced racialized candidates correlates with increased NCA volumes. There is good reason to suspect that the demographics of unplaced candidates reflects the demographics of the increased sources of candidates. It would not be surprising if internationally-trained candidates, whether originally Canadian or not, with more limited connection to Canadian legal practices have more difficulty in obtaining placements than those educated in Canadian law schools.
89. Qualitative information suggests inequality in the types of placements some students obtain based on factors other than competence. Statistics do not exist to enable a comparison of experiences between equality-seeking and other groups.
90. While the profession has made progress on a number of levels respecting enhanced diversity, the submissions of equality-seeking groups suggest that issues continue to exist that may affect the options available to some members of those groups, both in and

beyond the transitional training stage. In the Task Force's view, however, the limitations of the available statistics leave the issues somewhat unclear and undefined.

91. The Task Force agrees that all of these are matters of serious concern and has kept them in mind as it has developed its recommendations. In its view these concerns, the complexity of the issues and the insufficiency of the evidence around which to make final determinations further justifies the Task Force's recommendation for a pilot project. It will allow these issues to be considered over a period of time, with an evaluation structure that includes consideration of factors related to equality-seeking groups.
92. A licensing process designed with flexibility that undertakes a more systematic evaluation of issues affecting equality-seeking groups can more effectively monitor and address many of the issues raised in the submissions. Indeed for those who believe articling will always entrench a two-tiered licensing process, the pilot project will enable objective consideration of the value of an LPP as a single path for all candidates, rather than as one alternative, as a number of equality-seeking groups suggested.
93. Some have expressed the view that addressing shortages should not be the regulator's concern. There are, for example, international jurisdictions whose regulatory authorities distance themselves from responsibility for components of the licensing process. For example, the website of the SRA in England and Wales notes,

We do not provide careers advice; however, before applying to a Legal Practice Course, you should consider your route to qualification after the course. If you are planning to apply for a training contract, you need to know that the number of employers able to offer training contracts may be dictated by economic factors and can be significantly lower than the number of LPC graduates.<sup>37</sup>
94. Similarly the Law Society of Scotland's website notes,

Before choosing to study an LLB degree, you should be aware that acceptance by a university law faculty does not guarantee a place in the vocational post-graduate Diploma in Legal Practice or future

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<sup>37</sup> <http://www.sra.org.uk/students/lpc.page>

employment in the legal profession. However, a law degree is well respected and can be used as a stepping stone to many careers.<sup>38</sup>

95. The message of these statements is that although the regulator imposes certain steps as prerequisites for licensing it assumes no responsibility for a level playing field. The “market,” which is made up of those lawyers who choose to hire, decides who will and who will not meet the regulatory hurdles. There are a number of arguments made in support of this position, both in other jurisdictions and in Ontario, as the Task Force has observed in some of the submissions it received, which include the following:
- a. The number of Ontario and Canadian law school graduates and internationally-trained candidates continues to increase with no input from the profession as to how many articling placements the system can sustain. If the number of candidates seeking a license continues to increase unchecked, there will be a deleterious effect on the profession, which may have more lawyers than the system can bear.
  - b. Those who enter law school should be expected to do so having made a cost-benefit analysis that includes an understanding that they might not be able to complete their licensing process if they seek to do so in Ontario. This might lead them to attend law school in other jurisdictions, consider non-traditional uses to which they might put their law degree, or consider leaving larger metropolitan areas to obtain articling placements wherever they are available. Given that those choosing to enter law school are adults with, in most cases, undergraduate degrees and life experience it should be up to them to choose a path having already recognized the risks.
  - c. If articling is the best form of transitional training, the profession should not have to compromise it because more people want to become lawyers than the system can absorb.
  - d. The Law Society must make greater effort to find articling placements. Moreover, there are articling jobs going unfilled, particularly in smaller communities in the north and outside of larger metropolitan areas. Until all efforts to create more jobs have been exhausted the status quo is the best way to proceed.
96. With respect to these arguments, and recognizing that some other jurisdictions in the world have accepted them, the Task Force must disagree that this is the right approach for Ontario, for at least the following reasons:

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<sup>38</sup> <http://www.lawscot.org.uk/becomingasolicitor/students/studying-the-llb>

- a. Requirements for licensing are justifiable only when they have a legitimate purpose that contributes to competence. The Law Society requires the completion of articles as a condition of licensing on the basis that it contributes to entry-level competence. Such a requirement should not have the unintended consequence of limiting entrance to the profession because of market limitations. This could have negative implications for self-regulation because it gives rise to the perception that the profession is unreasonably restricting access to the legal services market.
- b. Even if the numbers of internationally-trained candidates and domestic law school graduates are on the rise and law societies have no control over these factors, their own systems must still have legitimate objectives and meet tests of fairness. This fact is reinforced by the existence in Ontario of the *Fair Access to Regulated Professions Act* that requires all regulatory requirements to be based on fair, objective and transparent principles.
- c. No profession, business, undertaking or endeavour is insulated from change and its decision-making should be cautious about being affected by a desire to return to the past. The Ontario Civil Legal Needs Assessment points strongly to unmet civil legal needs in this province. There would appear to be room in the profession for more lawyers, albeit perhaps focusing on different and additional areas of practice.
- d. The Task Force agrees that those entering law schools have the primary responsibility to familiarize themselves with the risks and employment realities of the legal profession, as would be expected of adults choosing any course of study or professional training. No profession can or should guarantee that acquiring a professional license ensures employment. Once licensed, lawyers have options to address market forces in the profession through the range of uses to which their professional license can be put. It is their responsibility to manage their careers.<sup>39</sup> In the Task Force's view, however, at the licensing stage candidates should be afforded a reasonable opportunity to demonstrate they are competent to receive the license. This is not a guarantee that everyone will successfully pass all the requirements for the license, but rather that the opportunity to demonstrate their competence should not be unreasonably withheld.
- e. A number of submissions have suggested that equality-seeking candidates are negatively affected by unreasonable barriers and that the internationally-trained candidates who must article may be particularly affected by this. To the extent that hiring reflects other than competence-based considerations the regulator must be concerned with process fairness.
- f. In 2008 Convocation addressed the articling shortage issue by approving a number of recommendations to,

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<sup>39</sup> That is not to say that the profession and the regulator should not continue to have an interest in issues surrounding lawyer post-license employment, particularly as they are relevant to principles of equality and diversity in the profession.



- i. reduce the requirement to article for internationally-trained candidates with at least 10 months experience in common law jurisdictions;
- ii. conduct a survey of the profession to determine if more firms were prepared to take students; and
- iii. expand what would qualify as an articling job.

The system continues to be unable to fully absorb the numbers seeking positions. Leaving the status quo in place on the assumption that the shortfall in articling positions will soon abate is not in the Task Force's view prudent.

- g. A significant minority of submissions suggested that the status quo would be sufficient if the length of articling is reduced from 10 months to five and double the number of placements became available. Firms and employers who offer the majority of jobs made it clear to the Task Force that such an approach is not one they would support as beneficial to either the student or the firm. It would be counterproductive to pursue this idea.
97. The Task Force notes that the majority of submissions agree that a failure to provide access to an essential component of the regulatory licensing regime is not legitimate and jeopardizes the continuation of the articling requirement, at least as the sole form of transitional training. The Task Force agrees.
98. At the same time, however, in the Task Force's view the Law Society is only one part of the equation and it is not the Law Society's obligation to find solutions to every challenge that faces law students, graduates and internationally-trained candidates for license. The Law Society has only limited ability and resources to control the environment in which candidates arrive at its door for entry to the profession. It is apparent to the Task Force that the issues affecting law students and graduates and candidates for licensing arise at a number of stages. The way forward must seek to balance a difficult reality with collective understanding, responsibility and effort along the following lines, all grounded in the context of requiring entry-level competence in candidates for licensing:
- a. Law schools, the Law Society and legal organizations should develop more meaningful communications about the "risks" and challenges of attending law school in a changing legal environment. A two-sentence alert on a website, as is done in England and Wales and Scotland, for example, may be of little value in assisting those considering a law degree to make wise decisions.

- b. Applicants to Canadian law schools and internationally-trained candidates seeking to transfer to Ontario should recognize that there are no guarantees respecting their future in the profession. They must assume responsibility to research their options.
- c. The Law Society must have a fair and transparent licensing process that makes determinations of admission based on competence, but this does not mean it should compel the profession to absorb or subsidize an unlimited number of candidates through their annual licensing fees.
- d. Law schools may need to examine tuition costs more closely, as well as the numbers of students they admit and graduate. In addition, it is clear that experiential training must play an increasingly important part in the law school curriculum and this may be an area for further development.

**(c) The Need to Measure Transitional Training Outcomes**

99. An important consideration when determining the role of transitional training is how its effectiveness is measured. From the Law Society's perspective, the articling system has been largely "hands-off" in this respect. Law societies have relied on generations of lawyers to act as Principals, supervising students and signing their articles at the conclusion of the process. Minimal rules are in place respecting who may act as a Principal, what the hiring process should entail and what tasks articling students should ideally complete, but it is fair to say that the Law Society does not set rigorous standards for the process. Nor does it truly define and measure outcomes so as to be able to make evidence-based assessments that the process actually adds to individual lawyer competence or results in a more competent profession than would be the case without articling or with an alternative system.
100. One of the implications of a hands-off regulatory approach is that the structure of articling and its priorities are largely developed by those who supply the articling placements. Since mid-to-large firms, primarily in larger urban centres, and government provide most of the jobs, they effectively shape the system, including deciding,
- a. what type of students are required;
  - b. how many placements to offer;
  - c. what the focus of the training will be; and

- d. the extent to which their students will,
    - i. interact with clients;
    - ii. learn about practice management or the business of practice;
    - iii. have their labour billed out to clients;
    - iv. be exposed to more than one area of law; and
  - e. myriad other conditions that affect the articling experience.
101. Some submissions have suggested that the fact that the legal profession in Ontario operates effectively, provides valuable service to the public and has government confidence, evidenced through continued self-regulation, means that the articling system must be working even without quality assurance goals and measurement tools being in place. While the Task Force has some intuitive sympathy for this view, it must conclude that for a regulatory requirement to be defensible it must be based on something more than anecdotal support, inaction or indeed inertia. A valid regulatory requirement must be premised upon the notion that it is part of a quality assurance system. Responsible regulation must address the questions, “What is the training requirement intended to accomplish?” “Does it do so?”
102. If transitional training is considered to be an essential requirement of the licensing process, then simply completing it should be an insufficient mechanism to evaluate a candidate’s success. The Task Force has concluded that the effectiveness of transitional training must be capable of and subject to measurement.
103. The Task Force has considered how best to evaluate the effectiveness of transitional training both for the individual seeking to be licensed and for the profession’s competence overall. In its view the most effective approach would be based on assessing performance *outcomes* rather than activity *inputs*. Standards and goals should be set for what those who have completed transitional training should be able to do (intended results). Candidates should then be assessed at the end of the process to determine if they have met the standards and accomplished those goals (performance results). It is an insufficient measure of competence to simply articulate a list of activities candidates must undertake with no evaluation of the performance that results from the completion of those tasks.

104. The value of focusing on performance outcomes is that there can be flexibility in the training methods, provided the ultimate formal assessments are the same. Moreover, the measurement can be done centrally so that individual Principals do not have to conduct the assessments.
105. Many submissions that supported transitional training agree that it is essential that there be measurable outcomes. To the extent reservations were expressed, they were based on a concern that if the requirements on articling Principals are too onerous it may further discourage smaller firms from hiring students and may result in some of those firms that currently employ students not doing so in the future.
106. Provided the outcome measurements are reasonable, designed to further the goals of entry-level competence and flexible, the Law Society should not reject higher standards for articling only because the number of articling placements may be affected. If anything, these reservations tend to support the view that alternative pathways to licensing are necessary if many articling Principals will not accept the responsibility of reasonable assessment requirements on them.

**(d) Timing of Transitional Training**

107. The Task Force recommends that the transitional training pilot project take place before licensing. The pilot project's focus will be on developing and evaluating alternative pathways to articling through an LPP as well as evaluating the value and effectiveness of articling. Since articling occurs after law school the pilot project will operate in the same general time frame. This will also assist in administering the pilot project and evaluating the two programs.
108. The Task Force did consult on and discuss the possibility of a post-licensing transitional training regime.<sup>40</sup> A post-licensing transitional training regime would resemble limited licensing more than traditional preparatory training.<sup>41</sup> The philosophy of this approach is

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<sup>40</sup> Option 3.

<sup>41</sup> As the Consultation Report described the concept, and similar to the American system of licensing, it recognizes successful completion of licensing examinations as the threshold for call to the bar. Unlike the American system, however, it recognizes the need for transitional supervision following license, defined according to employment

that it applies regulation where it is most needed, by expending regulatory resources on those in higher risk practices rather than on everyone, and obviating the need to develop pre-licensing alternative pathways.

109. The Task Force does not support this post-licensing approach to transitional training in Ontario's context for a number of reasons, most importantly, because post-licensing requirements without approved employer supervision in every case may not be able to protect the public sufficiently. Newly-licensed lawyers would be able to practise while in their transitional phase, but there would be no on-site mentor for these practitioners as would be the case for those working in an approved employer setting.<sup>42</sup>
110. The Task Force agrees that the issues of limited licensing and post-call mentoring are worth further discussion and attention in other post-licensing Law Society contexts. In evaluating the effectiveness of each of the components of the pilot project these issues should also be kept in mind to consider whether transitional training could be improved by, for example, some post-call licensing limitations (e.g. curriculum based CPD requirements, pre-requisites for certain high risk areas of practice ) or additional post-licensing mentoring for high risk practices.
111. The complete or significant removal of pre-license transitional training would also have the potential to make Ontario the only Canadian jurisdiction without such training. This could result in Ontario being offside the national mobility regime that enables lawyers to

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profile and whether the new lawyer works for an approved employer or not. Standards would be established to determine who qualifies as an approved employer and any size firm might qualify. For those working in these approved settings for a specified period of time this would satisfy transitional training requirements. For those not working under approved supervision there would be different transitional training. The licensee would be able to begin practising, but would be subject to more stringent risk-based requirements, such as a three-to-four week course similar to the previous bar admission course, required mentoring and a CPD curriculum of learning with possible competence-based outcomes assessment.

<sup>42</sup>The post-call approach found almost no support in the consultation meetings or submissions. Although many submissions accepted the need to consider alternative pathways to transitional training, virtually all considered the principle of vocational training in the "low-risk" context of a pre-call setting to be the most in keeping with the Ontario context. At two consultations held with representatives of law firms that hire a significant number of students, the initial reaction of most firms was that they would in fact hire fewer new lawyers under such an approach than they hire presently as articling students. If that is correct, even for a number of years as firms adjust, the result would be more new lawyers in non-supervised settings.

move freely between Canadian common law jurisdictions based on shared admission standards.

112. This risk should not be taken lightly. National standards and approaches to the practice of law in Canada are vitally important components of the profession's future success in the 21<sup>st</sup> century. Lawyers across Canadian jurisdictions have more in common than not and in the last decade law societies have recognized and embraced the benefits of common approaches in the public interest and that of the profession. The ability to move forward with national policies has been facilitated because of those common approaches.

113. The Federation's Mobility Task Force interim report in January 2002 stated:

One of the considerations that underlies the Task Force's mobility framework is the recognition that lawyers called to the bar in common law provinces are subject to remarkably similar,

- a. educational, admission, and regulatory requirements;
- b. legal principles, statutory structures and procedures; and
- c. codes of conduct arising from a common legal system.

Mobility provisions should reflect that this common approach and structural similarity render lawyers from common law bars more similar than not and the transfer from one common law province to another should be as seamless a process as is reasonable.<sup>43</sup>

114. The Task Force's concern in this area does not suggest that the Law Society should cede its authority over regulating the profession in the public interest in Ontario, but rather that its recommendations must consider the broader picture. Its pilot project allows for this, ensuring an opportunity for ongoing discussions with the Federation.

115. As discussed elsewhere in this report one of the concerns raised about reform is the extent of irrevocability of the change. In particular, an approach that would entail dismantling the articling regime without evidence that the chosen alternative, largely post-call, would be effective engendered a sense of caution.

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<sup>43</sup>Federation Mobility Task Force Interim Report. p. 6.

**(b) During Law School**

116. The Task Force also considered the issue of transitional training occurring during law school. The Consultation Report made brief reference to the Carnegie Foundation's report entitled *Educating Lawyers: Preparation for the Profession of Law* ("the Carnegie Report") in which a greater role for skills-based learning in American law schools is discussed. There are features of the Carnegie Report that the Task Force found interesting enough that it wished to seek comment on it and it has heard a variety of views in response.<sup>44</sup>
117. The Task Force recognizes that the report's ideas, born out of an American context where there is no transitional training, cannot simply be grafted onto a Canadian context. The Carnegie Report's integrated education model was not designed to meet external regulatory requirements. A Carnegie-like approach, coupled with the added goal of having the experiential learning component satisfy the licensing transitional training requirement, could have a somewhat different effect on law schools than the Carnegie report contemplated. This is because any transitional training during law school that seeks to satisfy a licensing requirement would have to comply with certain regulatory standards and performance objectives.
118. A number of law student submissions suggested interest in the Carnegie approach because it has the potential to shorten the time it takes to be licensed, would eliminate the additional cost of post-law school training and integrate skills training into law school for every student. In contrast, however, other students noted that it would narrow the range of options available to them, for example, to study an area of law intensively over second and third year or take exchange programs in their upper years.
119. Law schools also raised concerns about the implications of this approach for the nature of legal education in Canada. The Task Force recognizes that like many of the other issues it raised in the Consultation Report this one is complex and nuanced. At the same

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<sup>44</sup> *Summary of Submissions to the Articling Task Force Consultation*, online: <[www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487639](http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487639)> at pp.13-14.

time, it believes the topic is worthy of further exploration. Indeed, in the Task Force's view, not to explore the idea further would be a missed opportunity.

120. Although the pilot project the Task Force is recommending will take place after law school, the Task Force is of the view that this would not and should not preclude a law school that wishes to propose a Carnegie-like law degree from seeking approval from the Federation's Common Law Approval Committee and exploring with the Law Society whether its practical component could satisfy part or all of the transitional training requirements. In the Task Force's view there is nothing to preclude such a proposal, properly framed so that it meet the goals of transitional training, and approved, from operating alongside the pilot project.

**v. Student Debt Load and Transitional Training**

121. Annual law school tuitions and ancillary fees vary from law school to law school across Canada with the lowest in Ontario being approximately \$15,000 and the highest being approximately \$28,000. Many law student submissions addressed the high cost of law school and the effect of debt loads on the articling and career choices of graduates. They also described the implications of debt coupled with failure or difficulty to find an articling job.
122. Student submissions addressed what type of transitional training would best alleviate the burden of such loads. Some submissions stressed the advantage of transitional training that could occur during law school rather than after it. Others emphasized the need for transitional training that pays rather than training for which the student must pay. This raised issues about the possible unlevel playing field that could exist for those who would article versus those who attend an alternative pathway that involves further payment.
123. At the same time students spoke of the frustration of having incurred significant law school debt only to be precluded from being licensed because of insufficient articling placements.



124. The Task Force recognizes the stress that accumulated education debt places on many candidates for licensing. Some law school submissions suggested that law school debt must be factored into the choices the Law Society makes on transitional training, including suggesting that the profession be required to bear the burden for the transitional training process either through salaries or subsidies.
125. The extent to which law schools charge high tuitions is entirely beyond the Law Society's control. If the implication of some of the submissions respecting the impact of high law school tuition is that transitional training should be altered to accommodate law school tuition levels, the Task Force cannot agree. Its primary substantive concern must be competence and while fairness is an integral part of its process considerations, the design of the pilot project must meet the Law Society's regulatory obligations.
126. By introducing an LPP component of the pilot project, discussed below, the Law Society will provide increased opportunities to candidates who might otherwise be precluded from qualifying for licensing because of articling placement shortages. This will be done in the context of a program that meets Law Society standards for competence and provides the work placement opportunity important to the development of that competence.

### **OVERVIEW TO PROPOSED PILOT PROJECT**

127. Based on the considerations discussed above the Task Force recommends a pilot project with the following integrated components as discussed in detail below:
  - a. There will be a five-year transitional training pilot project, proposed to begin in 2014-15, with an articling component and a Law Practice Program ("LPP") component.
  - b. During the pilot project data designed to enable an evaluation of the project will be collected and any necessary refinements or other policy issues related to this will be considered in the Professional Development & Competence ("PD & C") Committee.
  - c. The formal review of the pilot project will commence in the final year of the pilot and be completed by the end of that year with a proposal for next steps provided to Convocation for its consideration. The implementation of the pilot project will

continue during the course of the review. Convocation will then determine whether the pilot project should end, become permanent or result in a different approach.

- d. During the pilot project, the 10-month articling program will continue, in general with its current administrative structure and with a focus on measures designed to enable the evaluation of the program merits at the end of the pilot project, including enhanced documentation for Principals and students to complete.
- e. The Law Society will issue a Request for Proposals (RFP) for interested parties to submit a proposal to provide a transparent, fair and defensible competency-based LPP to the Law Society as an alternative pathway to licensing. Validated law practice skills, task and professionalism competencies determined by the Law Society will form the basis of the LPP.
- f. The RFP will seek proposals for the delivery of an LPP that,
  - i. provides training on the established competencies;
  - ii. is designed to accomplish the program goals within approximately four months, but permits potential providers to suggest a length of program they determine is most effective to accomplish the objectives;
  - iii. includes an additional four (4) month (17 week) cooperative work placement. The establishment of work placements will be the responsibility of the provider(s) and the provider(s) will assist and support candidates in choosing and completing the placements. To the extent possible, the successful provider will seek placements in settings that offer a wide range of experiential opportunities, including in settings that offer relevant transitional training while also supporting access to justice in areas for which there are unmet civil legal needs;
  - iv. incorporates the use of practising lawyers as instructors and/or in other capacities; and
  - v. includes quality assurance assessments.
- g. The experiential components of both transitional training pathways (articling and LPP) will address approved competencies. The Law Society will oversee a formal process to assess defined learning outcomes necessary for entry-level practice, based on those competencies (“the assessment”). The assessment will be standardized, transparent and fair. All candidates for licensing, including any otherwise exempted from the LPP or articling, will be required to successfully complete the assessment as a requirement of licensing.
- h. The assessment process, applying at a minimum the components and considerations set out in paragraph 165 of this Report, will be developed and

proposed to Convocation for its approval in the period prior to implementation of the pilot project.

- i. To enable the Law Society and the profession to make evidence-based determinations about the merits of each component of the pilot project, an evaluation system, described in paragraphs 170-175 of this Report, will be designed and implemented.
- j. During the pilot 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) 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 will extend the three-year completion requirement for this period with the condition that each candidate must register and complete the LPP at the first available offering.
- k. Following Convocation's approval of the pilot project,
  - i. the RFP will be developed and issued;
  - ii. the RFP applications will be considered in accordance with the Law Society's established process for RFPs;
  - iii. the PD & C Committee will 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) will be chosen in accordance with the Law Society's established process;
  - v. steps to implement the requirements of the pilot project, including the development of the assessment process set out (g) and (h) above will be undertaken by the PD & C Department;
  - vi. any additional policy matters to enable implementation, including approval of the assessment process set out in (g) and (h) above, will be considered by the PD & C Committee and, where necessary, the Committee will make recommendations to Convocation for its consideration and approval.

## THE ARTICLING COMPONENT

128. One of the difficulties in accurately assessing the merits of articling is that there is little systemic evidence available on which to do so.<sup>45</sup> In its Consultation Report the Task Force noted:

To date, systemic assessments or benchmarks against which to determine articling students' competence have not been part of the licensing process. It is therefore somewhat difficult to objectively measure whether articling, as a regulatory requirement, actually accomplishes its goals. The evaluation of the system falls back upon anecdotal evidence or vague generalizations, often with no empirical evidence to back them up. Thus, although the system may well be accomplishing its goals the Law Society cannot demonstrate, through objective measures, that it is doing so.

A regulatory requirement such as articling must be evaluated on more than anecdotal evidence or the general belief, however valid, that the system is effective because supervised practice is inherently a good thing or because so many ethical and good professionals have come out of it. While articling *may* accomplish the five goals, set out above, tools capable of determining whether it *in fact* does so across the system are lacking.

If articling is a valuable process, it is essential that such a requirement or prerequisite to entry to the profession have objective and demonstrable standards, just as other competency-based regulatory requirements have.

The Law Society must be able to,

- identify and articulate the goals of articling;
- formulate criteria to measure whether those articulated goals are being achieved;
- ensure that the articling experience is reasonably consistent for all articling students; and
- assess whether articling students have demonstrated the practical skills and knowledge necessary for entry-level licensees.<sup>46</sup>

129. In the past, the Law Society has sought to increase the reporting accountability of Principals, but subsequently reduced the requirement in the hope of encouraging more lawyers to become Principals. Moreover, the Law Society has not evaluated the performance of articling students to determine whether they have acquired demonstrable skills during the articling process.

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<sup>45</sup> Information on the articling experience exists, but has not been designed to measure whether articling accomplishes specified goals.

<sup>46</sup> Consultation Report. Pages 8-9.

130. As part of the pilot project, the 10-month articling program will continue, with its administrative structure much the same (e.g. steps to becoming a Principal, hiring process, interview rules, the continuation of the professional responsibility course), but with particular attention to measures designed to enable the evaluation of the program merits at the end of the pilot project, including enhanced documentation for Principals and students to complete.

### **Documentation**

131. The purpose of the Principal and candidate documentation is to apply a more systematic approach to the articling experience and develop consistent data on the quantitative and qualitative aspects of the experience for those who are engaged in it. The Task Force is aware that in the past some Principals have complained about the imposition on their time of having to complete documentation such as this.
132. During the consultation, however, many members of the profession made clear their view that articling should continue, while at the same time agreeing there should be ways to measure the effectiveness of the program. To achieve an evidence-based evaluation of the effectiveness of articling there must be a commitment to documenting the process. If articling is as important as many in the profession consider, there must be a collective commitment to determining what the process accomplishes.
133. Documentation will be required from Principals and candidates. It will incorporate a series of questions whose answers will provide detailed information around time spent on particular skills and activities. The five goals of transitional training will be tracked through the documentation. The documentation will include the following:
  - a. **A Training Plan (Principal):** The Training Plan will be filed prior to the start of the articling term or within 10 days from the start of the articling term. Assuming the training plans do not change from year to year the Principal will not be required to submit a new form every year. If changes are contemplated or requirements change a new plan will be submitted.

The Training Plans for small firms and large firms and an optional “checklist” format plan for firms that prefer this approach will be developed.

This will also allow for some measurement of the quality of Principals and their approach to inculcating the established competencies.

- b. **A Mid-Term Evaluation (Principal and Candidate):** The mid-term evaluation will assist the Principal to monitor progress toward the objectives and substance of the education plan prepared by the Principal and approved by the Law Society, which will include a requirement for qualitative commentary in each of the competency categories.
- c. **An End of Term Evaluation (Candidate only):** This form is confidential to the candidate and prompts the candidate to provide candid feedback on the articling experience. The candidate will be asked to include qualitative commentary in each competency category. This input will assist the Society to determine if the placement was acceptable and should be allowed to continue in following years.
- d. **Filing of the Certificate of Service under Articles (Principal):** This document requires the Principal to certify that the candidate is a fit and proper candidate for licensing.

The Principal will not be requested to file a performance review at the end of the term. The formal assessments that must be taken by all candidates (LPP candidates will also take these assessments) will determine each candidate’s ability to function at an entry-level. Historically, Principals have not given constructive or negative feedback in the final review; they have delivered it directly to the candidate at the end of the placement. This face-to-face activity should be continued and will now be supplemented by the Law Society’s formal assessments.

134. The qualitative data obtained from these documents will provide useful information in assessing individual articling placements and their value in contributing to entry-level competence, particularly when measured against the students’ performance on the formal assessments.

135. As is currently the case, the articling training plan will allow for flexibility within each placement to permit Principals and their firms to expose the student to different areas of law and practice. At the same time, however, there will be attention paid to the way in

which the articling experience accomplishes the five goals of transitional training that were widely accepted in the consultations as key components of the experience.

### **Possible Further Adjustments to Articling**

136. There may need to be further adjustments to the articling program once the successful LPP proposal is finalized to address additional issues such as,
- a. the point at which students would be required to choose whether to seek articles or pursue the LPP route; and
  - b. scheduling issues related to transitional training, licensing examinations and calls to the bar.

These details will all be developed and brought to the PD&C Committee for its consideration and where necessary to Convocation.

### **LAW PRACTICE PROGRAM (LPP)**

137. The LPP is not intended to mirror articling. Both articling and the LPP will address the same competencies and will include the same formal assessments, but the manner in which the candidates will accomplish the competencies will be different. The merits of each approach will be evaluated over the life of the pilot project.
138. The Task Force considered carefully the challenges for candidates who take the LPP route to admission. These include the fact that they will have at least some responsibility for the costs of the program. Their work placements may well be unpaid, they may have to relocate for their work placements and the profession may react differently to them for having gone this route. There will no doubt be other challenges that will arise once the pilot project gets underway.
139. As set out above, the Task Force believes that the profession's reaction to LPP candidates as well as the other issues noted above can and will be addressed during the pilot project. The Law Society must work in conjunction with the profession, the provider(s) and the candidates to consider systemic ways to address these issues. The

evaluation of the LPP will include an assessment of these issues. The Task Force believes that law firms and legal organizations will have an important role to play in supporting and facilitating the success of both components of the pilot project and must be encouraged to do so.

140. Even with challenges, the introduction of this pilot project re-opens a door that for an increasing number of candidates was closing, as well as offering an alternative route for those who seek a less traditional road to licensing. The Task Force recognizes that the pilot project will not eliminate all the pressures on candidates, but in its view it is a positive step, which includes an opportunity to explore a new path.
141. The Task Force does not know how many candidates will pursue the LPP when it is implemented in the 2014-2015 licensing year, but it has estimated approximately 400 candidates, based on the pattern of increase in candidates seeking entry to the licensing process in recent years.

### **Third Party Providers**

142. The Task Force's proposal is based on the LPP being established and provided by a third party provider or providers. The Task Force makes no recommendation on whether there should be a single or multiple providers. That decision will be made when proposals are considered by the Law Society.
143. The Law Society provides learning supports and tools for lawyers and paralegals in a number of ways such as CPD programming, e-Bulletin Resources for Lawyers, the Knowledge Tree, practice guides and other resources. In the past it has been the provider of the bar admission course.
144. In the Task Force's view what is envisioned in the LPP component of the pilot project goes beyond the Law Society's expertise. The pilot project introduces a new and previously untried approach to transitional training in Ontario. The Law Society has a central role to play in this process in the area in which it has particular expertise, namely in the establishment of standards and system-wide assessment and testing.



145. From the training perspective, however, the LPP represents an innovative step, best undertaken by those whose primary expertise is in the development and establishment of professional experiential programs, adult learning, and use of technology in innovative delivery.
146. In addition, work placements of the type being contemplated for the LPP are somewhat different from articling placements with which the Law Society has experience, as will be discussed further, below. As part of the LPP a third party provider or providers will be required to ensure sufficient work placements that will meet the transitional training goals. Any provider submitting an RFP will be required to make a commitment to this component and provide details on how it will put it into effect. Co-operative education is a well-established format in adult education. The Task Force is of the view that third party providers will have additional sources and approaches to the work placements based on their own methodology, networks and expertise in this area.
147. As a result of its consultations and inquiries the Task Force is satisfied that there are third party providers capable of and interested in delivering an Ontario LPP, with work placements. The Law Society does not deliver the articling program. In the Task Force's view, it is appropriate that it also not deliver the LPP. The Law Society's focus should remain on overseeing the formal assessments of defined learning outcomes necessary for entry-level practice for all candidates.

### **Length of the Program**

148. During the pilot project, articling will continue to be a 10-month program, but the Task Force is of the view that the LPP can be somewhat shorter because the experiential learning opportunities will be more concentrated and deliberate.
149. The Task Force has discussed the issue of the program's length, which it agrees must be sufficient to accomplish,
- a. the competencies the Law Society articulates as necessary for entry-level lawyers to have acquired; and

- b. the five goals of transitional training discussed elsewhere in this report, including socialization to the profession.
150. Those providers who answer the RFP should have leeway to propose the program length that they consider appropriate to accomplish those goals, but the Task Force is of the view that it should provide some suggested range. To that end it is proposing that the simulated experiential component be approximately four months in length and the work placement be approximately four months. Certainly the LPP and work placements should not be longer than the articling term of 10 months.
151. The Law Society's evaluation of the RFPs will focus on assessing the degree to which the proposals address the competencies in an innovative and cost effective manner, demonstrate how the competencies can and will be achieved in the time frame proposed and illustrate how the five goals of transitional training will be accomplished.

### **Work Placements**

152. As discussed above, the Task Force is proposing that the term of the LPP work placements should be in the range of four months. The Task Force considers that combined with the experiential learning phase of the LPP this will provide integrated transitional training that will allow for comparative evaluation of the pilot project components at the end of five years.
153. The Task Force is aware that often work placements embedded in educational and training programs are unpaid. While it understands that this may present a potential challenge for some candidates who undertake this route and already have law school debt, it does not consider it practical to *require* that third party providers ensure paid placements. At the same time, the Task Force hopes that third party providers will seek out paid placements whenever possible.
154. Moreover, it should be a goal of third party providers, on which they should be required to report, to locate and offer some proportion of work placements in underserved

practice areas and locations in which legal services are required, provided they meet the goals of transitional training. These include, in particular,

- a. sole and small practice firms, in particular those providing services in areas of unmet civil legal needs, such as family law and criminal law;
- b. not-for profit venues that provide access to justice and social justice legal services; and
- c. other non-traditional venues or those under-represented in available articling placements.

155. During the consultation, the Task Force heard from a number of the sources that one of the difficulties they have in hiring articling students is being able to fund salaries. In contrast, they often indicated willingness to provide unpaid work placements of the type contemplated within the LPP.

### **Language and Locations**

156. The Law Society is committed to providing its licensing process in both English and French. The successful provider of the LPP will include delivery of the program in both languages.

157. It is anticipated that the French language LPP will be offered only in Ottawa and the English language LPP will be offered in Ottawa and Toronto. Work placements may be located across the province. It is conceivable that a provider might propose an additional location, but the Task Force is of the view that it would be unrealistic to require this as a condition of the RFP, particularly during the life of the pilot project.

158. Candidates will also be entitled to complete the Law Society assessments in French or English.

### **LAW SOCIETY ASSESSMENT OF COMPETENCIES**

159. The Law Society must gain reasonable assurance that the experiential components of licensing achieve defined learning objectives and outcomes. To gain that assurance, a

formal assessment of competencies at the end of those processes should be standardized, transparent and fair and should directly measure candidates' performance against defined learning outcomes necessary for entry-level practice. The Task Force recommends that all candidates regardless of which stream they complete, and including those exempted from both articling and the LPP,<sup>47</sup> complete a formal assessment of competencies as part of the licensing requirement.

160. The Task Force considered whether the LPP provider(s) and articling Principals or the Law Society should be responsible to conduct these formal assessments. While the Articling Task Force has determined that both the LPP and the articling program must integrate periodic assessment and/or performance reviews so as to be able to report that candidates are achieving the stated learning outcomes of the programs, this is not the “formal” assessment at the completion of transitional training that the Law Society will oversee.
161. In the Task Force’s view the more appropriate and consistent approach, which best preserves the Law Society’s regulatory control over standards, is for the Law Society to be responsible for those assessments. They are the independent confirmation that the expected learning outcomes have been achieved, regardless of whether the candidate articulated or completed the LPP. They will be consistently applied to all candidates.
162. Assessment will serve multiple purposes, including,
  - a. to measure entry-level competence of *each* candidate regardless of the transitional training route; and
  - b. to provide a point of overlap between the two components of the pilot project that will allow for comparison and consideration of the effectiveness of each.
163. In considering the issue of assessment the Task Force has examined a possible approach, which it outlines below. Its goal in doing so was to consider appropriate criteria that

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<sup>47</sup> The evaluation of the pilot project will also include a consideration of the results of the assessments for those who are otherwise exempted from transitional training to determine whether this alternative pathway is sufficient to ensure entry-level competence.

should be part of the development of any assessment process and to provide Convocation with some context for the discussion of assessments. While the approach outlined here is one way to measure or assess entry-level competence there may be equally or more effective alternatives that should be explored. Moreover, in the Task Force's view, the choice of an assessment process will be better informed by the RFP process and other implementation steps. Trying to finalize it at this stage would miss those additional perspectives.

164. For these reasons and to ensure that the most appropriate and cost effective assessment process is developed, the Task Force is of the view that the specific assessment process should be developed and proposed to Convocation for its approval in the period leading up to implementation of the pilot project. The developmental process should address the components and considerations set out below.

#### **Considerations to be applied in Developing the Assessment Approach**

165. Whatever specific approach is ultimately approved, the Task Force agrees that the development process should apply at least the following components and considerations:
  - a. The process should make use of the required competencies and learning objectives for the transitional or experiential component of the Law Society's licensing process (articling) that have been in place for many years. These include the Articling Goals and Objectives, set out at **TAB 1. Articling Goals and Objectives**, and the competence profiles, matrices and taxonomies that were included in the work completed in the formation of the Federation of Law Societies of Canada's National Admission Standards Project.<sup>48</sup>

The Articling Goals and Objectives are expressed as tasks and skills that should be completed or achieved during the training period. They are broadly stated and provide flexibility in the manner in which the candidate and his or her Principal/instructor will achieve them. They also recognize that the achievement of tasks is very much dependent upon the type of learning environment – solicitor or barrister, small firm or large firm – and they acknowledge that most, but not all, of the tasks may be capable of completion and that the completion of most, not all, of those tasks provides a solid foundation of training for candidates

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<sup>48</sup> The skills, tasks, professional responsibility and practice management competencies adopted by the Law Society in 2004 for purposes of evolving the licensing process remain current under the final validation process conducted nationally by the Federation. The competencies profiles are almost identical. The confirmation of this similarity indicates that the experiential components of entry-level lawyer training and assessments continue to be valid and applicable and can be used to formulate the assessment process.

seeking licensing as lawyers. These activities continue to represent the standardized tasks to which the Law Society expects an entry-level candidate to have had some exposure prior to licensing.

- b. The testing methodology should be capable of properly evaluating skills training experiences to achieve the purpose of measuring entry-level competence. So, for example, a determination must be made whether “in-person” assessments are required or some alternative approaches are possible for some or all of the formal assessments.
  - c. The testing methods should assure a level of objectivity that is appropriate for a diverse group of learners and a demanding profession.
  - d. The approach should include a determination of,
    - i. how frequently the assessments can be scheduled in the year;
    - ii. whether candidates will have access to consistent supports and training tools that address the concepts and skills to be evaluated through the formal assessments; and
    - iii. how many attempts at the assessment the candidate will be permitted and the consequences of failing.
  - e. The cost of the assessment process overall, and for each candidate, must be evaluated against the requirement to ensure entry-level competence.
166. As set out above, to focus its considerations and analysis the Task Force has discussed a possible assessment approach. That approach can be summarized as follows:
- a. It would require the candidate to prepare for and present particular skills or demonstrate knowledge before an assessor, or complete a task for submission to an assessor.
  - b. It contemplates five possible skills to be assessed:<sup>49</sup>
    - i. Interview a client.
    - ii. Draft an opinion letter.
    - iii. Draft an affidavit.
    - iv. Conduct a negotiation.
    - v. Present an analysis of an ethical problem.

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<sup>49</sup> The Law Society has numerous examples of past admissions programs and evaluations, all utilizing slightly different instructional design methodologies. These examples were all developed with subject-matter experts and adult educators and continue to provide a proven and reliable framework for supporting this possible approach.

- c. Given the number of candidates likely to be subject to the assessment process this possible approach contemplates the assessments being scheduled once a year to allow the Law Society to process all candidates in two (2) locations – Toronto and Ottawa – over a period of approximately two to four weeks.<sup>50</sup>
- d. Under this approach, candidates would have access to consistent supports and training tools that address the concepts and skills to be evaluated through the formal assessment.
- e. Premised as it is on in-person assessment for all candidates this approach would require a significant development and implementation process. Providing a skills assessment environment for almost 2000 candidates is a labour intensive exercise requiring the commitment of many assessors. The Task Force estimates that the cost of this possible approach would be in the range of \$2,637,000 per year. This figure takes into account direct expenses including estimated costs for training and orientation of assessors and role-players, costs for marking sessions and professional participants to support the assessment, facilities and materials and increased staff resources, as well as indirect expense allocations. Based on a figure of 2000 candidates per year, this would amount to \$1,320 per candidate for the assessment process.

167. As stated above, having considered this possible approach the Task Force is satisfied that further analysis of this issue is required, applying the considerations set out in paragraph 165 above. In particular it will be essential to consider whether the approach being considered meets the principles that the Task Force has emphasized throughout this report, namely that the primary substantive concern is competence and the primary process concern is fairness.

### PILOT PROJECT EVALUATION

168. The purpose of evaluation of the pilot project will be to capture,
- a. *objective* data designed to determine how well the components of the pilot project are achieving their stated goals; and
  - b. *subjective* data to gain insight into the needs and perceptions of candidates, instructors, articling Principals and others involved in the process.

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<sup>50</sup>By the time the assessments are in place, it is estimated that there will be close to 2000 new candidates entering the licensing process (the 2014-15 licensing year). The cost of conducting the assessments under this approach would increase with the frequency of offerings.

This can be achieved through both qualitative and quantitative evaluation measures.

169. If Convocation approves the pilot project, the full detail of the evaluation measures will be developed as part of the implementation plan and for the PD&C Committee's approval. It would be premature for the Task Force to define the scheme too prescriptively at this stage, but in an effort to set out the type of evaluation measures it believes are worthwhile to consider it sets out the following list of potential measures as examples of the type of data tracking and information analysis that may be employed to ascertain the effectiveness of the pilot project components.

**Quantitative Measures: Statistical Data, Performance Tracking and Comparative Analysis**

170. As is the case in the current licensing system, the Law Society tracks and will continue to track and report upon a variety of indicators ranging from demographic information through to individual performance information. This includes information on candidates who self-designate into equality-seeking categories, the educational background of all candidates, including Canadian or international, the law school they attended and, for international candidates, information on their citizenship (Canadian's returning or non-Canadians entering).
171. In addition, the Law Society will continue to report on exemptions, abridgements and alternatives to traditional articling placements, along with the standard statistics regarding articling, such as the number and location of articling placements and the number of unplaced candidates, and the completion of the online course.
172. The Law Society will also begin to track the qualitative information that is provided in the mid-term and end of term evaluations that the student and Principal will be required to complete during the placement term. With respect to assessment processes, such as the licensing examinations, performance tracking that provides information on success rates will be continued, and tracking will be implemented to follow the results of the formal assessment by each assessment, across each cohort, and by transitional training stream (articling or LPP).



## Qualitative Measures

173. To gather qualitative information the following types of surveys will be undertaken:
- A Law Practice Program Entry Survey
  - An Articling Program Survey
  - A Law Practice Program Survey
  - Post-Entry to Practice Survey/Focus Groups
  - Equality-seeking Groups Survey/Focus Groups
  - Survey and/or focus groups with employers of post-call lawyers to determine their perspectives on candidates from the articling stream versus candidates from the LPP stream
174. Following the approval of the report, and during the development process that leads up to the 2014-15 implementation of the new scheme, the PD&C Department will derive a formal evaluation and reporting plan that will outline the various points of quantitative and qualitative information that will be gathered, in what form it will be gathered, how it will be reported, and how often it will be reported.
175. The evaluation methodology and reporting system will be finalized well in advance of the inception of the 2014-15 licensing year and tracking for these purposes will begin immediately and continue for the full length of the pilot. In anticipation of having Convocation make a further decision on the continuation, or not, of the new licensing components that are the subject of the pilot, formal review and reporting on results will commence in the final year of the pilot and be completed by the end of that year, with a proposal for next steps provided to Convocation for its consideration. The implementation of the pilot project will continue during the course of the review. Convocation will then determine whether the pilot project should end, become permanent or result in a different approach.

## FINANCIAL AND RESOURCE IMPLICATIONS

176. Implementing the Task Force's recommendations will have financial and resource implications respecting introducing the LPP and enhancements to the articling process, the development and implementation of the formal assessment process, and the development of the evaluation process.

### **Projected Costs for the Licensing Process**

177. 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.
178. If the Task Force's recommendations are implemented, there will be additional costs for all candidates, including the additional costs for the formal assessment that will be proposed to Convocation prior to the implementation date of the pilot project.
179. Until potential providers submit proposals pursuant to the RFP, the projected costs per candidate for the LPP cannot be confirmed. For illustration purposes, however, the Task Force has used \$7,000 as an approximation, modeled on the approximate cost of the PLTC in Australia.
180. The Task Force estimates that during the pilot project approximately 400 candidates will elect to do the LPP per year. On an *un-equalized* basis and based on the estimated costs set out above, without inclusion of an amount for the cost of the final assessment,
  - a. LPP candidates would each be required to pay approximately \$9,950 for licensing, (which would cover the costs of the LPP, and licensing process fees including application fees, examination fees and call to the bar fees - \$7,000 plus \$2,950 ); and
  - b. candidates in the articling stream would pay approximately \$2,950 (which would cover the costs for the licensing process fees including application fees, examination fees and call to the bar fees - \$2,950).
181. The Task Force is of the view that candidates in the LPP should not have to bear the entire burden of the LPP program. It proposes that the costs be equalized across all licensing candidates so that the estimated licensing cost per candidate will be \$4,350 plus additional costs for the formal assessment. If, for example, the assessment approach described in paragraph 166 were applied, the equalized assessment costs would include an additional \$1320 per candidate.
182. As discussed above, both the proposal for the assessment process and a proposal respecting the evaluation of the pilot project, will include cost requirements. The

proposals for development of these two components will be provided to Convocation for its consideration and approval prior to implementation of the pilot project.

### **TRANSITION**

183. As set out above, the pilot project is estimated to begin in 2014-2015. The Task Force has considered the implications of this date to those in the system prior to the commencement date.
184. The Task Force discussed a number of possibilities for addressing the transition period issues of placement shortages and focused its discussion on three possibilities namely,
- a. waiving the articling requirement for unplaced candidates during this period;
  - b. transitional job creation and subsidization; and
  - c. grandparenting of candidates.

#### **Waiving the Articling Requirement**

185. It has been suggested that the Law Society consider waiving the articling requirement for those unable to find jobs until the pilot project is implemented. The Task Force is unable to make such a recommendation. The Task Force has explained throughout this Report why transitional training should continue to be a requirement of licensing to address entry-level competence. Accordingly, it would be inconsistent and contrary to the public interest to license hundreds of candidates without such training for reasons unrelated to competence.

#### **Transitional Job Creation and Subsidization**

186. Pursuit of additional articling jobs has been part of the Law Society's policies for decades and particularly so since 2008. This will continue during the period between approval of this report and implementation of the pilot project, but for the reasons discussed throughout this report there is little likelihood that more than a handful of jobs might be created.

187. During the consultation a number of submissions suggested that the Law Society should subsidize law firms or not-for-profit organizations to hire students. The submission was made that subsidizing articling positions in access to justice environments could address two aspects of the Law Society's mandate at once.
188. The Law Society recognizes and devotes significant attention to its mandate to enhance access to justice. Its Access to Justice Committee as well as other Committees focus on this issue and consider the most effective ways in which to advance that mandate. Any discussion about applying resources to advance the access to justice mandate must properly be addressed holistically across the Law Society's operations overall.
189. In the Task Force's view the amount of money necessary to subsidize sufficient jobs at a reasonable salary (\$45,000) would be enormous. It could place significant pressure on members' fees. For example, to subsidize 50 jobs would require a fund of \$2,250,000, to subsidize 100 would require \$4,500,000. The Task Force does not believe this is a viable approach. Moreover, in the Task Force's view it is beyond its mandate to assess whether this kind of approach would most effectively contribute to access to justice.

### **Grandparenting**

190. Under Law Society by-laws candidates have three years from the date of their application for licensing to complete the articling requirement. If they do not do so the Director of Professional Development & Competence can relieve from this requirement and grant an extension.
191. It would be unfair to deny candidates whose three years elapse just prior to the commencement of the LPP the opportunity to complete the LPP if they have not found an articling job or would prefer the LPP path. The Task Force considers that in these circumstances those candidates should be "grandparented."
192. 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) and who are unable to find an articling placement within the

three year period provided to complete all components of the licensing process, will be allowed to maintain their status as an licensing candidate until such time as they can enter and complete the LPP and all other aspects of the licensing process. The Law Society will extend the three-year completion requirement for this period with the condition that each of the candidates must register and complete the LPP at the first offering available to them.

### **IMPLEMENTATION TIME LINE**

193. If Convocation approves this final report and recommendations of the Task Force, the “next steps” will consist of three parts:
  - a. The RFP process (estimated timeline: October 2012 to approximately June 2013).
  - b. The pilot project developmental process (during 2013 – 2014).
  - c. The pilot project implementation (estimated commencement – licensing year 2014-15).
  
194. The process will be developed and managed through the PD & C Department and the PD&C Committee, with regular reports to Convocation both for information and for Convocation’s approval on policy matters, including the proposed assessment approach and the evaluation of the pilot project at its completion, including proposed next steps.

### **CONCLUSION**

195. The focus of the Law Society’s licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry-level to provide legal services effectively and in the public interest. The Law Society must ensure that any transitional training that is part of its licensing process contributes demonstrably and significantly to the development of competent and ethical entry-level lawyers who have practical problem-solving skills, in addition to academic and analytical ability.
  
196. As the Task Force has emphasized, the competence of those who seek admission must be the Law Society’s primary substantive concern and the fairness of the requirement must be its primary process concern.

197. The issues the Task Force has studied and consulted on over the last 18 months respecting articling and transitional training in general have been challenging and have illustrated the complex implications of fundamental change.
198. The Task Force believes that its two-pronged pilot project affords the best and most incremental opportunity to develop change and improve processes in a measured and thoughtful way. Indeed acceptance of the Task Force's recommendation that alternative transitional training approaches are worth developing, provides a unique opportunity to consider articling in conjunction with another approach to consider clearly its value or limitations.
199. The period leading up to implementation will afford ongoing opportunities to make refinements and address concerns, but the Task Force is satisfied that its overall approach as set out in this Report satisfies the goals of transitional training, provides a fair and defensible opportunity to all licensing candidates and builds on, rather than rejects, the experience of lawyers in Ontario (articling) and other jurisdictions that have introduced a law practice program. In particular, it focuses on the Law Society's obligation to address entry-level competence as part of its licensing process. At the same time by framing the recommendations as a pilot project it reflects the Task Force's understanding of the need to proceed cautiously and evaluate the two program streams against the competence requirements.

## MINORITY REPORT

### EMBRACING CHANGE IN THE LICENSING PROCESS: A MINORITY VIEW

#### INTRODUCTION

200. Forty years ago, a committee of the Law Society chaired by Bert MacKinnon Q.C. (who went on to become Associate Chief Justice of Ontario) and which included many other leading members of the Bar,<sup>51</sup> recommended that articling be abolished. At that time, like today, the profession was facing a large increase in qualified people seeking to become licensed to practice law in Ontario. The recommendation foundered due to objections from a profession resistant to change. In the forty year period since the release of the MacKinnon Report, the need for change has grown more compelling. Continuing articling as a licensing requirement cannot be justified. The report of the majority of the Articling Task Force (the “majority”) recognizes this in proposing an alternative track to licensing. We agree that there must be a new licensing process, but disagree that articling should continue.
201. As we set out below, a transitional training program must be justified as effective and directly related to ensuring that licensees have the core competencies to be lawyers. It should be fair and available to all who have the academic qualifications to seek to be a lawyer in Ontario. Articling does not meet these objectives, and we should not preserve it, or excuse its continued existence, by creating a new, inequitable, alternative route to licensing. While described as a five year pilot project, the Law Practice Program (“LPP”) proposed by the majority will create a new, cumbersome licensing requirement which will do little to enhance the competence of newly licensed lawyers in Ontario, and will amount to a different barrier to entry to the profession.

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<sup>51</sup>The members of the Committee were The Hon. Justice J.D. Arnup, W.Z. Estey, Esq., Q.C., The Hon. Mr. Justice Patrick Galligan, G. Glover, Jr., Esq., W. Gibson Gray, Esq., Q.C., Prof. D. Hefferon, G.F. Henderson, Esq., Q.C., Kenneth Jarvis, Esq., Q.C., Dr. Roby Kidd, Donald H.L. Lamont, Esq., Q.C., James C. MacDonald, Esq., Dean R.S. Mackay, Q.C., G. Arthur Martin, Esq., Q.C., Prof. D. Mendes da Costa, Q.C., Brian Pape, Esq., T. Platana, Esq., R.J. Roberts, Esq., Q.C., S.L. Robins, Esq., Q.C., N. MacL. Rogers, Esq., Q.C., A.R.A. Scace, Esq., Dean D. Soberman and Stuart D. Thom, Esq., Q.C.

202. Instead, we propose that articling be abolished and that all candidates for a lawyer's license be required to enroll in a comprehensive transitional pre-licensing program – two to three months long – that includes on-line learning and exams assessing core competencies to be a lawyer – including legal knowledge and skills, business, professional and ethical issues. Most new lawyers practise in an employment context where there is supervision, mentoring and training provided by more experienced lawyers. For those new licensees who choose to enter sole practice, we propose rigorous oversight of them by the Law Society in the first few years of practice – through mentoring, supervision and inspection, among other things. In this way, the Law Society's resources will be directed towards the public interest, by ensuring that the public is protected from inexperienced and incompetent lawyers, but will also facilitate access to justice by allowing more lawyers to obtain a license. It may also result in savings from having fewer lawyers in the discipline process.
203. We are keenly aware that our view is not the predominant view expressed by those who participated in the Articling Task Force consultations. However, the expectation that our recommendation will be met with strong, and no doubt emotional, opposition (as it was in 1972), is not a reason to shy away from making it. As benchers, we must approach the problems we face in a principled way consistent with our statutory objectives to ensure professional competence of those who provide legal services, and to do so having regard to, among other things, our duty to facilitate access to justice, protect the public interest, act in a timely, open and efficient manner, and to ensure that our standards of learning and competence be proportionate to the significance of our regulatory objectives.<sup>52</sup>
204. The majority acknowledges the limitations of articling, noting that “[t]o some degree the description of what the ideal articling experience addresses is a theoretical construct that is not reflected in the reality of the current profile of placements.”<sup>53</sup> Indeed, the majority appears to accept that articling cannot be validated on any objective basis. In light of this, it is difficult to justify its proposal to have not one, but two, lengthy transitional programs, the first of which (articling) cannot be validated, and the second of which (the

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<sup>52</sup> *Law Society Act*, R.S.O. 1990, c. L.8, ss. 4.1 and 4.2.

<sup>53</sup> Majority Report, para. 65.



LPP) creates a new, unfair and similarly flawed approach. As we elaborate below, abolishing articling and having one track to licensing available to all is equitable and furthers access to justice. It will focus on actually assessing core competencies in a proportionate way, and provide a fairer route to licensing for all who are qualified to seek one, including many lawyers likely to serve new communities of Canadians, in different languages and with more cultural sensitivity, providing services to many who otherwise might never seek out or obtain much-needed legal advice.

205. We observe that in several ways we are not that far apart from the majority. We agree the status quo cannot continue, and that a new licensing process must be established. Indeed, if the co-op component of the LPP is removed, our proposals are similar, except that the majority proposes to leave articling in place for at least the length of the pilot project.

#### **STARTING POINT – THE LAW SOCIETY’S REGULATORY FRAMEWORK**

206. Our starting point is to approach the articling problem consistent with our statutory objectives – to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to act in a timely, open and efficient manner.<sup>54</sup> In our view, the focus and the goal of the licensing process must be on the best way to ensure that each candidate meets the core competencies to make certain that the public is protected, having regard to the principles of fairness, equity and access to justice.
207. The Articling Task Force’s December 2011 Consultation Report identified the following five goals of transitional training:
1. Application of defined practice and problem solving skills through contextual or experiential learning.
  2. Consideration of practice management issues, including the business of law.
  3. Application of ethical and professionalism principles in professional, practical and transactional contexts.
  4. Socialization from student to practitioner.
  5. Introduction to systemic mentoring.<sup>55</sup>

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<sup>54</sup> *Law Society Act*, R.S.O. 1990, c. L.8, ss. 4.1 and 4.2.

<sup>55</sup> Consultation Report, p. 6.

208. The Consultation Report also identified two guiding principles:
1. Transitional training with at least the five goals, has a valid regulatory purpose.
  2. For transitional training to be a valid regulatory requirement, its design, implementation and measurement should be transparent, objective, impartial and fair.<sup>56</sup>
209. In our view, and as we explain below, measured against these five goals and two principles, articling not only fails to qualify as transitional training that has a valid regulatory purpose, but also fails to be transparent, objective, impartial or fair. The Law Society can offer no assurances to the candidate, the profession or the public that the articling experience is beneficial and protects the public, or that it is objective, impartial and fair.
210. In our view, to fulfill our responsibility to the profession and to the public we must deal with the articling crisis now, and do so in a manner that promotes fairness, equality, access to the profession and access to justice, without compromising competence.

## **ARTICLING TODAY**

211. In our view, articling as it exists today is virtually indefensible from a regulatory standpoint. The Law Society has delegated responsibility for transitional training to the profession, without requiring meaningful oversight or assessment. The profession in turn has failed to provide sufficient articling positions to meet demand, largely for economic reasons. The Law Society has made attempts in the past to insist on more rigorous standards. Those efforts have been resisted by the profession and, paradoxically, have led to fewer positions being available. In effect, the original articling “compact” between the regulator and the profession has been broken for some time.
212. It is worth reiterating the many concerns which exist about articling today.

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<sup>56</sup> Consultation Report, p. 7.

**(a) Articling does not reflect the profession as a whole**

213. At one time, when practice in Ontario was more uniform, articling was a professional obligation shared by the entire profession, regardless of the size of law firm or type of practice. Today, in contrast, the vast majority of placements are in medium-sized and larger firms and with government, which design their own programs suiting the work they do. For the most part, they may do a good job at giving students valuable experience in working in those environments – environments which largely self-regulate in any event, as their training process and supervision continues long after articling is completed. There are relatively few articling placements available in small firms. Certain important areas of practice – criminal law, family, real estate – are very underrepresented in the articling process. The articling experience in medium-sized and larger firms and government may do little, if anything, to prepare students for the challenges of small firm or sole practice, where 50% of lawyers in private practice work.<sup>57</sup> As well, the Law Society’s experience is that a disproportionate number of lawyers who run into difficulties practise in those settings.

**(b) The nature of the articling experience**

214. The majority describes the Law Society’s current oversight of articling as a “hands off regulatory approach”.<sup>58</sup> While the Law Society sets expectations, it does not assess whether articling meets those expectations. The majority report notes that articling “must be evaluated based on the needs of the 21<sup>st</sup> century practice of law,”<sup>59</sup> but notes that the Law Society currently does not set rigorous standards, nor “define and measure outcomes so as to be able to make evidence-based assessments that the process actually adds to individual lawyer competence or results in a more competent profession than would be the case without articling...”<sup>60</sup> Put another way, it cannot be stated that articling today is necessary to ensure that licensees are competent and professional. As was stated in the Consultation Report, articling is only “*presumed* to contribute to the

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<sup>57</sup> Majority Report, para. 66(g).

<sup>58</sup> Majority Report, para. 99.

<sup>59</sup> Majority Report, para. 65.

<sup>60</sup> Majority Report, para. 99.

acquisition of entry-level competencies.”<sup>61</sup> The Report of the majority properly identifies a long list of the “challenges to articling” and “accepts that articling may have limitations.”<sup>62</sup> It observes that while some submissions noted what “*good* articling experiences” are capable of providing “...few actual articling placements are capable of, or even try, to accomplish *all* these factors,”<sup>63</sup> and concludes that articling must include better forms of quality assurance.

215. The articling experience varies widely. Some students gain a range of experiences, others may do only research (law clerks at courts, for example), still others will have a very limited focus on a specific area of law or practice, while others (not noted by the majority) may do largely menial and routine tasks, and gain little helpful professional experience. We do not wish to minimize the very good articling experiences of many, but given that articling is essentially unregulated by the Law Society, if a particular student’s articling experience is successful and meaningful it is almost happenstance. No wonder a recent Toronto Life article describes it as the “articling rodeo, where admission is arbitrary and the value anyone’s guess.”<sup>64</sup>

**(c) Articling and regulation**

216. Articling was referred to in the deliberations of the Task Force as a “sacred cow,” meaning that the profession has imbued it with almost mystical qualities. Most submissions from the private bar favoured retention of articling. However, such views were not necessarily based on whether articling met specific goals of the licensing process. Indeed, many of those who support articling appear to have been influenced by their own subjective experiences of articling in the past or the nature and quality of the training provided by the large Bay Street law firms. Others appear to be concerned that abolition will lead to a decline in standards and open the floodgates to unqualified lawyers.

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<sup>61</sup> Consultation Report, p. 5.

<sup>62</sup> Majority Report, paras. 66-68.

<sup>63</sup> Majority Report, para. 64.

<sup>64</sup> Christopher R. Graham, “No Room at the Firm”, Toronto Life, September 2012, at page 40.

217. As the majority Report notes, while the majority of those consulted are prepared to consider alternatives, they also “accepted that changes were required to ensure fairness and consistency to the candidates and [to] enhance the role of articling to ensure entry-level competence.”<sup>65</sup> However, the experience of the Law Society has been that this will reduce the number of available articling positions, because some practitioners will simply not be prepared to meet the Law Society’s requirements. This is a sad reality which the private bar has not acknowledged in its submissions to the Task Force.
218. On the other hand, we also heard from some lawyers that articling at a larger firm or government did little or nothing to prepare them to practice on their own, or in a different field of law than what they were exposed to as a student. We also received compelling briefs arguing for the abolition of articling.<sup>66</sup> In recommending that the “period of service under articles of clerkship no longer be a licensing requirement for admission to the Bar,” The Advocates’ Society stated:

There is even a larger problem with the current system than articling position shortages that has been identified in the Consultation Report as well as earlier LSUC commissioned studies. That larger problem concerns the many articling students who do not receive meaningful, constructive training in their articles. The net effect is that, while the LSUC insists on practical training as a precondition to admission to the Bar, under the current articling system the LSUC has no mechanisms or controls in place to determine whether those under articles are actually receiving the required training to acceptable standards and are capable of applying the practical skills required of a practitioner.<sup>67</sup>

**(d) Articling evaluated in light of the “goals” of transitional training**

219. In our view (and implicitly in the view of the majority), it cannot be said that articling “contributes demonstrably and significantly to the development of competent and ethical

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<sup>65</sup> Majority Report, para. 12.

<sup>66</sup> Submissions from the following organizations supported the abolishment of articling and the implementation of a practical legal training course for all candidates: ARCH Disability Law Centre, Canadian Association of Black Lawyers, Federation of Asian Canadian Lawyers, Office of the Fairness Commissioner, and The Advocates’ Society. See also the submission of the African Canadian Legal Clinic which argued that in the alternative to the Law Society making a concerted effort to ensure that articling positions are available to all candidates, articling should be abolished in favour of a practical legal training course for all candidates.

<sup>67</sup> Law Society Articling Task Force Consultation Submissions. The Advocates Society p. 6.  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487582>

entry-level lawyers”.<sup>68</sup> Indeed, with respect to our colleagues, it cannot be said that articling is necessary to meet the five goals of transitional training set out in the majority Report. Consider each one.

**1. *Application of defined practice and problem solving skills through contextual or experiential training.***

220. Given the wide range of articling experiences, there is no way to say how much or how little this goal is achieved through articling. Further, this goal can be achieved in a variety of ways without articling. Many law students spend time in legal clinics and/or take experiential courses that give them these opportunities.<sup>69</sup> Others may have the experience from practising elsewhere (internationally-trained lawyers) or simply from previous work experience. Summer jobs with law firms may also provide this experiential training.
221. Assuming this goal can be more precisely defined and assessed, how much time, if any, is required to gain this aspect of experiential training as part of a “transitional training” requirement? Does it require 10 months, one month, or simply some assessment of ability, in order to be licensed? The extent to which articling students gain experience (good or bad) in the “application of defined practice and problem solving skills” is unknown. The majority’s recommendation of creating an LPP confirms that it too sees this goal as something that can be achieved outside articling.

**2. *Consideration of practice management issues, including the business of law.***

222. The same comments may be made about this goal as 1, above. In many law firms, large and small, students are often far-removed from the business aspects of the practice – such as getting retainers, submitting accounts, dealing with trust accounts and other critical aspects of serving clients that are encountered in running a traditional law practice. Further, those who article for government organizations may not be exposed to practice management issues at all.

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<sup>68</sup> Consultation Report, p. 6.

<sup>69</sup> Notably, Osgoode Hall Law School has just become the first Canadian law school to introduce an experiential education requirement as part of its curriculum (announced September 13, 2012). It is reasonable to expect other schools to follow this initiative.

3. *Application of ethical and professionalism principles in professional, practical and transactional contexts.*

223. The same comments may be made for this as for goals 1 and 2, above. Clearly there are many different ways to be exposed to the values of the profession. What is it about the 10 month articling period that satisfies us that it meets this objective?

4. *Socialization from student to practitioner.*

224. While undoubtedly this is a valid objective of transitional training, its importance in justifying articling is easily overstated. As the MacKinnon Report noted some 40 years ago, students graduating from law school have many years of university behind them. In fact, generally they have many more years than prospective licensees in England or Australia, the two jurisdictions that in various ways continue to prescribe lengthy transitional training for prospective licensees.<sup>70</sup> Today, most individuals seeking an articling placement will have at least seven years of post-secondary education and be at least in their mid-20s. Many have even more years of education and are older. Many have spent time (many years, even) in the workforce – professional or otherwise. A significant number of law students work in legal clinics in law school, or spend summers working in law firms or other professional environments. In our view, it is unreasonable to justify articling based on the notion that articling is necessary to “socialize” people from students to practitioners.

5. *Introduction to systemic mentoring.*

225. Certainly articling exposes many students to senior practitioners who can serve as role models and in some cases provide hands-on mentoring. These relationships can be important for the new lawyer; in some cases they can be critical to their development. Unfortunately, there is no way to ensure that all students are appropriately mentored during articles: i.e. that the process ensures “systemic” mentoring. We know from our own experiences and those of new lawyers that during articles the nature of the tasks

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<sup>70</sup> Majority Report, paras. 50(b) and (c).

performed, access to and interaction with senior practitioners, and exposure to real clients and their problems varies widely.

226. Fortunately, however, articling is not the only opportunity for new lawyers to gain mentoring. Those who practise as employees or in association with others will generally obtain mentoring when necessary. Many firms and government have their own structures to ensure supervision and mentoring. Again, it is those who go on to practice in settings where they do not have mentors, or access to mentors, that we should be concerned about. Articling does not address this post-call risk to the public.

**(e) Numbers and the so-called “Articling Crisis”**

227. Currently, the Law Society has a mandatory licensing requirement that cannot be fulfilled by hundreds of candidates each year because of conditions that are beyond both the candidates’ and the Law Society’s control. In its report, the majority states that it agrees “that a failure to provide access to an essential component of the regulatory licensing regime is not legitimate and jeopardizes the continuation of the articling requirement, at least as the sole form of transitional training.”<sup>71</sup>
228. While we agree with the majority’s observation that it is not the Law Society’s obligation to find every lawyer a job<sup>72</sup>, it is the Law Society’s obligation to ensure that every qualified candidate has a fair and equal opportunity to complete the licensing process. The barrier to entry posed by articling violates this obligation. With too few positions available, the inability to get an articling position is not related to one’s personal ability to obtain a law degree, to pass the licensing examinations, or to demonstrate that one otherwise meets the Law Society’s professional standards to obtain a license to practice.

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<sup>71</sup> Majority Report, para. 97.

<sup>72</sup> Majority Report. Para. 98.



**(f) Fairness issues**

229. As the Consultation Report noted, a disproportionate number of persons unable to obtain positions appear to be from equality-seeking groups - people who may be more likely to become sole practitioners or work in small firms where access to justice needs are more likely to be met.<sup>73</sup>

230. The Law Society has a strong commitment to addressing equity issues. Unfortunately, legitimate concerns remain about the impact of the “articling rodeo” on equality-seeking groups. It is no accident that the Canadian Association of Black Lawyers, for example, favours abolishing articling. Indeed, as the majority Report notes:

Many of the submissions from equality-seeking groups concluded that given the issues surrounding placements for equality-seeking groups any proposal for alternative pathways that retained articling as an option would be problematic for a number of reasons. These include the possibility of creating two classes of lawyers with the preferred group being those who articulated, the difficulty of adding debt to those already bearing a burden from law school expenses, and the belief that by providing an alternative to articling the profession would be able to mask the uneven treatment of equality-seeking groups.<sup>74</sup>

231. The majority report also notes:

A number of submissions have suggested that equality-seeking candidates are negatively affected by unreasonable barriers and that the internationally-trained candidates who must article may be particularly affected by this. To the extent that hiring reflects other than competence-based considerations the regulator must be concerned with process fairness.<sup>75</sup>

232. The majority’s response to these concerns about the possible unequal treatment of those who take an LPP is that while this is an issue which will require “special attention” from the Law Society, it is inaccurate to suggest that it would be a “new issue” caused only by the introduction of an LPP. It suggests that the pilot project “may in fact afford a head-on opportunity to challenge these types of views and stereotypes directly.”<sup>76</sup> In our view,

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<sup>73</sup> Consultation Report, p. 11.

<sup>74</sup> Majority Report, para. 85.

<sup>75</sup> Majority Report, para. 96(e).

<sup>76</sup> Majority Report, para. 86.

the majority downplays and confounds the fairness issues that already exist with articling, as well as the potential discriminatory effects of a two-tier licensing system. This issue is developed further below.

## **OUR PROPOSAL**

233. We agreed with the majority early on in our work that some form of transitional training is desirable. However, such training must be directly related to the Law Society's function of ensuring the competence of licensees, and not be an unreasonable, or unjustified obstacle to the obtaining of a license. Also, any requirements must be justifiable having regard to the Law Society's mandate to govern the profession in a way that promotes access to justice, is fair, proportionate, and protects the public.
234. What this means, therefore, is that we should look at the licensing process from the standpoint of what is actually necessary to ensure core competencies and to achieve the valid objectives of transitional training in a fair, equitable, accessible and consistent manner. In our view, this can be achieved by a single well-designed pre-licensing transitional program of learning modules and culminating assessments with objective, measurable standards, addressing substantive legal knowledge, business, professional and ethical issues. Exactly how long is necessary will depend on details to be worked out in the implementation phase, but we contemplate it lasting between two and three months. We note that the majority sees its LPP as lasting no more than 4 months absent a "co-op" placement, suggesting that on this at least, we are not far apart.
235. Currently, prospective licensees must complete a 30 hour online training course focused on professional responsibility, ethics and practice management comprised of 4 modules that can be completed at any time during the articling term, and must write each of a Barrister's and a Solicitor's exam. The online modules and exams test core legal competencies. We see no reason why such on-line learning and testing cannot 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 (goal #1, above), and to provide further learning modules and tests on practice management, the business of law,

and ethics and professionalism (goals 2 and 3). The Law Society has numerous examples of past admission programs and evaluations utilizing instructional design methodologies. We understand that these could be readily adapted and revised and provided on-line to meet the specific objectives sought.<sup>77</sup> This would not involve a massive drain on resources, and increased costs could be recovered through relatively modest fees. It would certainly be less expensive than creating and overseeing an LPP. This is an advantage to both the Law Society and to prospective licensees, many of whom face huge debt loads following law school. It is also fair, equitable and transparent, with all students assessed on objective criteria.

236. In this way at least three of the five goals of transitional training identified in the majority report are met, which we believe is more than can be said by preserving articling. As we have commented, the fourth and fifth “goals”, of “socialization” and “systemic mentoring,” are of dubious validity given the maturity of prospective licensees, and the fact that “systemic mentoring” (like “socialization”) is not necessarily achieved in articling anyway. On the other hand, mentoring can, and should, be achieved in practice, as we discuss below under Post-Licensing.
237. Our proposal involves applying objective standards to all applicants that relate directly to whether they have sufficient legal skills, and knowledge of the business and ethics of the profession, to practice law. It does not impose barriers to licensing based on whether one can get an articling job or, in the alternative, afford to pay (a lot) for a lengthy LPP and then be able to afford working, for free, at a “co-op” placement (which might require expensive temporary relocation by the candidate) that may be of limited or no value. By allowing more people to write licensing exams without unreasonable barriers, it will likely result in licensing more lawyers, thereby promoting access to justice. And over time the efficacy of the program may be measured and assessed.

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<sup>77</sup> For example, the Skills and Professional Responsibility Course, which formed part of the licensing process from 2006 to 2009, was a 5-week course that included simulated scenarios and other practical learning.

238. As the Consultation Report noted (and we accept), “[f]or transitional training to be a valid regulatory *requirement*, its design, implementation and measurement should be transparent, objective, impartial and fair.”<sup>78</sup> Our proposal meets those criteria.

#### **POST-LICENSING: MENTORING AND SUPERVISION IN INITIAL YEARS OF PRACTICE**

239. One of the major concerns expressed about abolishing articling is that it removes the requirement that for a period of time licensing candidates practice under supervision. Even though many other jurisdictions (such as the fifty United States) do not have this requirement, the view of many in the profession in Ontario appears to be that such a requirement is necessary to protect the public.
240. As outlined above, it cannot be said that articling today is necessary. At best it may prepare the licensee for practice in the environment in which he or she articling. As a result, it does little or nothing to ensure public protection with respect to those who may end up in private practice outside those environments, often in small or sole practices, where the risk to the public is highest and supervision and mentoring may not be present.
241. We believe that new lawyers should be subject to some form of mentoring or supervision in their initial years, which can be achieved in a number of ways – many of which involve regulatory tools already in use by the Law Society. Accordingly, as part of our proposal we recommend that the Law Society require new calls intending to enter private practice to file practice plans with the Law Society, which will outline whether they intend to practise on their own or in association with other lawyers. Those lawyers who intend to enter into a sole or small practice will be required to either identify a mentor who will meet criteria set out by the Law Society who will have an ongoing role in supporting the mentee’s work for a period of time and/or be subject to frequent practice reviews by the Law Society during the first few years of practice. The Law Society should also consider having greater requirements for compulsory professional development for such licensees, for instance, a hands-on mandatory CPD program dedicated to law firm management, including hands-on activities in law firm accounting,

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<sup>78</sup> Consultation Report, p. 7.

retainer policies and processes, and other key areas of risk. This should be well within the Law Society's current capabilities.<sup>79</sup>

242. We leave the details of such oversight for further discussion and input (especially from the Department of Professional Development and Competence), but note that our proposal is consistent with Convocation's priority of enhancing mentoring (a topic of much discussion today), and that this focus on new sole practitioners relates directly to public protection by directing resources where they are needed, which may result in savings in the discipline area. The Law Society will be responsible for organizing and administering a mentoring system province-wide and the costs of that system should be borne by the profession. Improvement and enhancement of mentoring is a priority of this Convocation and this proposal is consistent with that objective.
243. Our proposal does not recommend mandatory mentoring. That would require further study and debate. Further, in situations where no mentor can be found, the lawyer should not be prevented from practice – as this would be a barrier similar to the inability to get an articling job. Rather, in those cases, the Law Society will need to consider in detail the practice plan of the licensee, and determine the scope of practice and degree of more rigorous oversight and monitoring of the lawyer in the early years. For example, consideration may be given to completing more frequent practice reviews of the practitioner's practice in the first two to three years. The Law Society could also consider expanding its existing "Law Mentorship Program"<sup>80</sup> and provide mentors to those new lawyers who are unable to secure mentors of their own. Many local law associations and other organizations, such as The Advocates' Society, have mentoring programs that may be looked to as models. While there may be some increased costs associated with this, they will be offset by the advantage of getting more people into practice and meeting access to justice needs, and such oversight should result in fewer cases in the expensive discipline process, resulting in savings in that area.

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<sup>79</sup> Of 1707 new licensees in 2011, for example, 340 entered private practice in firms of 5 lawyers or less. Of that only 121 entered sole practices.

<sup>80</sup> <http://rc.lsuc.on.ca/jsp/mentorship/index.jsp>.

## **IMPLICATIONS OF ABOLISHING ARTICLING FOR POST-LICENSING EMPLOYMENT**

244. One concern regarding abolition raised frequently during Task Force discussions was that it would reduce the number of new positions offered to law school graduates by the medium-sized and larger firms, who would now be free of their longstanding obligation to provide articling placements, and would now only hire the number of fully licensed lawyers that they really require.
245. There are several responses to this *in terrorem* argument. The Law Society's sole role is to regulate the profession in the public interest. It is not our role to attempt to influence the market for new lawyers. In some ways, the current articling crisis comes as a result of the Law Society as regulator having tied a critical element of the licensing process to market forces. Cutting that tie is a good thing – it is up to the market and the profession, not the Law Society, to create the jobs that will meet the demands of new lawyers.
246. However, at a practical level we think there are other responses to this concern. The first is that the law firms that currently generate the bulk of the articling positions will always have a need to attract a pool of new lawyers whose performance is assessed for a period of time before decisions are made about permanent hiring. American firms operate this way. Many firms have their own sophisticated training programs which exist independently of Law Society requirements. They are likely to replace articling positions with short-term (say, twelve month) employment contracts and they will continue to train new lawyers to meet their own needs.
247. Governments and other public institutions which now provide articling positions may be in a somewhat different position; however, we see no reason why they may not also take on new lawyers on contracts akin to articling before deciding to make a permanent commitment. While some articling positions currently available may not be replaced by post-call positions, for the reasons expressed above we do not believe that this factor alone militates against abolition.
248. We also do not believe that clerking will be affected by the abolition of articles. Clerkship with one of the courts is a long tradition in Ontario, just as it is in the United

States, where articling does not exist. There are a variety of reasons to consider clerkship, and many who choose to clerk do so without regard for the immediate implications for their own careers. We believe that many new lawyers will continue to find clerkship an attractive option even without the benefit of having it count towards satisfaction of a stage in the licensing process.

249. There is another factor we have mentioned that should pervade any discussion about the effect of abolition on the post-call market for new lawyers – access to justice. Today, hundreds of qualified candidates annually cannot find articling positions and for that reason are unable to enter the profession and serve the public. Abolition of the articling barrier will allow those candidates to become licensed and go into practice. This is consistent with our mandate to act in the public interest, including facilitating access to justice.

## **MOBILITY ISSUES**

250. Frequently during our deliberations, and in the majority Report the spectre has been raised that abolishing articling “could result in Ontario being offside the national mobility regime that enables lawyers to move freely between Canadian common law jurisdictions based on shared competence regimes.”<sup>81</sup>
251. In our view, this concern is overstated. While the existence of articling in all provinces may have been an underlying factor when the Law Societies discussed this issue, the National Mobility Agreement<sup>82</sup> makes no mention of articling being a compulsory requirement. There is no mandatory requirement for compulsory articles across Canada. Mobility agreements may be amended to deal with lawyers in the first few years of practice, or other Provinces may follow suit in abolishing articles. The articling crisis is an Ontario problem (where close to 40% of Canadian lawyers practice) and a principled solution to access to the profession should not be prevented because of an issue that affects relatively few, and is easily addressed.

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<sup>81</sup> Majority Report, para. 111.

<sup>82</sup> [http://www.flsc.ca/documents/mobility\\_agreement\\_aug02.pdf](http://www.flsc.ca/documents/mobility_agreement_aug02.pdf)

252. Conversely, a mobility benefit of abolishing articling is the potential to keep good lawyers in Canada. For at least the past fifteen years, many leading U.S. firms have actively recruited high-achieving students from Canadian law schools, and Canadians who may have studied at prestigious American and English universities. One of the competitive advantages of the American firms in causing this “brain drain” is that the students become lawyers immediately and are not burdened by a lengthy licensing process. Our proposal will even that playing field.

## **OUR OBJECTIONS TO THE PROPOSED PILOT PROJECT**

### **(a) 5 Year Period to Assess Articling**

253. The Pilot Project is being proposed to Convocation on the basis that it is necessary to permit objective assessment of both articling and the new LPP. In paragraph 128 of the majority Report, for instance, the majority comments: “One of the difficulties in accurately assessing the merits of articling is that there is little systemic evidence available on which to do so.” The majority proposes to allow both models to exist in tandem for the 5 year pilot period, with the expectation that at the end of that period they will each be objectively evaluated against the Law Society’s objectives with the expectation that Convocation will then have sufficient information to determine if one or both should be continued, with or without modification.
254. While we agree that more data can be useful and that lack of data may be a good reason to avoid making difficult decisions, buried in this reasoning is the implicit acknowledgement that the Law Society is unable to objectively evaluate articling, a process which has been a mainstay of its licensing process for over 100 years. This admission is startling; if true one would wonder what has been going on all these years at Osgoode Hall. Fortunately, in our view it is not true. The lack of objective *statistical* evidence to prove articling’s effectiveness is the responsibility of the profession itself, which has steadfastly resisted attempts to put in place objective assessment criteria. It is in fact one of the primary deficiencies of articling that the profession has refused to allow it to be objectively assessed in a scientific fashion. However, that does not mean



that it is not possible, based on the Law Society's lengthy experience, to reach reasonable conclusions about its effectiveness in providing transitional training. For the reasons set out earlier, we believe that the evidence is compelling that articling is not effective, and that the articling process is unfair and discriminatory.

255. Further, the majority's recommendation that quality assurance measures will be developed for articling appears to be nothing more than "enhanced documentation requirements."<sup>83</sup> This confirms that little will change in the next five years other than, based on past experience, the possibility that these new requirements may further reduce the number of articling positions offered by the profession. Further, the proposed addition of "skills assessments" – for both articling and LPP students - will undoubtedly involve significant costs to develop a testing regime. It will also require large continued expenses to administer it - likely requiring employment of a great many lawyers to *subjectively* assess candidates, making the risk of inconsistency and unfairness in this process high.
256. With respect to our colleagues, in our view it is simply unnecessary to take another 5 years to "study" articling. As outlined earlier in this report, 40 years ago the first major report on articling recommended abolition. Since then the Law Society has had a number of task forces and working groups study the issue, including this one. Time is not on the Law Society's side; the articling crisis is real and growing. In our view the time to make the hard choices is now.

**(b) Two-tiered Licensing**

257. Aside from the fact that more time to study articling is unnecessary, in our view there are more fundamental flaws with the proposed Pilot Project. The first and most important flaw is that an important part of our licensing process will now have two streams of candidates, at least for a five year period and possibly for a much longer period. One stream will consist of candidates who are paid a significant salary to article; the other stream will consist of candidates who will go through a 4 month course followed by a 4

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<sup>83</sup> Majority Report, para. 127(d).

month unpaid co-op placement. The post-licensing employment market will be able to determine which candidates went through which stream, simply by asking job candidates “did you article?”

258. In our view it is inevitable that the LPP graduates will be stigmatized by the profession, on the basis that these are the candidates who couldn’t find articles and therefore are somehow less qualified. We have heard that this is the experience in Australia. In other words, at least for the pilot period, and likely for longer (given the time required to transition if Convocation was to choose one of the two options at the end of that period) newly called lawyers will be divided by the profession into two tiers: those who articulated, and those who did not. The profession will perceive those in the second tier as inferior to those in the first.
259. The majority appears to recognize this as a risk, acknowledging that the “challenges” LPP graduates will face include: “... the fact that they will have at least some responsibility for the costs of the program. Their work placements may well be unpaid, they may have to relocate for their work placements *and the profession may react differently to them for having gone this route.*” (emphasis added)<sup>84</sup> The only justification offered for creating such obvious unequal treatment is that it will give more opportunities to those who currently cannot find articles. In our view, and with respect, the two-tiered proposal of the majority will do nothing to address the concerns of equality-seeking groups about whether articling is discriminatory and, arguably, institutionalizes a different form of discrimination in the LPP.
260. The Task Force agrees as a whole that for transitional training to be a valid regulatory requirement its “design, implementation and measurement should be transparent, objective, impartial and fair.”<sup>85</sup> In our view the two-tiered Pilot Program fails that test. We owe more to those who are currently not obtaining articles. We have to design a system – even if on a temporary or experimental basis – which treats all candidates

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<sup>84</sup> Majority Report, para. 138.

<sup>85</sup> Consultation Report, p.7.

fairly, and objectively, and does not create artificial barriers or impediments to their long-term prospects as members of this profession.

261. Does this analysis change if at the end of the pilot period Convocation chooses the majority's LPP as the sole transitional training model, and abolishes articling? This scenario is unlikely given that there is no assurance that the LPP – provided by external institutions – can run a course and provide “co-op” placements for close to 2000 candidates each year. Moreover, even if Convocation could take this direction, LPP graduates would have experienced a significant time period where the program was run in tandem with articling. In our view, this is a reason to make the hard decision to abolish articling now, and to make any transition to a new form of transitional training (as discussed earlier) as short as possible.
262. Although not reflected in the majority Report, it has been suggested that the possible prejudicial effects of having two tiers of candidates over the life of the Pilot Project would be alleviated by creating an LPP that was “gold standard.” We have no confidence that such a program will, or can be, of such a high standard that it can be justified as a critical or necessary component of legal training. In fact, the majority proposes to contract-out the LPP to external educators, thereby ceding control of the course to one, or more, third parties.
263. We also doubt that the profession will consider a 4 month unpaid co-op placement administered by a third-party provider to be the equivalent of the current articling placement process organized by the law firms themselves. Regardless of how hard the Law Society and its provider work to make the LPP rigorous and thorough, the profession will still see it as a second-best solution for second-best candidates who could not get articling positions. ***We do not believe any person who can successfully complete our licensing process should be considered second-best.***

**(c) The Co-op Placement**

264. Beyond the discriminatory aspects of the Pilot Project, we have several other objections to the proposed LPP, which is significantly longer than the transitional training we envisage as being necessary. Another major concern is the “co-op” placement.
265. As pointed out earlier in this Report, Canadian law school graduates typically have more formal education than their counterparts in countries like Australia (where a form of LPP has existed for some time and where in certain jurisdictions it contains a co-op placement) and the United Kingdom. Our candidates are older and more experienced than their counterparts in other countries. Many of them will have taken one or more clinical courses in law school; some will have firsthand experience with file management through volunteering in student law clinics.
266. As admirable as it sounds, we question whether a co-op placement is really necessary or useful, given its relatively short length and the fact that it is highly likely to be unpaid. We are also skeptical that an outside provider will be able to find sufficient positions with the private bar, clinics or legal aid offices, or that the bar will support such an initiative. The Articling Task Force has received no data or evidence that sufficient positions can be found and it is, in our view, reckless to embark on such a path without this assurance. We also question whether a 4 month placement, likely in one narrow area of the law, will be of any measurable benefit to candidates. Given the uneven experience with articles across the Province, we can have little confidence that the co-op placement will not be plagued by similar problems.
267. Moreover, as noted above, if Convocation will have to consider one day whether to abolish articling in favour of the LPP, a significant factor has to be whether the outside provider could provide co-op placements for approximately 2000 annual graduates (the likely number once the two new Canadian law schools are up and running). It seems to

us highly unlikely that it could.<sup>86</sup> Wouldn't we then be in exactly the same position we are now? The articling crisis would have been replaced by the co-op crisis.

**(d) Costs of the Licensing Process Proposed by the Majority**

268. Another concern with the Pilot Project deals with costs. Today, most students graduate with heavy debt loads. Under the majority's approach, which involves articling candidates subsidizing the LPP (offered by a third-party, for profit) the cost of the licensing process would increase substantially from \$2950 to \$4,350 per licensing candidate and almost double to \$5,670 per licensing candidate when the estimated costs of a culminating assessment are factored in.<sup>87</sup> And while LPP candidates would therefore pay the same fee as articling candidates, they would not have any income during the course and co-op period, and may well have to relocate in order to attend the LPP or serve in a co-op position. Further, as is the practice now, many law firms will pay the articling fees on behalf of their articling students. Thus, candidates in the LPP are doubly penalized: once for being "second tier" and a second time financially for their failure to get an articling placement.
269. The real cost of the lengthy LPP (inclusive of the course, co-operative placement and licensing process and assessment fees, including call to the bar fees) appears to be \$11,270 per LPP candidate, a very large and concerning number.<sup>88</sup> We note that this assumes the costs per candidate of the LPP course and co-operative placements are \$7,000, modeled on approximate costs of the PLTC in an Australian jurisdiction. If the costs were higher these numbers would increase.<sup>89</sup>

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<sup>86</sup> Larger law firms have resisted splitting or shortening articles on the basis that it takes students some time to become accustomed to the work and workplace, making them very unlikely to step up and accept students on short-term co-op placements.

<sup>87</sup> We note that this assumes the costs per candidate of the LPP are \$7000, modelled on approximate costs of the PLTC in an Australian jurisdiction. If the costs were higher, these numbers would increase. It should be noted that the cost of the PLTC offered by The College of Law – the largest provider of the PLTC in Australia – for 2012 is \$7,760 for the course component and \$1,150 for the clinical experience module, totalling \$8,910. The cost for 2013 is \$8,070 for the course component and \$1,200 for the clinical experience module, totalling \$9,270. <http://www.collaw.edu.au/Future-Students/Practical-Legal-Training-Programs/Program-Fees/>

<sup>88</sup>The cost of the LPP, application fees, the possible assessment fees and licensing process fees, including examination and call to the bar fees - \$7,000 plus \$1,320 plus \$2,950.

<sup>89</sup> It should be noted that the cost of the PLTC offered by the College of Law - the largest provider of the PLTC in Australia for 2012 is \$7,760 for the course component and \$1,150 for the clinical experience module, totaling

270. The costs of the culminating assessment, outlined in the majority Report, appear to be as much as \$2,637,000 per year.<sup>90</sup>
271. What is absent from the majority's Report is an estimate of the costs to the Law Society in having to administer two streams of candidates instead of one. These costs exist and are significant. A shorter period of transitional training for all licensing candidates with no co-op placement would avoid most of these issues.

### **THE BROADER CONTEXT AND THE RESPONSIBILITIES OF THE LAW SCHOOLS**

272. The Law Society may still give out honorary degrees, but it is essentially a regulator, not an educator. This raises the broader context of legal education and professional training generally. We do, after all, require prospective licensees to have a university law degree, typically obtained after at least an undergraduate degree, and to have met high academic standards.
273. What then of law schools and the scope of legal education? As the majority notes,<sup>91</sup> the Task Force considered the Carnegie Foundation Report that urged a greater role for skills-based learning in law schools. In our consultations, many law students showed interest in the Carnegie approach. The law schools themselves, however, were generally resistant to taking on more practical training, raising concerns about the implications on their curriculum and the changes to legal education that could result. Put bluntly, some of this resistance is from law schools, or faculty members, who see their role as to only teach academic courses, and not to engage in any practical training.
274. This is not to say we believe legal education should be up-ended - far from it. We value and respect the high quality of legal education in Canada and the intellectual rigour involved in obtaining a law degree. We have also noted that some students obtain valuable practical training within the law schools, either through course work or volunteering at student legal clinics. Some schools have taken remarkable initiatives and

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\$8,910. The cost for 2013 is \$8,070 for the course component and \$1,200 for the clinical experience module, totaling \$9,270. <http://www.collaw.edu.au/Future-Students/Practical-Legal-Training-Programs/Program-Fees>.

<sup>90</sup> Majority Report, para. 166.

<sup>91</sup> Majority Report, para. 116-120.

shown much commitment in this area. As noted earlier, Osgoode Hall Law School recently announced a “bold change” requiring every student to “be exposed to law in action through an experiential course,” and has created an Office of Experiential Education.<sup>92</sup> Students completing such courses may gain far better experiential training than they may find in a co-op placement, and may justifiably question the utility of the co-op requirement.

275. In our view, law schools should follow Osgoode’s lead and increase opportunities for practical training and, indeed, require it. Many students, after years and years of academic study, are clamouring for practical training in the latter half of a three-year law degree. All members of the Task Force felt that the Carnegie approach had merit and that this discussion should be pursued with the law schools. However, under the majority’s recommendations, there will be little incentive or pressure brought to bear on law schools to even begin this discussion. So long as the Law Society requires articling or a lengthy LPP with a co-op placement, law schools can assert that students will get practical training when they go through the licensing process. In the meantime, as noted, those who have obtained practical training will rightly question the need for a co-op requirement.
276. We believe that the difficult, broader discussion with law schools about professional training should take place now. Abolishing articling may well cause law schools to put more emphasis on practical training. In the absence of articling, students may increase pressure for such opportunities in law schools. We might even consider whether our accreditation of schools should require an increased component of practical training. The majority’s recommendation is, like its preservation of articling and creation of a lengthy “pilot” LPP, simply putting off for years another discussion that needs to take place now.

## CONCLUSION

277. In our view, and with respect to the views of our colleagues on the Articling Task Force, the time has come to embrace change. Articling today does not meet the Law Society’s

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<sup>92</sup> Media Release, Osgoode Hall Law School, September 13, 2012.

core regulatory objective of ensuring that new lawyers are competent to practise law. It is discriminatory and unfair. Putting off the difficult decision to abolish it does a disservice to the profession and to those licensing candidates to whom we owe a great responsibility to ensure that our licensing process is rigorous but fair.

278. In our opinion, the pilot project proposed by the majority is fundamentally flawed and should be rejected by Convocation. Our proposal - abolishing articling in favour of a modest expansion of the current licensing program coupled with increased post-licensing requirements - is rigorous and will protect the public interest. It is transparent, objective, impartial and fair in its design, implementation and measurement, and will promote access to justice.

Jacqueline A. Horvat  
Vern Krishna  
Paul B. Schabas  
Peter C. Wardle



## LSUC Articling Goals and Objectives

## LSUC ARTICLING GOALS AND OBJECTIVES

The following includes various activities and tasks that are intended to form part of an articling candidate's learning during articles. These goals and objectives are designed as a reference for the Articling Principal who is expected to exercise best efforts to ensure that these areas of competency are included in the articling training while providing direct supervision to the articling candidate throughout the articling term.

### PROFESSIONAL RESPONSIBILITY

- the basic duties and responsibilities of a lawyer will be taught through frequent discussions with lawyers on individual files
- discuss client confidentiality
- explanation and demonstration of system used to avoid conflicts of interest
- explanation and demonstration of tickler system
- explanation of how fees are set and billed out, and how this is explained to clients
- use of trust and general accounts
- discuss appropriate response when asked by a client to do something that would breach professional conduct rules.

### INTERVIEWING

- discuss proper interviewing techniques
- attend with lawyer on initial interviews with new clients
- observe interviews with witnesses
- prepare witness statements or affidavits for signature based on interview
- interview clients or witnesses
- interview consultants, experts, employees of various governmental agencies or ministries
- prepare clients or witnesses for trial or other examination

### ADVISING

- discuss proper legal counselling techniques
- prepare memo for lawyer giving basis for advising client
- generate options and remedies for client
- attend with lawyer at meetings with clients in which the client is advised and counselled concerning remedies and options, and instructions are received
- draft opinion letter to client outlining options and remedies
- prepare memo to file or other record of advice given to client
- advise client under direct supervision of lawyer

### FACT INVESTIGATION

- review documentary evidence (e.g. client's personal or internal files, corporate minute books, files maintained by government or administrative bodies such as the OMB)
- conduct searches under various public records systems (e.g. land titles; PPSA; corporate searches, etc.)
- observe examinations for discovery or in aid of execution, or cross-examinations on an interlocutory matter
- prepare summary of transcripts
- assist in the follow-up to examinations for discovery (preparation of list of undertakings)
- attend a creditors' meeting
- attend disclosure meeting between defence and Crown

## LEGAL RESEARCH

- become familiar with research materials and facilities available (e.g. firm library, local law library, inter-firm lending arrangements, computer search databases)
- research a point of law and report verbally to lawyer
- prepare memorandum of law
- prepare critique of or response to opponent's pleadings/facta

## PLANNING AND CONDUCT OF A MATTER

- discuss client's problem with lawyer
- formulate plan with lawyer and generate options and strategy
- discussion of effective communication with clients and other lawyers
- discussion of various cost and time saving techniques
- prepare written report of options and strategy based on the articling candidate's research and investigation
- assessment of various options in light of client's needs and financial resources
- prepare draft reporting letters to client

## FILE AND PRACTICE MANAGEMENT

- learn basic file and record keeping practices
- learn procedure for opening and closing files
- prepare a case plan or checklist for a new file
- learn how to document a file (records of telephone calls, etc.)
- learn how to organize a file
- learn how to use time docketing system
- learn how to keep client informed of progress of matter
- become familiar with billing practices
- become familiar with tickler system (follow-ups and limitation dates)
- learn trust and general account procedures
- learn process for recording expenses and disbursements

## DRAFTING and LEGAL WRITING

- learn proper usage of precedents
- discussion of methods for improving accuracy and clarity of expression in the legal context
- draft pleadings (notices of motion, orders, offers to settle, notices of appeal, affidavits, facta, draft judgments, minutes of settlement)
- draft retainers, correspondence, agreements, opinion letters, memoranda of law, reports

## NEGOTIATION

- discussion of negotiation techniques and strategy
- observation of negotiations
- review and discuss success of negotiations with lawyer
- conduct negotiation of small claims court matters alone (under guidance of lawyer)
- observe mandatory mediation, Alternative Dispute Resolution

## ADVOCACY

- discuss advocacy techniques
- observe advocacy in a variety of circumstances (motions, tribunal hearings, trials, pre-trial conferences, discoveries, applications, references, assessments of costs, cross-examinations on affidavits)
- attend set date court, uncontested and consent motions, status hearings, judgment-debtor examinations, Small Claims Court
- conduct simple tribunal hearing
- attend on references, assessments of costs, passing of accounts in estate matters (subject to discretion of Judge of Ontario Court (General Division))
- attend on trial of a provincial offence matter, summary conviction matter
- other, as appropriate