



ARTICLING TASK FORCE

May 24, 2012

INTERIM REPORT

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Purpose of Report: Information

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TASK FORCE PROCESS

1. Since its last report on December 9, 2011 the Task Force has met on the following dates:
February 13, 2012
March 7, 2012
March 23, 2012
April 17, 2012
May 3, 2012
2. In addition, between December 9, 2011 and March 15, 2012 Task Force members and staff have held regional meetings with lawyers in nine cities and attended consultation meetings across the province with law faculties and law students and, on April 12, with benchers.

INTRODUCTION AND BACKGROUND

3. The process by which each successive generation of lawyers is licensed reveals much about what the profession views as important to ensure ongoing competence and commitment to the public it serves.
4. In June 2011, the Law Society's Articling Task Force ("the Task Force") began an in depth review of the issues affecting the articling system, an integral component of the Law Society's licensing process. Although the immediate impetus for the review was the increasing shortage of articling placements, it soon became apparent to the Task Force that the articling program must be considered in a broader context to examine its effectiveness, fairness, ongoing viability and future in a rapidly changing legal landscape.¹
5. On December 9, 2011 Convocation approved the dissemination of the Task Force's Consultation Report to the profession. The Consultation Report was intended to "foster and stimulate constructive engagement on meaningful solutions" to the issues affecting articling in particular, and the licensing of lawyers in general "rather than proposals that will result in band-aid remedies or *ad hoc* approaches to the problem." The consultation period ran until March 2012.²
6. Between December 2011 and the end of March 2012 the Task Force engaged in a comprehensive consultation with the profession to consider an effective, fair and transparent process for ensuring the entry-level competence of those the Law Society licenses as lawyers.³ This larger question of the principles underlying the process of licensing lawyers grounds the narrower issue of the articling program in a larger, more nuanced context that is essential to the development of solutions that will serve the profession and the public well.

¹ The Task Force's amended Terms of Reference are available at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485613>.

² The Consultation Report is available at <http://www.lsuc.on.ca/articling-task-force-consultation-report/>.

³ The Law Society regulates both lawyers and paralegals. Many of the principles that are discussed in this report have relevance to the admission of both groups of the profession. However, the Task Force's consultations and its ultimate recommendations are specifically limited to the licensing of lawyers.

7. The Task Force's own discussions, the consultations it held and the submissions it received have canvassed a broad array of topics relevant to the discussion of licensing. These included issues related to legal education generally, the value of transitional training, including the ongoing viability of the current approach and the relative merits of pre-call versus post-call training, quality assurance as a feature of the licensing process, input and output measurements of entry level competence, access to the profession of diverse groups and access to justice for members of the public, the responsibility of current lawyers toward the next generation of lawyers, the role of the market in determining entry to a profession, the cost of qualifying for the profession and its impact on candidates' options and choices, and the importance of an inter-jurisdictional conversation among law societies about national admission standards.
8. The discussions have included consideration of numerous questions, including the following:
 - a. Does a profession have a collective responsibility to be concerned with the structure and fairness of the process by which new lawyers are licensed?
 - b. Is transitional training a necessary component of the licensing process in the development of a competent profession? If so, is articling the only or best way of achieving the goals of transitional training?
 - c. Should competence be the only measure of admission or do market forces have a role to play in the admission process?
 - d. Do law students and recent law graduates have a right to expect the regulator and the profession to assist them to be admitted and, if so what is the appropriate limit of such assistance?
 - e. Should the current transitional training program of articling and possible alternatives to it be reviewed for their ability to enhance diversity and access to justice?
 - f. What role, if any, does or should the Law Society have in determining the number of candidates admitted to law schools?
 - g. Should there be a correlation between available positions for transitional training and available law school places?
 - h. In developing entry level competence training should the cost to candidates or to members of the profession be a factor for consideration? Should the high cost of

law school tuition and attendant graduate debt preclude the Law Society from pursuing certain options?

- i. Can the public interest be served by a more streamlined pre-licensing process and more targeted post-licensing initiatives and requirements?
 - j. Do law schools have a role to play in providing transitional training and reducing the shortage of placements?
 - k. What, if any, empirically-based evidence supports one form of transitional training over another?
9. Members of the profession, legal organizations, law schools, law societies, law students and articling students, the Federation of Law Societies of Canada, law firms and others have been fully engaged in the consultation process. Their detailed input reflects an understanding of why the Law Society must consider the transitional training issue, an appreciation of the complexity of both the analysis and possible solutions and a deep interest and commitment to the profession.
10. A fair and effective licensing process is essential to the profession's renewal. 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.
11. The Task Force's Consultation Report illustrated the complexity of the issues at an overview level. The consultation meetings and the submissions the Task Force received have further demonstrated a wide range of possible solutions, diverse views on the options set out in the Consultation Report and the importance of considering each option fully and reflectively.
12. The submissions also reflect a diversity of opinion on the pace of any action to address articling. Many submissions urged bold action. Others urged the Task Force to provide further information, conduct further research and flesh out some of the options before proceeding along any new paths. Many noted that some solutions require the type of change that, once effected, would be difficult to reverse, making it all the more essential to proceed carefully. The Federation of Law Societies of Canada and other law societies suggested that given the potential national impact of changes to transitional training further discussions should be held at a national level, particularly in view of the National

Admissions Standards project that is underway and in which the Law Society of Upper Canada is an active participant. A national discussion is also important because of the interconnectedness of jurisdictions through the National Mobility Agreement, which permits lawyers from common law jurisdiction in Canada to practise in any other common law jurisdiction.

13. In its Terms of Reference the Task Force's mandate projected a final report in May 2012. That timeline was ambitious, but the Task Force began its work believing that it could provide a final report in that period. It has found, however, that it is not possible to do justice to the scope of the issues and provide a meaningful proposal that Convocation would find detailed enough to allow it to make an informed decision. Moreover, the Task Force has been impressed by the multitude of suggestions it has heard from individuals and organizations and considers it important that it reflect on some of those proposals more fully than has been possible in the brief period since the consultation period ended.
14. The Task Force is aware that the issues that prompted its establishment, particularly as related to articling placement shortages continue to exist. It has not reached its decision to postpone its final report lightly. It strongly believes, however, that by extending its mandate to the fall of 2012 as discussed at Convocation in April 2012, it can develop a better proposal that will address the issues around transitional training, quality assurance and the most viable way forward. At that time it will also address possible interim solutions that are necessary to address the transition between recommendations and implementation.
15. The Task Force takes this opportunity to provide Convocation with a report on its consultation process, including the process it followed and a summary of the major themes it heard from the submissions.

The Task Force Consultation Report

16. As the regulator of the legal profession it is up to the Law Society to approve policies and implement processes that are in keeping with *Law Society Act* requirements and

provisions. The *Act* requires that the Law Society ensure that all persons who practise law in Ontario meet standards of learning, professional competence and professional conduct. This extends to the licensing requirements for entry to the profession. Moreover the Law Society has a “duty to act so as to facilitate access to justice for the people of Ontario.”

17. For ease of discussion, the Task Force compartmentalized possible approaches to the issues into five options, but in going forward the Task Force will assess which *elements* in the various options could best provide a substantively appropriate licensing mechanism in the context of a procedurally fair process. This focus on the relevant and necessary elements for the licensing process will be the key to the Task Force’s roadmap for reform of the licensing process.

The Consultation Process

18. The Task Force undertook a number of steps to bring the Consultation Report and the consultation meetings to the attention of the profession, set out at **TAB 1: Consultation Notification Steps**.
19. The Task Force received 125 public submissions, 70 from individuals, and 55 institutional responses.⁴ It held 25 consultation sessions. The consultation meeting list is set out at **TAB 2: Task Force Meetings**. The submissions received are listed at **TAB 3: Submissions List**.
20. The submissions are summarized at **TAB 4: Overview Report on Submissions**.⁵ The report addresses the views expressed on the proposed five options and their elements, comments provided on the questions the Task Force posed in the Consultation Report, input on other possible approaches to the issues the Task Force raised and general comments.

⁴ Institutional responses include those from legal organizations, law societies, law firms, the judiciary, government ministries, law school and law students. During the Licensing & Accreditation Task Force’s 2008 review of articling it received 60 comments from individuals and approximately 40 institutional responses.

⁵ The submissions will also be available on the Law Society’s website.

21. The submissions and comments made at the consultation meetings recognize the complexity of the issues and illustrate a willingness among many to consider possible approaches that would not have been thought viable by most even four years ago. Proposed solutions reflect individuals' and organizations' perspective, experience, and mandates. The submissions,
- a. address the role of transitional training and its most effective positioning in the licensing process;
 - b. reflect the strong continued belief in articling held by the majority of respondents, but illustrate that increasingly this view is coupled with a perception that for the articling process to be defensible it must meet objective and measurable standards;
 - c. point to a view among some that articling in its current form creates unreasonable barriers to entry and should be entirely replaced by another form of transitional training;
 - d. express concerns about the reasons underlying placement issues, particularly as related to increasing numbers of law school graduates and internationally trained candidates;
 - e. raise concern about the artificiality of the divisions between legal education and the licensing process and about the increasing cost of legal education;
 - f. canvass the national implications of any Law Society of Upper Canada actions;
 - g. consider the means by which transitional training solutions can and should address access to justice, fairness, and equity considerations;
 - h. provide input on the appropriate entry level standards;
 - i. consider the possible implications of any changes to the licensing process on the perception of the profession and the impact of differential licensing experiences on those entering the profession;
 - j. provide detailed input on each of the options; and
 - k. raise concerns about the timing of any changes.
22. These submissions will provide assistance to the Task Force as it narrows its focus and develops recommendations for Convocation's consideration.

23. If the health of a profession can in part be measured by its members' engagement in the important issues that affect it and the public it serves, the articling consultation has revealed an encouraging level of interest, reflection and commitment. The Task Force is grateful for the assistance it has received.

24. In the coming months the Task Force will turn its attention to developing a proposed roadmap for Convocation's consideration. No matter how the ultimate recommendations are framed, they will include some form of transitional training and measurable standards as the foundation that grounds them.

CONSULTATION NOTIFICATION STEPS

1. A Notice to the Profession was placed in the *Ontario Reports* on January 6 and 20, 2012 and February 10, 2012.
2. An article on the Consultation was included in the February 2012 *Ontario Lawyers Gazette*.
3. The Law Society placed the Consultation Report and request for comments in a prominent place on the website where it remained throughout the consultation process.
4. The 9 regional meetings in Toronto, Sudbury, London, Windsor, Barrie, Hamilton, Ottawa, and Kingston were advertised on the Law Society website.
5. Outreach efforts were made to communicate with each region about the consultation meetings and seek the relevant law association's assistance to bring the meetings to the attention of the lawyers in the community.
6. Each law school was contacted to request meetings with law faculties and law students.
7. Letters were sent to a large number of law firms and government that hire a significant percentage of articling students to invite their comments.
8. Letters were written to all major legal organizations, law societies, and the judiciary to invite their comments.
9. A number of blogs reported on the Consultation Report and notified readers of the request for comments.

TASK FORCE MEETINGS

Regional Consultations

January 17, 2012	Sudbury
January 18, 2012	Toronto
January 30, 2012	Thunder Bay
February 13, 2012	London
February 16, 2012	Windsor
February 27, 2012	Barrie
February 28, 2012	Hamilton
February 29, 2012	Ottawa
March 5, 2012	Kingston

Law School Faculty and Law Student Consultations

February 10, 2012	Panel at Osgoode Hall Law School
February 14, 2012	Task Force member Raj Anand presents at the University of Toronto Faculty of Law Program on Professionalism
February 16, 2012	Windsor Law, University of Windsor
February 18, 2012	Task Force member Jacqueline Horvat participates in articling panel at the Black Law Students Association of Canada's Annual Conference
February 24, 2012	University of Ottawa Faculty of Law English Common Law Program
March 5, 2012	Queen's University Faculty of Law
March 9, 2012	Western Law, University of Western Ontario
March 16, 2012	University Of Toronto Faculty of Law

March 27, 2012 University of Ottawa, Faculty of Law, French Common Law Program

Additional Consultation Sessions

December 2, 2011 Ontario Bar Association Council Meeting (before Consultation Report issued)

December 6, 2011 Treasurer addresses the National Association for Law Placement (NALP) highlighting the Consultation Report

January 13, 2012 Paliare Roland Consultation

January 31, 2012 Treasurer's Liaison Group Meeting

February 1, 2012 Toronto Lawyers' Association - Meeting with Executive

February 2012 Meeting with President of Lakehead University

March 7, 2012 Law firm managing partners meeting

March 12, 2012 Ryerson University meeting

April 2, 2012 Law firm managing partners meeting

SUBMISSIONS LIST

Individuals

Justice Agyemang
A. Akbar
Karen Andrews
Phil Augustine (2 submissions)
Stuart Bailey
Michele Ballagh
Suzanne Balzer
Glenn Carbol
Douglas Chan
Paul Calarco
Lisa DeLong
Haig DeRusha
David J. D'Intino
Alan Direnfeld
Bruce Engel
Rosalie A. Evans
Tom Feather
Roderic G. Ferguson
Greg Fournier
Virvet T. Georgeson
Carolyn Gerbac
Nachshon Goltz
William L. Grimmett
Peter Mark Hamiwka
Troy Hunter
Sylvia Jacob
Mark G. Johnson
Paul Johnston
Mohamed Kamaluddin
Aleksandra Karpik
Jacob Kaufman
Sheila Kerr (2 submissions)
Shahana Khan
Mitchell E. Kowalski (2 submissions)
Brian Kuchar
Cynthia J. Ledgley
Paul Lepsoe
Michael Lesage
Paul M. Mann (2 submissions)
Bruce McChesney
Shelley McGill and Sharon Ilavsky
David McRobert
Anne Mundy-Markell

Stela Njogu
John O'Donoghue
François Paltrinieri
Lori Pope
Al Pomerant
Gordon Prisco
Helene Puccini
Robert A. Rastorp
Shaïda Ratansi
Max Reed
Katie G. Ross
Mark Rubenstein
Clayton Ruby
Jason A. Schmidt
Joseph E. Schuchert
David W. Scott
Milan Seres
Jennifer Sheryer
Jacob Tummon
Marion Van de Wetering
Eric van Eyken
Joy Wakefield
Jan Weir
Joanna Weiss
Ken A. Whent, Q.C.
Rollie Willis, Q.C.
Anna Wong

Judicial

Court of Appeal for Ontario
Superior Court of Justice
Justice Peter Harris (Ontario Court of Justice)

Law Firm

Davis LLP
Lerners
Norton Rose Canada LLP
Pallet Valo LLP
Sack Goldblatt Mitchell LLP
Torys LLP

Law Schools and Student Organizations

Queen's University Faculty of Law

Queen's University – Queen's Law Students

Réclef – Regroupement Etudiant de Common Law en Francais plus English translation

University of Ottawa Common Law Section

University of Ottawa Ad Hoc Working Group on Articling and Access to Justice

University of Ottawa Common Law Student Society

University of Toronto Faculty of Law's Students' Society Student Affairs and Governance Committee

University of Windsor – Francine A. Herlehy

University of Windsor – Windsor Law Student Articling Working Group

University of Windsor - Windsor Law Academic Planning Committee

University of Western Ontario – Western Law Student Legal Society

University of Western Ontario – Community Legal Services

Law Societies

Barreau du Québec plus English translation

CEOs of Law Societies of Alberta, Saskatchewan, Manitoba and Nova Scotia

Law Society of Alberta

Law Society of British Columbia

Law Society of Manitoba

Law Society of Saskatchewan

Law Society of Upper Canada

- Aboriginal Working Group
- Equity Advisory Group

Nova Scotia Barristers' Society

Legal Organizations

African Canadian Legal Clinic

Association of Corporate Counsel (Ontario Chapter)

Association of Law Officers of the Crown

Association des jurists d'expression française de l'Ontario plus English translation

ARCH Disability Law Centre
Canadian Association of Black Lawyers
Canadian Environmental Law Association
Canadian Lawyers Abroad (Catherine McKenna)
Community Legal Services Ottawa Centre
County and District Law Presidents' Association
County of Carleton Law Association
Criminal Lawyers' Association
Family Lawyers' Association
Federation of Asian Canadian Lawyers
Hispanic Ontario Lawyers Association
LAWPRO
Ministry of the Attorney General
Office of the Fairness Commissioner
Ontario Trial Lawyers Association
Pro Bono Law Ontario
The Advocates' Society
The Ontario Bar Association
Thunder Bay Law Association
City of Toronto – Chair of the Articling Program
Toronto Lawyers Association



ARTICLING TASK FORCE

SUMMARY OF SUBMISSIONS TO THE ARTICLING TASK FORCE CONSULTATION

TASK FORCE MEMBERS

Laurie Pawlitza (Treasurer)
Thomas Conway (Chair)
Raj Anand
Adriana Doyle
Jacqueline Horvat
Vern Krishna
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OVERVIEW OF SUBMISSIONS

The Law Society received submissions from individuals, government, legal organizations, equality-seeking groups, the judiciary, law societies, law schools, and law students. Most submissions considered the five options outlined in the Consultation Report, which were,

1. the status quo (“Option 1”);
2. the status quo with quality assurance improvements (“Option 2”);
3. the replacement of a pre-licensing transition requirement with a post-licensing transition requirement (“Option 3”);
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) (“Option 4”); and
5. only a PLTC requirement (“Option 5”).

Certain consultation participants also raised hybrid options based on elements of the above options, or shared entirely new options. The submissions are summarized below.

INDIVIDUALS

The Task Force received individual submissions from law students, lawyers in private practice, government, legal clinics, and in-house environments, former lawyers, academics and consultants. Individual submissions ranged from support for the status quo through to abolishing articling. Many individual practitioners and law students expressed a strong preference that articling be maintained in some form. However, individual submissions also highlighted many of the shortcomings in the current articling system as follows:

- Several students and recent graduates reported difficulties securing articling placements. Many more reported working for free in order to complete the articling requirement. Several students reported that having incurred significant student debt to pursue careers in law, it took them over a year to secure an articling position, or they continue to search for positions with limited success.
- Individuals cautioned that the current shortage of articling positions has created increased student vulnerabilities.
- Some noted that the lack of measurability of articling outcomes, the varied nature of articling positions, and the shortage of placements are making articling increasingly difficult to justify as a pre-licensing requirement.
- Lawyers noted financial constraints in criminal, family, immigration and other related practice areas, affecting practitioners’ ability to hire articling students, and suggested financial incentives to recruit principals.

- Certain criminal lawyers suggested that the Law Society lobby Legal Aid Ontario to develop financial incentives to encourage practitioners to hire articling students.
- Some lawyers in northern Ontario and smaller centers spoke of varying needs of employers in different geographical areas. Many suggested that the Law Society should continue its efforts to promote the value of articling, and consider targeted initiatives to encourage articling programs in underserved communities.

LEGAL ORGANIZATIONS AND GOVERNMENT

The Task Force received submissions from a wide range of legal organizations and from government departments that present diverse views regarding articling. Many provided suggestions for minor changes to articling, but suggested that the articling program otherwise meets their constituency's needs. Others appreciated that the lack of measurement of a licensing component, and the shortage of articling placements would likely require the Law Society to take further action. Some expressed the view that articling presents an artificial barrier to entry that may threaten lawyers' privilege to self-regulate and that the Law Society must act to create a more fair, measurable transitional training program. Others, including certain equality-seeking organizations (whose submissions are discussed further below), suggested that articling should be abandoned, and replaced with a PLTC for all licensing candidates. A minority of comments suggested that the Law Society take additional steps to caution students that admission to law school does not guarantee an articling placement or the ability to pursue a career in law.

EQUALITY-SEEKING GROUPS

The Task Force heard from numerous individuals who identified as being members of equality-seeking groups, as well as from organizations representing equality-seeking groups. The majority of equality-seeking groups reported that the articling program does not serve members of equality-seeking groups well. These organizations noted that many individuals from equality-seeking groups must overcome numerous obstacles in order to be admitted to the legal profession. Nearly all submissions from equality-seeking groups rejected continuing with the status quo on the basis that this would fail to address articling placement shortages, which creates an unfair barrier to entry into the profession that disproportionately impacts students from equality-seeking groups. However, there was no unanimous recommended path to improving upon the current transitional training system by equality-seeking organizations. Suggested approaches included the following:

- 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 practice law.
- Increase measurement tools against which students and articling students are assessed.
- 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.

- Develop a PLTC for students who do not have articling positions, but continue to provide articling as one transitional training pathway (Option 4).
- Abolish articling and replace it with a PLTC (Option 5), either within law school or after law school, as this creates a single, universal transitional training program.
- Combine a PLTC with a shorter articling requirement, which would develop a universal, fair system, with increased quality assurance mechanisms.

The submissions from equality-seeking groups raised numerous issues regarding potential PLTC models for the Task Force's further consideration, including the need for buy-in from the profession and the Law Society to ensure that the public understands that a PLTC is equal to the articling system. These concerns are discussed in further detail below.

THE JUDICIARY

The Task Force received submissions on behalf of the Court of Appeal and the Superior Court of Justice. The judiciary strongly supported the continuation of judicial clerking programs. To the extent there was comment on the options, support was expressed for Options 2 and 4 over any option which would abolish articling.

LAW SOCIETIES

Canadian Law Societies are monitoring the Task Force's work with great interest. Submissions noted the "persuasive" reasons for considering alternatives to articling, and encouraged Ontario's initiative in this regard. The Federation of Law Societies of Canada (the "Federation") and several individual law societies requested that the Task Force engage in dialogue to consider how proposed changes to Ontario's transitional training and licensing system might impact national regulation and other Canadian law societies. They noted in particular that the National Mobility Agreement is predicated on lawyers having similar educational and licensing requirements and competencies. The Federation and certain individual law societies have expressed interest in working with the Law Society.

LAW SCHOOLS

The Task Force held consultations at each Ontario law school, and met with Ontario's law school Deans as part of its consultations. It was made clear by most law school Deans and faculty that Ontario law schools are not presently interested in offering a PLTC within the three year law school stream because,

- a PLTC within the law school setting could affect academic freedom, if the Law Society dictates curriculum requirements to schools respecting what standards an "in law school" PLTC must address;

- law schools are not well situated to teach practical legal skills to students, which is better left to the Law Society and legal professionals; and
- developing clinical law school programs is expensive, and would drain resources dedicated to other school initiatives.

However, the Task Force also heard that a PLTC in law school might be viable for some students in certain limited contexts. According to certain submissions,

- it may be possible to develop a PLTC during law school based on existing clinical programs for a limited number of students;
- a PLTC during law school could be developed as a pilot project at one or more law schools;
- PLTCs during law schools would not, in and of themselves, fully be able to respond to the current articling placement shortages;
- developing a PLTC in law school would require further discussions and debate as to the appropriate level of experiential learning in law schools; and
- law schools might seek permission from the government to charge PLTC students an additional fee.

LAW STUDENTS

The Task Force heard from law students at each regional consultation session, at law school consultations, and through written submissions. Students were highly engaged in the consultation process. The vast majority of law students reported that they wish to pursue careers as practising lawyers upon graduating law school. However, the Task Force heard from many recent law school graduates who had yet to find an articling placement, as well as from individuals completing articling placements for free in order to be licensed to practice. Students stressed that being unable to find an articling position has nothing to do with a student's competency level. Law students at all levels of study are concerned by the costs of pursuing legal education, and the risk of being unable to find paid articles upon graduation, as well as post-call employment opportunities.

Law students provided an array of recommendations to the Task Force, including that,

- the Law Society, law schools, the profession and governments should be doing more to ensure that the profession renews itself in an equitable manner;
- the Law Society should engage in dialogue with Ontario law schools to determine the number of incoming students, coordinate efforts to promote articling positions, and develop new articling placements;

- a co-op legal program should be developed in Ontario;
- a PLTC within law school should be developed in Ontario to better prepare students for practising law, to provide opportunities to train students while providing access to justice, and to provide students with a streamlined, risk-free path to becoming licensed;
- if a PLTC within law school is developed, students should still have the option of pursuing a three year academic law program;
- many students expressed support for the continuation of articling in some form, as articling provides a paid placement for many students, an opportunity for students to experience hands-on legal training, mentoring by a practising lawyer, and a potential to be hired back with the same employer upon being called to the bar; and
- students expressed concerns with respect to the costs of a PLTC and potential stigma associated with a PLTC.

OPTIONS

The Task Force heard a range of opinions regarding each option, with many submissions presenting views that adopt part of one option, or combinations of various options. The following summary provides an overview of the general comments and concerns raised with respect to each of the options considered in the Consultation Report.

OPTION 1: THE STATUS QUO

A “LOST OPPORTUNITY” TO IMPROVE THE CURRENT SYSTEM

Option 1, maintaining the status quo, was strongly opposed by many individuals and groups, for the following reasons:

- To many, including some who support articling, the status quo unfairly prevents otherwise qualified licensing candidates from completing a requirement of the licensing process. Articling positions are not provided by the laws of supply and demand operating in a free market. Rather, the legal marketplace is a highly controlled, regulated market, in which only certain legal service providers offer articling opportunities, with others failing to do so due to a variety of factors.
- The status quo fails to address articling placement shortages, the wide variation between articling experiences and any quality improvements to the current system.
- The status quo does not serve students from equality-seeking groups, including racialised students and students with disabilities.
- The status quo presents challenges for students seeking to work in criminal, immigration, and family law, or in rural and/or small law firm settings, as there are few articling

positions in these areas. Lack of articling positions in these areas may impact on students' career paths and limit access to justice.

To some, were Convocation to adopt Option 1, it would mark a "lost opportunity" to improve upon the current system and would not mark sufficient effort to meet the Law Society's statutory requirement to "facilitate" access to justice for Ontarians.

"DON'T THROW THE BABY OUT WITH THE BATHWATER"

A small minority of individuals, organizations and law firms endorsed the status quo. To some within this group, articling has trained generations of competent lawyers, and is the only way to make sure that law students may develop into competent entry level lawyers. Within this group, a few individuals questioned whether there is an articling "crisis", or that the current placement shortage is not temporary. Certain respondents noted that although there may be a shortage of articling positions compared to the number of students seeking placements, this was not a problem created by the Law Society, and it should not have to solve it. In their view attainment of a law degree does not guarantee an articling position. The Law Society should not be dedicating any resources to address articling shortages.

Many proponents of the status quo believe that laws of supply and demand dictate how many students complete articles of clerkship annually. Having "too many lawyers" would not be in the public interest. Moreover, in their view unplaced law school graduates may need to try harder or relocate to find an articling position, seek articling opportunities outside Ontario, or seek other employment in another field until such time as they can find articling in Ontario.

OPTION 2: THE STATUS QUO WITH QUALITY ASSURANCE IMPROVEMENTS

AN INCOMPLETE RESPONSE TO SHORTCOMINGS OF THE CURRENT ARTICLING PROGRAMME

Option 2, maintaining the status quo while developing quality assurance improvements to the articling system, remained unpopular among many groups, who see this option as sharing many of the shortcomings of the status quo under Option 1. In their view Option 2 by itself fails to address the issue of unplaced licensing candidates, and fails to address the lack of articling opportunities in particular areas of law, or in smaller firm or rural settings.

A number of firms with well-established articling programs felt that their own quality assurance measures are sufficient to address competence. Some comments suggested an increased reporting requirement would likely lead to a decrease in the number of articling positions offered by law firms. Certain specialist firms also noted that standardized, "one-size-fits-all" benchmarks would be inappropriate to properly measure the nuances of each articling experience.

A POTENTIAL PART OF THE SOLUTION, BUT NOT A STAND-ALONE OPTION

Many respondents found elements of Option 2 appealing, although few suggested that this option could serve as a stand-alone solution to the issues being considered by the Task Force. They agreed that articling would benefit from established standards, quality improvements and

assessments, provided,

- they are flexible enough to account for the wide range of articling positions available; and
- any new quality assurance programs should not be so onerous so as to act as a disincentive to those already hiring or considering hiring articling students.

One submission suggested that properly developed quality assurance requirements could lead to an increase in articling principals by making it easier for principals to focus on key competency requirements.

A RANGE OF ALTERNATIVES FOR FURTHER CONSIDERATION, BUT NOT STAND-ALONE OPTIONS

Option 2 also sparked suggestions for the addition of quality assurance coupled with incentives to provide more articling placements to either increase the number of positions or assure positions to all licensing candidates.

The Task Force received numerous suggestions as to how to improve the current articling program and/or encourage the profession to create more articling positions, including,

- working with law schools to decrease the number of students accepted into law schools;
- making the licensing examinations more difficult;
- shortening articling to five or six months so that employers may hire twice as many articling students;
- funding new articling positions in legal clinics so that all unplaced licensing candidates obtain articles of clerkships;
- providing articling “matching services”; and
- developing subsidies for the creation of new articling positions in small firm, rural and other underserved settings.

A list of various individual suggested improvements to articling is found at Appendix II. Given that the profession does not have sufficient articling positions to meet current demand, many consultation participants suggested that incentives to encourage new articling positions and efforts to improve the current articling program may only be, at best, part of a broader solution to the difficulties facing transitional training. Certain consultation respondents cautioned that if the Law Society commits to fund placements for all licensing candidates, and the number of articling shortages continues to increase, then Ontario lawyers would face ongoing, increasing costs to support articling subsidies without necessarily addressing the underlying causes of placement shortages, or maintaining the quality of articling.

During regional consultations and discussions with the profession, the Task Force heard from many groups that recognized that the unplaced articling student issue is unlikely to be resolved

through such initiatives. The Advocates Society, for example, expressed the view that articling shortages are endemic and will likely worsen over time under the current system. With increased internationally trained candidate enrollment, increased NCA enrollment, new Canadian law schools and common law programs coming online in the near future, and possible expansion of Ontario law school enrollment numbers, there is reason to suspect that the number of licensing applicants will continue to increase.

OPTION 3: REPLACE PRE-LICENSING TRANSITION TRAINING WITH A POST-LICENSING TRANSITION REQUIREMENT

Option 3 contemplated abolishing articling and replacing it with post-call transitional training. Overall, few submissions or participants at consultation sessions supported this option, although those who did raised several arguments in favour of moving to this system.

FAIR, RISK BASED REGULATION

Proponents of replacing pre-licensing transition training with a post-licensing transition requirement under Option 3 noted that under this option licensing candidates could start practising following passing the bar examination. Supporters of Option 3 noted that the American licensing system does not have an articling requirement, but that the American system appears to produce competent lawyers. They suggested that in Ontario, entry-level competence can be achieved without articling, as is the case in the United States. Supporters also noted that Option 3 is fairer to licensing applicants than the current system.

Certain supporters of Option 3 additionally noted that this path would offer a more direct route for students interested in practising in small firm settings. They noted that most articling positions in private firms are in medium to large firms, but that most lawyers practice as sole practitioners or in small firm settings with six or fewer lawyers. They suggested that under the current system, a student with an interest in small firm practice may be driven off this path due to the lack of articling positions at such firms, but that under Option 3 a student with an interest in practising in a small firm setting could immediately do so. Certain proponents of Option 3 similarly suggested that this option could assist in the “graying of the bar” problem, as practitioners winding down practice or retiring may be able to recruit a lawyer to their practice.

Proponents of Option 3 suggested that this option is likely cost-effective, and would not lead to costs of subsidizing articling positions, or costs associated with a PLTC. It fosters a risks-based regulatory approach by providing that those entering into higher-risk practice areas, such as in sole practice or certain small firm settings, would be required to fulfill additional training.

Several individuals favored Option 3 or elements of Option 3 as it could represent a shift towards a graduated licensing program, or to a limited licensing regulatory regime. Under graduated licensing, a lawyer might be restricted from engaging in certain higher risk practice areas in the first few years of practice. Under limited licensing, lawyers could face limitations in their practice areas. Both graduated licensing and limited licensing employ a risk-based approach to regulating lawyers.

CONCERNS OVER ABOLISHING ARTICLING, ENTRY LEVEL COMPETENCIES AND PUBLIC PROTECTION

Option 3 drew opposition from many who noted that it contemplates the abolition of articling. Preference for a pre-license rather than post-license transition period was expressed by many. Comments included concern,

- by a few students that they were unprepared to commence private practice as a lawyer immediately or shortly following graduating law school without some form of rigorous transition training;
- that Option 3 would not provide sufficient mentoring or socialization opportunities for new lawyers, which could erode professionalism and competence;
- that Option 3 would transfer the unplaced student problem from pre-call to post-call, particularly if firms chose not to hire as many post-call employees as they would have hired articling students under the current system;
- that post-call licensing would needlessly place the public at risk, as lawyers would enter the practice without any, or with only limited practical training, potentially leading to increased complaints, discipline cases, increased insurance premiums and increased costs to members of the Law Society to fund investigations, disciplinary hearings and enforcement;
- that this approach could be viewed as undermining the common assumptions of the National Mobility Agreement entered into by all Canadian law societies in common law jurisdictions; and
- that Option 3, like a PLTC program in law school, might limit a lawyer's exposure to different practice environments and different areas of law, whereas certain articling students benefit from rotating through different practice areas.

THE PRACTICAL LEGAL TRAINING COURSE – OPTIONS 4 and 5

OVERVIEW

Option 4, introducing a choice of either an articling requirement or a PLTC, and Option 5, which would replace articling with a PLTC for all licensing candidates, became the focus of many regional consultations and written submissions, some of which exclusively focused on these options. The idea of a PLTC drew both interest and concern. Many in the consultations noted that while the PLTC sounds interesting in theory, greater details as to the nature of a PLTC need to be considered.

Several consultation participants supported a PLTC for a variety of reasons:

- Upon hearing of the barriers that articling poses to licensing candidates, and the extent of the articling placement shortages, certain participants indicated that although they entered the consultation strongly supporting articling, they would also support a PLTC in order to develop a more fair licensing system, particularly if the Law Society is unable to address the shortage in articling positions through additional supports to the articling process.
- Almost all equality-seeking groups support a PLTC in some form, either through Option 4, Option 5, or a modified option, such as requiring both articling and completion of a PLTC as licensing requirements, provided certain limitations of the concept can be addressed.
- Under either Option 4 or Option 5, licensing candidates would avoid being in what was described as “licensing limbo” or “regulatory purgatory” due to being unable to find an articling position.
- Limiting the number of articling positions constitutes a form of anti-competitive behavior that can no longer be justified on the basis that it is necessary to develop entry level lawyer competency.
- The PLTC could be used to develop standard competencies. A PLTC, properly constructed, could shift towards outcomes based regulation of licensees, with assessments to ensure that licensees do, in fact, develop certain skills through the practical training component of the licensing process.
- A PLTC could provide licensing candidates with more control over their career paths in their early years of practice and permit them to explore pathways into the profession that fall outside of the traditional law firm articling experience.

Opposition to the PLTC models was also expressed:

- Many lawyers were strongly wedded to articling, with some of the view that it is the only way to prepare students to transition from legal student to practising lawyer. In their view a PLTC would be more course work, which was overwhelmingly rejected as unnecessary after law school, and insufficiently practical in nature. A PLTC would not adequately prepare students for entry level practice in specialized areas of practice. In essence, many expressed the view that a PLTC, even with placements, would not serve as an adequate substitute to articling.
- A PLTC would fail to provide sufficient mentoring and socialization opportunities to licensing candidates, and would deprive students of the opportunity provided by articling to make a positive impression with an employer, which could lead to being hired back as a lawyer after being called to the bar.
- If Ontario provided a PLTC option, without requiring articling, law students from other Canadian jurisdictions and internationally trained lawyers may migrate to Ontario to be called to the bar.

- The costs of a PLTC could be onerous on students, members of the Law Society, or both.

PLTC “DURING LAW SCHOOL” AND PLTC “AFTER LAW SCHOOL” OPTIONS

The Consultation Report raised the possibility of a PLTC during the three year law school curriculum and a PLTC option after law school. Both PLTC models are considered below.

PLTC DURING LAW SCHOOL

A PLTC stream in law school gained the support of many students, certain equality-seeking groups and certain individuals. To some, a PLTC in law school could build lawyer competency. Many suggested that students would be able to better learn legal principles by applying them in practice. This integrated learning would assist students in better understanding the foundations of law, and introduce students to the practice of law.

Comments on the PLTC during law school model offered a range of views on this approach:

- This program could be built on existing law school run legal clinics. Placements in clinic programs, it was submitted, offer a win-win, as students learn legal practice and at the same time assist in meeting unmet legal needs.
- A PLTC during law school creates a less risky path through law school. It would provide students practical training without the risk of graduating law school without an articling position.
- A PLTC in law school would provide a more affordable path for students to become licensed, and a faster path than the current post-law school articling requirement. It could also be developed to facilitate career paths in the social justice, small firm and non-firm settings. Several students suggested that the third year of law school, which comprises mostly elective courses, could be developed to build more practical training for students.
- One equality-seeking group suggested that a PLTC in law school should be the sole means of transitional training to ensure a system that is uniform and fair to all. However, many students expressed a desire to have the choice to pursue a more academically-focused three year law school program.
- Law schools expressed several concerns with respect to a PLTC in law school. As noted above, representatives from law schools expressed concerns that the inclusion of a PLTC in law school may not allow students sufficient grounding in the study of the law that three years currently does. Further study of a PLTC in law school model should occur before such a program could be considered at the faculty level. Certain faculty raised possible issues related to academic freedom arising out of a PLTC whose standards are set by the Law Society. Certain law school faculty and practising lawyers were also concerned that the teaching legal practice would be better left to the profession.

- Certain practitioners believed the full three years of academic study of law is necessary as part of a lawyer’s early development, as the three years imbue students with legal knowledge, and teach students how to think like a lawyer. It was noted that law schools provide a unique opportunity to consider the many dimensions of law, including the theoretical and doctrinal. Many cautioned that practical training should not be downloaded to the law schools as this would turn them into a “trade school”.
- Certain lawyers were concerned that a PLTC within law school might put students on a path to a type of practice at too early a stage, and that articling or placements following law school would better permit students to explore a range of practice areas.
- Capacity issues were raised regarding developing a PLTC in law school. Many envisioned a PLTC in law school developing clinical placements in conjunction with already existing student run legal clinics. However, these clinics are not prepared to take on the entire student cohort. Clinics face space concerns, an insufficient number of lawyers to supervise the work of an entire student cohort, and other issues which make it impractical for these clinics to become the single practice area for students.
- If a PLTC developed in law school was based on student placements, there may again be difficulties associated with finding sufficient placements for the total number of enrolled students. Concern would have to be given to this issue, so as to avoid simply creating a shortage of positions at a different stage of the licensing process.
- Any shift to a PLTC during law school would require further study and debate. Proceeding in this direction should be gradual, and only with the involvement of law schools, lawyers, students, law societies, governments, and other stakeholders.

ISSUES FOR FURTHER CONSIDERATION REGARDING A PLTC AFTER LAW SCHOOL UNDER OPTION 4

The PLTC after law school approach was given detailed consideration by numerous groups. Several institutions expressed interest in potentially delivering a PLTC. Many individuals and legal organizations expressed interest in the option, but also raised the following issues for the Task Force’s further consideration:

- (1) Competency: As the Task Force itself noted, the PLTC must be designed to maintain or improve entry level competency, and should not dilute licensing requirements. The ultimate objective should be to prepare better lawyers to serve Ontarians.
- (2) PLTC Content: There was a unanimous view expressed that a PLTC must focus on the practical. Students must be exposed to the practice of law through hands-on, practical experiential opportunities. The Task Force also heard from certain consultation participants that the PLTC should also focus on,

- a. professionalism and legal ethics, including civility, dealing with difficult clients, and dealing with self represented and unrepresented parties;
- b. legal business skills; and
- c. anti-racist education and diversity training to prepare new lawyers to serve the province's diverse communities.

The PLTC must include mentoring and socialization components, which could be developed through innovations to existing programs and resources. Certain practitioners were of the view that the PLTC should offer a uniform system, while others suggested that streamed programs could provide invaluable training for future sole and small practitioners, clinic lawyers, lawyers practising in criminal, family, and public interest advocacy, and barristers and solicitors. To some, specialized training could provide value-add to a PLTC program for students. Certain groups suggested that a PLTC should also be designed to collaterally address access to justice issues.

- (3) Program length: The Task Force must consider the appropriate total length of a PLTC. The focus must be on the appropriate length of a program to develop entry level competency. The Task Force heard only limited submissions regarding this issue, with no consensus emerging as to the necessary duration of transitional training program.
- (4) Costs: Costs of a PLTC must be calculated, and the question of who will pay for a PLTC must be carefully considered. Costs of a PLTC must not create an unfair barrier, and should not deter students who did not obtain articles from enrolling in a PLTC. The Law Society was urged to consider scholarships, bursaries, loan forgiveness options, the establishment of trust funds to encourage scholarships, and other potential programs for PLTC candidates if a PLTC involves costs to students.
- (5) Stigma: The Law Society must ensure that the PLTC is not seen as a “second choice” option compared to articling. The Law Society must ensure that the PLTC develops a reputation for excellence.
- (6) Program provider: The Law Society must carefully consider the selection of program provider and retain authority over the requirements of a transitional training program.
- (7) Language: The PLTC must be available in both English and French.
- (8) Program location: There was a general consensus that a PLTC must not pose geographic barriers to students in Ontario, and that the program should be offered in numerous locations in Ontario. Many submissions suggested that certain PLTC components could be conducted on-line to improve accessibility to the PLTC, although certain lawyers were concerned that programs delivered online would not provide sufficient mentoring or

socialization.

- (9) PLTC placements: If placements are required as part of a PLTC, the Law Society must be sure that providers maintain a sufficient number. Several lawyers practising in small firms or as sole practitioners were very receptive to considering taking a student through a PLTC, and the Task Force should further consider which other legal segments may be interested in offering new placements for practical training.

The Task Force must also consider,

- the appropriate duration of PLTC placements;
 - placement locations;
 - the appropriate method of placing students in workplace settings (based on best practices in existing professional matching and co-op programs);
 - the types of placements, which could include placements in clinics, non-government organizations, and other alternative legal settings; and
 - whether placements should be paid or unpaid, given that employers may be less inclined to offer paid placements, but that several lawyers supported paid placements both for principled and practical reasons.
- (10) Access to justice: Certain legal organizations strongly supported developing a PLTC to facilitate access to justice by, *inter alia*, requiring a minimum *pro bono* requirement in the program, and offering placements in legal settings dedicated to facilitating access to justice.
- (11) Equity considerations: One equality-seeking group advised that a PLTC could represent a major improvement over the current practical training and would be a “welcome innovation.” However, the Task Force was advised that any practical training program must not further marginalize people from equality-seeking groups. A PLTC must be designed to avoid creating financial unfairness that would disproportionately affect equality-seeking groups or exacerbate discrimination or barriers faced by members of certain equality-seeking groups.
- (12) Quality assurance, assessments and measurement of a PLTC:
- Quality assurance mechanisms would need to be developed to ensure that PLTCs focus on practical skills, to measure the performance of the PLTC provider, and to ensure a basic level of consistency of field placement outcomes.

- There should be clear, objective and fair standards to assess the delivery and results of practical training.
- Certain submissions raised concerns with the current lack of measurement tools for transition training, and noted that they should be developed.

OPTION 5: PLTC REQUIREMENT REPLACING ARTICLING

As with the other options, the Task Force heard divergent views regarding Option 5, which would replace articling with a PLTC requirement for all licensing candidates.

FAIR, UNIFORM REGULATION

Certain individual lawyers and several equality-seeking groups considered Option 5 the fairest transitional training option. Option 5 supporters noted that it,

- would remove unfairness in the articling system by removing the risk of otherwise qualified candidates not being able to be licensed due to being unable to find an articling position;
- would standardize the transitional training program, and remove the risk of an actual or perceived two-tiered system emerging; and
- could be developed to facilitate access to justice.

OPPOSITION TO ABOLISHING ARTICLING AND CONCERNS REGARDING A PLTC

Those in favour of maintaining articling as the sole pathway to licensing were opposed to Option 5. The reasons given for opposing Option 4, which offered a choice between a PLTC and articling as two separate pathways to licensing, generally applied to Option 5 as well.

Many in favour of Option 4 suggested that removing the choice between articling and a PLTC would be unfair to both firms and students. Firms would lose their traditional articling student hiring pool, and a vital source of labour. Students who otherwise had the choice of transitional training options would now have no flexibility. Moreover, under Option 5 the potential for paid employment is removed. Opponents of Option 5 also highlighted that the costs associated with running a PLTC for *all* students under this option would likely be prohibitive, as these costs would either be assumed by all students, the profession, or both students and members of the Law Society. Many groups cautioned that it would be both imprudent and dangerous to move to replace articling with an unknown, untested single system.

OTHER OPTIONS

As noted above, the five options raised in the Consultation Report were set out in general terms, with the Task Force encouraging additional suggestions. The Task Force received numerous

submissions that combined elements from the five options, or which provided new recommendations for the Task Force's consideration:

- Shorten articling from ten to six months to encourage lawyers to hire more articling students. The six month period was suggested to encourage employers to hire two students instead of one over the course of a year. However, most firms cautioned that it is unlikely that they would hire an increased number of candidates because of a change in articling duration.
- Licensing candidates should be required to complete both a shortened articling placement *and* a PLTC. This single stream program could provide all licensing candidates with a shared experience through the PLTC, and specialized training through articling. However, concerns were raised regarding the need for both programs, the cost of a PLTC for all candidates, and potential continued articling placement shortages.
- A PLTC should be developed as a “safety net” for students who could not find articling placements. Under this model, students would have to apply for articling positions, and be willing to relocate throughout Ontario, or even possibly outside of Ontario, before being considered for admission into the PLTC.
- The Law Society should create a new L4 license. Under this proposal, only Class L1 licensees would need to complete articling.¹ Candidates could obtain an L4 license if they passed the licensing exams and professionalism course. The L4 license would permit the licensee to provide legal services authorized by a P1 license, L2 license, in-house legal services or provide legal services for a government body or corporation.²
- Work with Ontario law schools to develop a four year legal co-op program that would meet the Law Society transitional training licensing requirements.
- According to one organization, the Law Society should undertake temporary measures to assist current students who have not found articling positions, but then let the market regulate articling.
- Some lawyers opined that the Law Society should create more difficult bar examinations in order to cull the number of law students who may be licenses.
- Permit “a la carte” articling. An articling student could work for multiple employers, and upon working for a certain number of hours, and completing certain designated tasks, could be called to the bar. This could assist lawyers in remote areas, and sole and small practitioners, who could hire a student on an “as needed” basis, or pay a student on an

¹ A Class L1 License is a license issued to a person by the Law Society entitling that person to practice law in Ontario as a barrister and solicitor.

² A Class L2 License is a license issued to a person by the Law Society entitling that person to practice law in Ontario as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or an assistant Crown Attorney. A P1 License is a paralegal license issued by the Law Society.

hourly basis. The model would add flexibility for both students and principals. Corporations could hire project students. Students would benefit from working on different tasks for a variety of principals. This model contemplates more than one principal, perhaps with a primary principal, and could be combined with a PLTC.

- Permit articling through a professional corporation, in order to complete subcontract work for more than one principal.

NEXT STEPS: ADDRESS THE CURRENT SHORTAGES QUICKLY, BUT MOVE GRADUALLY IF RESTRUCTURING TRANSITIONAL TRAINING

The Task Force heard from anxious students and concerned lawyers that the Law Society should move quickly to respond to the current shortage of articling placements. The clear consensus was that, at the very least, students currently enrolled in law school and recent graduates who have not passed through the licensing system should not be left to languish within the Law Society's licensing program merely because of a shortage of articling placements.

At the same time, numerous submissions urged caution and a gradual, considered approach to any departure from the status quo. Certain groups suggested that changes to Ontario's transitional training system could be developed using pilot projects.

APPENDIX I: RESPONSES TO THE CONSULTATION QUESTIONS

1. Should transitional training form part of the Law Society's licensing requirements as discussed in the consultation report?

There was nearly unanimity that transitional training should form part of the Law Society's licensing requirements. Even certain supporters of abolishing articling suggested that some sort of short transitional training would be necessary.

2. Is so, has the Task Force accurately described the goals of transitional training as part of the Law Society's licensing process?

The majority of consultation respondents indicated that the Task Force accurately described the goals of transitional training as part of the Law Society's licensing process. A small group of respondents suggested that a full list of necessary legal skills should be developed, with more specific goals, so that principals can better assess whether a student has gained an understanding of the practical aspects of being a lawyer. It was suggested that a full list of necessary legal skills should include, *inter alia*, cultural competency, making access to justice an explicit goal of transitional training, and revising the "practice management issues" to recognize that this means different things in different contexts. One submission suggested that the current list of competencies is too broad, and that, depending on the articling placement, it may be impossible for the student to meet each of the required competencies.

3. As a regulatory requirement, should transitional training have established standards against which students are assessed? If so, how does the current articling requirement accomplish this?

Most consultation participants agreed that transitional training should have established standards against which students should be assessed. Many respondents noted that articling does not currently have standards.

Although several individuals and organizations noted that there is a need to develop further standards, many expressed the view that this should be done in a manner that provides flexibility to recognize the varied articling options available, and to avoid being overly onerous, which could have the unintended consequence of deterring lawyers from becoming or continuing to serve as articling principals.

A number of suggestions were made respecting the establishment of standards for the articling requirement, including:

- Standards should outline what competencies should be imparted to the student and the kinds of exposure that should be required to meet this goal;
- One of the measurable requirements should be access to justice;
- A better definition of what is to be taught in articling is necessary to ensure that the goals of articling are addressed, but without becoming onerous;

- Certain respondents suggested that established standards and criteria should be developed to assess both students and principals;
- The current checklist for articling principals should be improved to provide more guidance to articling principals; and,
- Developing more standards, perhaps through marking and reviewing of online work that is currently part of the licensing program.

4. Should the Law Society address the issue of articling shortages, and, if so, how?

Most respondents suggested the Law Society should address articling shortages. However, there was no clear consensus how to do so.

Most respondents indicated that the Law Society should address the issue of articling shortages. As described in the review of responses to questions 5 and 6, below, certain respondents favour a Law Society financial incentive to encourage new articling placements, or the creation of Law Society funded articling positions. Many supported increased efforts to encourage the creation of new articling placements. There is also support by many within the profession for creating new paths to licensing to be offered either in addition to, or in place of traditional articling.

However, a few respondents suggested that the Law Society should not address the issue of articling shortages, which could be addressed by the market. Certain respondents claimed there is an oversupply of articling students, and that creating additional articling opportunities should not be the Law Society's goal.

5. What are your views on the introduction of financial incentives to encourage increased placements? Should Law Society fees fund such incentives?

Responses to this question varied significantly. Certain lawyers and other organizations were firmly of the view that the Law Society should not introduce financial incentives to encourage increased placements. Certain practitioners noted that financial incentives would not ensure quality articling placements for students. It was also noted that salary is only one consideration when lawyers consider taking on an articling student, with several other factors, including the lawyer's time and practice area also factoring into whether a lawyer would be prepared to serve as an articling principal. Others opposed incentives on the basis that they would be funded by the Law Society, which would lead to increased costs to Law Society members. Certain individuals were concerned that this investment would not in itself address articling shortages. Some lawyers were opposed to paying a levy to develop their future potential competitors or to assist competitors' firms which hired articling students.

However, certain individual lawyers speaking at the regional consultation sessions and in written submissions advised that they would be prepared to see Law Society fees increase in order to encourage articling placements, and expressed the view that such a cost would be both reasonable and welcome were it able to assist in the profession finding means of renewing itself.

In addition to the possibility of introducing financial incentives, certain respondents also noted that the Law Society could introduce financial penalties in an effort to shift behavior within the legal profession. Certain individuals and/or organizations encouraged the Law Society to consider the following economic measures to address articling shortages:

- A few submissions recommended requiring all practitioners to either accept to train an articling student on a rotating basis, or pay into an articling fund in lieu of serving as an articling principal (with a suggested \$300 to \$1,000 contribution amount).
- A few individuals and organizations recommended lawyers pay a modest amount (in the \$250 range) to fund incentives for rural based lawyers, sole practitioners and small firms to hire articling students.
- One organization suggested that the Law Society levy lawyers to expand legal clinics, create a new “mega-clinic”, or develop articling student duty counsel programs to address the articling shortage while increasing access to justice (see Question 6 for more detail).
- One submission suggested that the Law Society levy lawyers to hire regional principal mentors.
- Certain individuals and organizations suggested establishing a grant for students to work in small firms, not for profits, and other areas.
- A few individuals suggested considering an incentive program similar to programs to retain doctors for the North for articling students to accept positions in the North or other underserved communities, with the condition that they stay in the community for three years. This could include a student loan forgiveness program.
- A few submissions recommended providing incentives to articling students and principals in remote locations including relocation subsidies, subsidies for students to travel for exams, and other supports for principals in small firms or sole practice.
- A few submissions suggested establishing a grant or subsidy available by application to those employers seeking an articling student who could meet the goals of articling, but lack funding.
- A couple of submissions suggested establishing a fund to contribute towards an articling student, with \$20,000 (or other amount) from the Law Society for each articling student, conditional on this money being available to the articling student.
- A few individuals recommended reducing or waiving the members’ annual fee and/or LawPRO insurance premiums for lawyers hiring articling students, or increasing the members’ annual fee for lawyers who do not hire articling students (by \$100 or some other reasonable amount).
- A few individuals recommended providing increased Continuing Professional Development (“CPD”) credits for serving as an articling principal (which could also lead to an articling principal spending less on attending CPD programming).
- One individual recommended establishing a charitable trust so that supporters of articling grants may benefit from beneficial tax rates.

Certain organizations, including the OBA, suggested that if subsidies and financial incentives are being considered they should start as pilot programs.

6. What are your views on introducing a system specifically designed to hire articling students under the supervision of lawyers to provide access to justice to low income Ontarians, equality-seeking groups and regions outside the major metropolitan centres? What is your view of such an initiative being funded through the law society fees?

Generally the responses to Question 6 followed the responses to Question 5, with those opposed to financial incentives (Question 5) also opposed to developing a system to hire articling students under the supervision of lawyers (Question 6). Those opposed to such an initiative raised various concerns, with cost implications raised as the predominant concern.

Certain individuals and organizational respondents supported introducing a system designed to hire articling students under supervision of lawyers to provide access to justice to low income Ontarians. They suggested that such an initiative could benefit students, legal clinics and other social justice settings, and Ontarians facing unmet legal needs. Certain clinic lawyer practitioners noted that in order to properly supervise students, clinics would need additional funding in order to hire additional lawyers. However, if this could be arranged, this articling initiative could serve as a recruiting tool for legal clinic and legal aid lawyers, which, it was submitted by one legal clinic practitioner, is especially necessary given the graying of the legal clinic bar.

Certain respondents suggested detailed programs whereby articling students could be hired to provide access to justice to low income Ontarians under the supervision of lawyers including,

- creating an articling student small claims court duty counsel program;
- creating a clerkship program within the Family Court;
- creating a “Legal Corps” dedicated to improving access to justice; and
- increasing funds to legal clinics to hire additional articling students.

Other detailed submissions proposed,

- imposing a levy on lawyers to create 200 access to justice positions, to work preferably in Ontario’s 80 community legal clinics, or possibly with lawyers in private practice, with possible Legal Aid Ontario (“LAO”) or government funding for articling-supervision capacity; and
- establishing a "civil law mega-clinic program" to provide services to fill the service gap between low-income clients of legal clinics and high-income individuals who can afford a lawyer, with the clinics attached to law schools, and combining real clinic work with intensive classroom education on practical competencies.

The issue of how to fund the initiatives contemplated by this question generated a range of views. Many individuals expressed a willingness to pay for this type of program. One law firm expressly indicated that it would be prepared to hire articling students to advance “access to justice,” but suggested that the profession should perhaps be asked to help defray these costs.

Certain respondents in favour of creating the articling programs described in Question 6 believed that the Law Society should seek funding from other sources, including the federal and provincial governments, LAO, and private funding. Certain respondents suggested that the Law Society could consider developing pilot projects to facilitate access to justice.

Certain respondents expressed the concern that articling shortages should be treated as separate from any Law Society access to justice initiative, and that the Law Society should not “package” its steps to address the articling placement issue as an access to justice initiative. It was suggested that students who article in access to justice settings may not necessarily continue to practice in these areas. Others found the idea raised in Question 6 noble in principle, but suggested that the public interest would not be best served by having articling students offering services to the public, even under supervision, on the basis that students do not have sufficient training to provide such services. It was cautioned that although this suggestion is “laudable” such placements would not serve as a complete alternative to articling, and it should not be assumed that low-income Ontarians would be well served by students, no matter how well-intentioned these students may be.

7. Should successful completion of the licensing examinations be a prerequisite to commencing transitional training?

This question did not receive attention from most respondents, although those respondents who did consider this question provided mixed answers. Certain individuals, equality-seeking groups, and the Nova Scotia Barristers’ Society suggested that the successful completion of the licensing examinations should not be a prerequisite to commencing transitional training. It was noted that licensing examinations are easier for students to understand after completing articling. It was also suggested that if a PLTC were developed, students should be able to complete the PLTC before writing examinations, as the PLTC could assist students preparing for licensing examinations. In contrast, certain firms suggested that having students write the exam first provides better assurance that students acquired certain substantive legal knowledge prior to proceeding to obtaining practical training.

8. What are your views on the five options presented in this consultation report?

The answer to this question is provided in the above Report.

9. What are your views on the issue of over-representation of equity-seeking groups in those not able to obtain articling positions?

Most consultation participants that addressed this question confirmed that the over-representation of equality-seeking groups in those not able to obtain articling is an issue that must be addressed as a matter of fairness to individual licensing applicants, and so that the profession may reflect the diversity of Ontarians. Many respondents suggested that more information is required to properly interpret the statistics provided in the Consultation Report or to better understand issues impacting equality-seeking groups through the licensing process. Certain legal organizations submitted that difficulties in obtaining articling placements, experienced disproportionately by equality-seeking groups, may cause a chain reaction, where it then becomes difficult for a licensing candidate to find employment in a firm post-call, as well as proper mentoring and

socialization. These factors, some suggested, have led to the over-representation of equality-seeking groups in the Law Society's discipline process.

Certain respondents suggested there may be discrimination in the hiring process. One respondent recommended that law schools should submit applications on behalf of students with identifiable information removed as one means of reducing prejudices in hiring practices. As described in greater detail above, equality-seeking generally noted that any new initiatives to improve practical training must address equity issues.

A small number of individuals and groups, including one equality-seeking group, challenged whether there is sufficient empirical support to show that the current system is preventing students from equality-seeking groups from finding articling positions, or that there is drastic over-representation of equality-seeking groups in those not able to obtain articling positions. One submission suggested that the 4-5% over-representation of equality-seeking groups in those unable to obtain articling positions may include double-counting, as some candidates may self-identify as belonging to more than one equality-seeking group, and/or may be attributable to increased law school enrollment at the University of Ottawa, which may have caused an increase in unplaced francophone students, combined with an increase in internationally-trained lawyers, many of whom may be from equality-seeking groups, and may be seeking an articling placement in Ontario without the requisite familiarity with Ontario's legal market.

10. If you have concerns, do any of the proposed options satisfactorily address those concerns?

As described in the Report above, certain consultation participants outlined alternate options, ranging from abolishing articling, to developing a PLTC *with* an articling requirement for all.

APPENDIX II: INDIVIDUAL SUGGESTED IMPROVEMENTS TO ARTICLING

- In partnership with law schools, local bar associations and the OBA, develop information-sessions and recruitment tools to recruit starting in first year law school for rural areas' needs.
- Hold a second round of on campus interviews for articling positions.
- Encourage flexibility in articling, including split articling, part time articling, and extending the timeframe for certain students to complete articles.
- Permit multiple employers for articles, including part time articles for two or more firms at the same time (provided there is a conflicts check system in place). This may encourage students to try a variety of practice areas, and could consider practice in a smaller community.
- Permit articling students to work in different legal environments for articling, and pay them through a common fund to ensure a level playing field.
- Reduce duration of articles for students who completed certain practical elements during law school.
- Permit law associations to act as "employer/principal" for several students, with the students available to member firms on a file by file basis. Firms would pay per use. Judges could also hire students. During down time, students would serve as small claims court duty counsel.
- The Law Society should also consider funding a small claims court duty counsel program.
- Articling should also be treated like Continuing Professional Development ("CPD") time, with hours logged, possibly from multiple projects or associations, being collected over time.
- The Law Society should raise the possibility of the hiring of more articling students by the Department of Justice Canada with the federal government.
- Develop a centralized student application system accessible by employers.
- Develop an articling manual for students listing the names of all law firms, with details of areas of practice, and whether the firm accepts articling students.
- Develop an award recognizing leading articling principals who have made outstanding contributions to legal education.
- Permit individuals to be called to the bar immediately upon completing all of the requirements of the articling procedure.
- Return the articling period to 12 months and/or reinstate the Bar Admission Course.
- The Law Society should consider lobbying the government so students may defer payment obligations on student loans while articling.
- Online education models could be used to improve articling, but should not replace face to face interactions with lawyers.
- Improve the formalized assessment process by focusing on skills rather than specific tasks.
- Require assessments at least once or twice during articling periods so that articling students are given feedback during their training.