

**COUNTY AND DISTRICTS LAW
PRESIDENTS' ASSOCIATION**

RESPONSE TO

THE LAW SOCIETY OF UPPER CANADA'S

CONSULTATION REPORT

BY

THE LICENSING AND ACCREDITATION

TASK FORCE

May, 2008

CDLPA Licensing and Accreditation Committee

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BACKGROUND

The Law Society of Upper Canada (“Law Society”) and in particular the Task Force on Licensing and Accreditation have completed the “Consultation Report” which constitutes a comprehensive review and analysis of the continuum of legal education in Ontario; including the:

- (i) current law school curriculum;
- (ii) professional responsibility and Skills Development Program; and
- (iii) the present Articles of Clerkship program.

The ultimate goal is to determine whether these three components of legal education are meeting the goal of delivering a competent lawyer into the legal services market. What follows are general preliminary comments by CDLPA’s Licensing and Accreditation Committee in response to the request for input by the Law Society’s Task Force in its Consultation Report (the “Report”). Further refinement and consultation may be required as and when the Consultation Report is modified and amended.

PRELIMINARY ITEMS

As a preliminary matter, paragraph 36 of the Report indicates that there is a danger in continuing to assess the licensing process on the basis of memory and past experiences, rather than on present context, effectiveness and results. The CDLPA Licensing and Accreditation Committee (the “CDLPA Committee”) agrees with this proposition, but suggests to the Task Force that valid experiences emanating from the present system are no less valid than suppositions regarding future consequences of not changing the present system. The CDLPA Committee stresses that any arguments against abolishing the articling process herein are based on benchmarks of effectiveness and results and have been made with the goal of improving the licensing process as a whole. The Report indicates that substantial change is required and the CDLPA Committee agrees.

FULSOME NATURE OF DISCUSSION IN REPORT

The analysis contained in the Report is broadly based and examines the entire continuum of legal education: law school, articling and bar admissions (skills and professional responsibility). In summary, such analysis examines:

- a) what are the goals/ purposes of the program?
- b) are the programs duplicative?
- c) are the programs accomplishing those goals?

- d) are there factors that make it difficult to accomplish those goals?
- e) what conclusions/recommendations can be drawn as a result?

Prior to any discussion with respect to licensing and accreditation, the Law Society needs to decide whether its mandate is to ensure that law schools maintain the level of funding that same currently receive based upon the number of students admitted annually or, is it to ensure that law school graduates have a level of competence that affords competent entry into the market. It is the CDLPA Committee's position that this question is instructive and determinative to the present situation of licensing and accreditation.

Pursuant to its mandate, the Law Society must take appropriate steps to ensure that students have a level of skill and practical experience necessary to practice law effectively prior to call to Bar.

SKILLS AND PROFESSIONAL RESPONSIBILITY AND SKILLS COMPONENT

According to the Report, the Skills and Professional Responsibility Program provides for a total of 60 hours of work (whether that is in class or independent preparation time) over a 4 week period. That equates to 15 hours per week. The CDLPA Committee's initial reaction is that this level of intensity would not likely prepare a student for private law practice where a minimum of 40-50 hours per week will be spent in the office and at home preparation. Students themselves have indicated that "the training in each distinct competency/ skill set was too brief in scope and nature to be worthwhile." (para 72).

The Report indicates that upon call to the Bar there were certain minimum skills lawyers should have in addition to their legal knowledge (para 44). This continues to be true. The real question is – are we delivering this in the most effective and efficient manner possible? Moreover, is the goal being obtained?

In 2003, the Task Force on the Continuum of Legal Education *originally* recommended doing away with Skills Development, however, Convocation felt that the program filled a gap in that skills were not being taught by the Law Schools. Has this changed? Perhaps it has or it should.

The current Skills and Professional Responsibility Program effectively requires that students reside (and are therefore more likely to continue to reside) in the four major urban centers where the course is offered.

For example in 1999 and 2000, Thunder Bay received permission from the LSUC to run its own Bar Admissions Course as the number of articling students, at the time, warranted it. Practitioners volunteered to teach and invigilate exams and students (some of whom had families) were not required to travel to Southern Ontario in order to complete their educations. Had students been required to move for Bar Ads, the likelihood that Thunder Bay would have lost those lawyers permanently is a probability. In the subsequent years (after the lapse of the teaching of the course in Thunder Bay), there have not been sufficient students in Thunder Bay

to warrant the continuation of the program. How can that be given that the number of articling students is statistically rising exponentially? Logic suggests students are not going to centres outside of major urban ones for a variety of reasons. There are placements in those communities. The Law Society must be directed and not swayed from focusing on the underlying challenges confronting small town practice. Not so coincidentally, this challenge is reflected by the quest and task of the Sole Practitioner and Small Firm Task Force.

The CDLPA Committee's position is that the Skills and Professional Responsibility program could and should be taught in law school. At a total of 60 hours over 4 weeks it can easily be integrated into the curriculum. If it is deemed necessary, as the Report seems to indicate, a law school could maintain small class sizes, involve practising lawyers as instructors, provide early exposure to mentors and role models with direct experience. If this is not possible as a result of cost and instructor recruitment (para 63) then maintaining an articling type experience as a component of the continuum of legal education becomes vital. Skills education and professional responsibility form a significant part of the current mandatory law school curriculum and, in most examples, the hours of instruction exceed the current Program (para 56).

ARTICLING COMPONENT

The CDLPA Committee agrees with the Licensing and Accreditation Task Force Consultation Report, in its contention that the current articling program is only partially meeting the goals of the program, which are stated to be as follows:

- a) to provide law school graduates with exposure to certain defined practice skills in a professional environment in a consistent manner across articling positions;
- b) to provide law school graduates with exposure to professional responsibility and ethical issues in a professional environment in a consistent manner across positions;
- c) to provide law school graduates with the opportunity to evaluate practice environments for the purposes of subsequent professional life;
- d) to fill law school gaps in law students' development as professionals; and
- e) to facilitate the transition to sole or small practice (page 30).

While the CDLPA Committee disagrees that the three options stipulated on page 33 are the only options available, it nonetheless agrees fundamental change is required, as opposed to a "band-aid" solutions. The three options as stated, are:

- (i) continuing the program but make it clear that there are no guarantees of placement;

- (ii) acceptance that if there is to be an articling type requirement that the Law Society must bear responsibility for all candidate placements or some equivalent training; or
- (iii) abolition of the articling program.

The Report indicates that 71% of the Province's articling jobs are located in Toronto. Ottawa, London and Hamilton are the next three largest centres as employers (para 88). The CDLPA Committee queries the comparative nature of these statistics and requires explanation of the number of firms in smaller centres who cannot find students despite a willingness to have one or more. Anecdotally, the Report states that those firms represent only a handful of positions and could not appreciably alleviate the number of students who cannot find a placement. The CDLPA Committee believes statistics should be compiled to determine the number of firms who would otherwise be willing to have an articling student. This is a critical pre-condition to developing placement assistance programs. CDLPA, as a grass roots organization, would have the ability to assist with such a survey and program implementation to assist. This must lead the Law Society to analyze and address the potential reasons why students do not want to take articling positions essentially located outside of Toronto. Cost of education, cost of relocation from a law school city and the ability to repay student loans at a faster rate in larger centres are likely reasons. On a broader scale, there are clear succession issues for the profession and small and medium sized town life which need to be addressed. The issue may not be lack of positions, but lack of students willing to fill available positions. A survey needs to address these issues. The survey should be broadly based, involve active research modeling and integrate educating the profession regarding Law Society placement and recruitment assistance.

The CDLPA Committee requests the Law Society to take a very focused look at the underlying causes of the crisis. Some logical causes are as follows:

(i) *Salaries in Large Urban Centres*

Law firms in the larger metropolitan centres pay disproportionately large salaries to articling students. Therefore, students go there because they usually have high student debt or lifestyle goals requiring such salaries.

(ii) *Articling Experience in Large Centres*

Anecdotally, many of students in large firm get little court experience, work very long hours and frequently do not receive context to their work. Such experiences do not provide articling students with the skills and practical resources necessary to allow competent practice as a sole practitioner or in a small firm.

The CDLPA Committee believes the Law Society may wish to regulate more closely the types of articling experiences that students receive. This is no easy task, but needs to be attempted. There are certain steps that can be taken so that the articling experience provides key

components of practice including court appearances, client meetings, deal closings and business practice issues.

The Law Society should further particularize the specific skills required to be taught in the articling experience so that students acquire a meaningful learning experience and not a research based one. The CDLPA Committee recognizes that the Law Society already has criteria in place however, experience suggests that firms do not necessarily follow same. The Report itself recognizes that the articling students have widely disparate experiences from firm to firm and city to city (page 30). The Epstein Report referenced in the Report indicates that there should be a full review of the articling system within three years of implementation of the Epstein Report's recommendations. Did this occur?

A CASE FOR THE ARTICLING PROGRAM

There is no substitute for the practical learning that is achieved inside a law firm. Classroom teaching, no matter how practical the course, is no substitute.

It is not just practical legal issues that an articling student learns – it is time management, office organization, business skills, people management, staff management and drafting of legal documents. In short, it is the only effective way of learning real client skills, which is not replicated by the practising of interview skills. Students need a real life client that they can “follow” from initial interview to end result. The practical experience encompasses small items such as:

- (i) Dictation and Drafting;
- (ii) Docketing;
- (iii) time management;
- (iv) file management; and
- (v) file administration.

Students do not agree that these same skills can be taught in the Skills Development and Professional Responsibility program. In the development of the Report, the Committee interviewed current students and found that “the skills of client relationships and practice management appear to be most frequently addressed in this context, namely, intensive courses and clinical experience. In the Task Force’s own view it is difficult if not impossible to learn these skills proficiently other than in “practice” context.” (para 56c). “The Task Force is convinced that the Law Society’s Skills and Professional Responsibility Program has already encountered difficulty in accomplishing its goals.” (para 58) (namely, the effective teaching of skills development). The candidates agree that case based classroom work is too contrived to be useful and that the existing program does not approximate reality (para 73). This supports the argument that there is no substitute for the articling experience. The CDLPA Committee concurs.

MIS-MATCH OF POSITIONS TO APPLICANTS

The Report states that there are 100 law students that are unable to get articling jobs per year. The CDLPA Committee suggests that a good number of those 100 students CHOOSE not to take articling jobs which are available. There are articling jobs available which are not filled. These students either do not want to or cannot leave the metropolitan areas. If they do not want to – that is their decision. Comprehensive research is required regarding the number of firms that want articling students and cannot get them. The Law Society should do a comprehensive study in this area, with the assistance of groups like CDLPA. Then, a clear assessment of the number of positions available may be made.

In short, a comprehensive review of the matching program, its timing and impact on other centres is necessary.

Although, the LSUC cannot force a student to take a job in a community other than that students first choice, a requirement of an articling component will make that position more desirable. To be effective, it must be well known to the student before attending law school that articling jobs are not guaranteed in major metropolitan centres. This also addresses the concern that the Fairness Commissioner may view the lack of articling positions as an unreasonable barrier to entry into the profession.

Any study must assess every community (however small and remote) that has practising lawyers. The study needs to address the financial possibilities of not having to compete for pay, not having to recruit and “lure” a student away from a big centre. In short, the study should be a complete inventory of articling opportunities across the province and how to attract firms and practitioners back into the articling program.

On one hand, many sole practitioners/ small firms cannot afford to recruit at the six law schools (that, by the way are all located within 600 km of one another) and cannot afford to pay what the larger centers do. On the other hand, some can offer a better articling experience, but need to understand that the Law Society supports the program and their goals.

At the Plenary session held by CDLPA in May 2008, we heard from the Presidents in a conclusive way. Under no circumstances would practising lawyers in Ontario support the abolition of the articling program. It is viewed as fundamental to the production of competent and effective legal counsel.

Much discussion ensued surrounding the issue of the barriers to entry and fairness legislation. The Presidents were clear that our ability to self regulate and, to ensure that new lawyers who are entering the profession and introduced to the public, absolutely cannot be compromised by some sense of larger obligation to ensure that every law school graduate can enter the profession regardless of where one obtains one’s degree or what level of training one has received. The Law Society’s obligation is to govern in the public interest and CDLPA believes that this is achieved by the Law Society’s assurance that lawyers entering the profession are competent. If legislation is to be challenged on the basis, then as a self-regulating profession, we owe that to the public

The question becomes - are there any methods by which we can accomplish the stated goals if the present system is not working?

There were a number of suggestions put forth at Plenary that may be considered by the Task Force.

COOPERATIVE PLACEMENTS

Another suggested option is to make certain articling placements more of a co-operative placement as is the case for teachers in Ontario. The duration could be shortened and built in to the law school curriculum. This would allow Soles and Smalls to participate more effectively. While it may be suggested this approach would actually hinder the programs as the student is less willing to leave the City where the law school is situated, thereby leaving the smaller centers out however, a law school in the North could help retain placements in that area. Also, as the cooperative placement relocate is not such a permanent and substantial one, students are more likely to commit to a smaller centre, knowing that it is a fairly short period.

RELOCATION GRANTS

Perhaps some consideration should be given to relocation grants, incentives to leave the GTA and assistance to Soles and Smalls to take articling students. The Law Society should look at the possibility of some financial incentive to taking an articling position in a communities outside of Toronto/Ottawa/London and Hamilton.

LAW SCHOOL DEGREE PROGRAMS

Given that the last (and only) document to regulate the law school degree was developed in 1957 and amended in 1969, it makes sense that this issue be revisited. Now is the opportunity to review and revamp the requirements recognizing the limitations of classroom teaching.

ULTIMATE SOLUTION

During CDLPA's review of the issue and as a result of the CDLPA Plenary consultation session, the ultimate solution, given the relevant legislative pressures upon the regulator and the increasing demand for accreditation, will likely be found in a revised hybrid model. Such a model would logically include the following components:

1. A retained articling program for those wishing to enter private practice;
2. Some accredited alternative training program for "overflow" applicants to the articling program; and
3. Exemptions from articling for those wishing to be called to the Bar, but wishing to refrain from private practice or, alternatively, seek practice in "non-public" arenas (such as in-house counsel or

government). This would include skills enhancements should such a lawyer wish to enter private practice at a later date.

CDLPA ASSISTANCE

In terms of enhancing and improving the present articling program, CDLPA, in conjunction with the Law Society and other stakeholder groups, will:

1. Undertake a thorough review of the present placement articling impediments in small and medium sized communities;
2. Strive to improve its information systems and information flow to practising lawyers; and,
3. Enhance and improve joint opportunities, information and marketing of opportunities relating to the articling program and direct related efforts to assist sole and small practice, succession planning, and the retention of women in private practice.

COMMUNICATION TO THE PROFESSION

Regardless of the approach taken as a result of the Report and Convocation's ultimate decision, a comprehensive package of material and information ought to be developed and provided to all law students and practitioners outlining the issue of whether it is Law Society's obligation to ensure an articling placement. The Law Society needs to more widely advertise the present practice of helping firms and students gain joint articling placements and assisting firms outside major metropolitan areas in finding an articling student.

Respectfully Submitted by,

The CDLPA Licensing and Accreditation Committee

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