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To the Articling Task Force:

Re: Response to the Articling Task Force Consultation Report

This letter is delivered on behalf of the Toronto Lawyers Association (“TLA”).

It is clear that the Law Society has devoted significant time and resources to address the current placement issues related to the articling component of the lawyer licensing process.

The TLA is to provide feedback to the Law Society regarding the Articling Task Force Consultation Report and the related discussions and information sessions that have occurred since its release. The TLA has also invited and received feedback from its members on this important issue.

Benefits of Articling and Giving Back to the Profession

The TLA has been, and will continue to be a strong advocate for articling. The TLA promotes and encourages its members to take on articling students. The TLA recognizes the benefits of articling to both students and the firms or sole practitioners hiring them. The TLA assists articling students with free memberships, research and library functions, information sessions regarding articling, and accredited CPD programmes created specifically for articling students.

Articling students obtain practical, hands-on training on real files and cases, which directly exposes them to the issues that are encountered daily in the practice of law. Both students and firms derive short and long-term benefits from participation in articling. Rather than paying for this training, students earn a salary and the firm can bill the student’s time over the 10 month articling term. In addition to the short-term benefit, articling offers both the student and the firm a chance to develop a long-term relationship, either by hiring the student back at the end of the term, or by maintaining a professional relationship with the former student. Even when students

are not hired back, they will have gained real world practical experience regarding the operation of a law practice. They usually will also receive a good letter of reference, which can assist in securing employment elsewhere.

When a firm, large or small, is engaged in the articling process, there is usually a yearly commitment to hire students. This is in part good business sense, for the reasons listed above, but it is also a commitment by the firm or the articling principal to 'give back to the profession' by mentoring students to become lawyers. Under the current system, most candidates seeking entry to the legal profession in Ontario are required to article. However, if that were to change, and articling minimized to being a choice under option 4, or eliminated altogether under option 5, it is not difficult to imagine that the mindset of lawyers and firms would also change. While some medium and (perhaps most) large firms might simply hire first year associates on a contract basis, instead of articling students, the question must also be asked as to whether they would hire the same numbers? First year associate positions could be pared back if more emphasis were placed on summer positions, or if the profession generally was no longer 'giving back' through its formerly integral role in the licensing process. It could also be anticipated that most medium and small firms, and sole practitioners, may simply wrap up their articling programmes and look to hire associates on an as needed basis only. Given market forces, that need may occur every year, or it may not. It is suspected that firms, large and small, who have traditionally participated in articling, do so for the business and 'giving back to the profession' reasons cited above. However, how many firms do so because of convention? How many firms hire the same number of students each year because that is what they have done historically? The articling principal or committee performs the annual articling routine in adherence to the formal process, which has fixed dates and deadlines, both for the applicants and firms. Remove the formal process, and questions will indeed be raised by firms and lawyers about whether they should continue their historical practice.

Thus, it is important to examine what new problems may be created by trying to correct the existing ones. The TLA is concerned that if articling is but a choice, or eliminated altogether, the current problem regarding entry level (articling) placements in the profession will not only be shifted onto newly called lawyers, it will be further compounded if even fewer positions are available than were available under articling.

Increased Number of Graduating Law Students

Apparently, the articling placement problem is unique to Ontario. Articling supply and demand continues to be met in other Canadian jurisdictions. While market forces have been cited as one reason for the lack of placements in Ontario, the statistics show that the core problem is actually the increase in the number of recently graduated law students applying for articling positions in Ontario - specifically in urban centres such as Toronto, Ottawa, London, Hamilton and Windsor. The statistics provided in the Task Force's Report reveal two primary factors for the increase in prospective articling students in Ontario:

1. A significant increase in graduating students at Ontario law schools over the last decade; and

2. A further significant increase in the number of international candidates pursuing articling positions within the last three years.

The Task Force's Report cites a 15.5 percent increase in graduates from Ontario schools alone (33.2 percent being the highest from the University of Ottawa) from 2001 to 2011. The total number of graduating students in Ontario over that period went from 1152 to 1330, an increase of 178.

The Report also cites that in the 2007/08 licensing year there were 93 international candidates registered. In the 2010/11 licensing year, there were 272 international candidates registered, an increase of almost 300 percent over a three year period.

The Law Society has no control over the admission of students into law schools in Ontario or elsewhere. Similarly, it has no control over how legal education is marketed to prospective and current students, or what expectations are developed in students for what is in store post-graduation. Arguably, it should not be the Law Society's responsibility or mandate to correct a problem that it has neither created nor encouraged.

Articling Positions throughout Ontario

The Task Force's Report indicates that 65 percent of all articling positions are located within Toronto. When Toronto, Ottawa, London, Hamilton and Windsor are included, the total number of placements totals 79 percent. The majority of placements (71 percent) are in medium to large size firms. These statistics show that articling continues to work in Toronto and other cities. It is TLA's view, contrary to some perceptions, that the articling crisis is not a Toronto or big city problem.. Since the vast majority of positions are offered in Toronto and other urban centres, prospective articling students really have little choice but to seek out positions in those centres. However, they should be strongly encouraged not do so exclusively. It would prudent, especially now, for students to circulate resumes and applications to cities other than Toronto as well as to smaller communities.

Sole practitioners and small firms, both inside and outside of urban centres, obviously cannot offer the same articling salaries as medium and large firms. Given the supply and demand issues at play, however, students will likely accept lower salaries, especially if the alternative is to pay for PLTC course. Small firms should also be able to recover the costs of modest salaries through the student's billings to clients. In fact, an articling student should generate a profit for a small firm.

A major incentive for firms of any size offering articling positions outside of Toronto, is that jobs can be offered and accepted each year in June, two months in advance of the annual August hiring process that takes place for Toronto positions. Firms outside of Toronto, and prospective articling students, should be made better aware of the benefit of being able to offer and accept positions before the Toronto interviews are scheduled.

In addition to addressing the articling placement issue, the Law Society should continue to encourage the addition of new articling positions outside of Toronto in smaller communities

where the “greying of the bar” phenomenon is more prevalent. If not addressed, access to justice issues will arise as senior lawyers retire without adequate succession planning in place. Articling can be the crucial first step in mentoring new lawyers who will eventually assume the practices of retiring lawyers.

Equality-Seeking Groups

The Report also cites statistics for the placement of candidates who identify themselves as being from an equality-seeking community. Table 1 of Appendix 5: Placement Report identified the following groups and percentages:

Candidate Group	Percentage of total cohort
Aboriginal	1.4
Francophone	4.4
Gay/Lesbian/Bisexual/Transgendered	2.4
Persons with a Disability	1.9
Racialized Community	16.4
Total	26.6

The Report suggests that 86% of the candidates who identify themselves as belonging to equality-seeking groups secured articling placements by June, 2011, roughly 4% lower than the overall placement figure of 90%. The Report further cites the placement rates for each group as follows: Aboriginal – 93%, Persons with a Disability – 90%, Francophone – 75%, Gay/Lesbian/Bisexual/Transgendered – 86%, Racialized Community – 85%.

It is unclear what can be interpreted regarding placement issues from these statistics, as not all candidates report whether they identify themselves as belonging to an equality seeking group. On the other hand, some candidates may report that they fall into more than one category. For those unplaced candidates who identify as belonging to more than one group, this would show an increase in non-placements for equality-seeking groups in those individual categories and the groupings as a whole. Therefore, more information is required to properly interpret these statistics.

It does not appear that the purpose of including these statistics in the Report is to suggest that equality-seeking groups are facing widespread or systemic discrimination when seeking articling positions. However, it cannot be emphasized enough that if candidates do believe that they are being discriminated against, this is a serious issue that should be brought to the attention of the Law Society and explored fully with full and complete information.

To extract a positive from the statistics, the TLA is encouraged by and celebrates the fact that the diversity of the Bar is clearly increasing and is becoming more reflective of our Canadian society.

Listed Options from the Task Force Report

A number of potential licensing options and alternatives are being considered. The range of options include: maintaining the status quo with the current articling programme, with or without added quality assurance improvements; offering a Practical Legal Training Course (PLTC) in addition to or in replacement of articling; and the replacement of pre-licensing requirements with a post-licensing transition period.

The two options that have been the subject of much discussion are options 4 and 5. Both options include a PLTC, either as an option to supplement articling or to replace it entirely. However, what the PLTC programme would look like, including who would offer it, when and where it would be held, and what would be the cost, are questions that ought to be answered before PLTC can be fully explored as a supplement to articling, or as a standalone option.

Options 4 and 5 and the Effect of PLTC Reducing or Eliminating Articling

The four month Bar Admission Course (BAC) was replaced several years ago. Discussing options that include PLTC could signal a return to a more in-depth, more costly BAC. Even if PLTC were to replace articling, it would still include a law setting placement component, albeit shorter in length.

Who would offer PLTC? There is no information to suggest that one or more of the law schools in Ontario are interested in offering PLTC either in the third year of study, or beyond. If interest is generated, the Law Society would have to work together with the law schools or third party providers to develop the PLTC programme. It is unknown whether law schools would be willing to modify their curricula, or even have the faculty or facilities to offer such a programme to some or all of their students in either third year or as an additional fourth year. If offered in third year, what would the impact be in losing substantive courses? If none or only a few law schools adopts a PLTC programme, what would happen to the students at other schools who require PLTC? Would they have to apply for and compete again for placements at law schools and third party institutions?

The Report does comment that PLTC would have a law setting placement, which would be unpaid and shorter in duration than articling. Would the students have to apply for and find these placements or would the PLTC provider distribute them? Some of the comments from TLA members regarding articling cite the fact that the current articling term of 10 months is too short; in part because of the steep initial learning curve. Students become more comfortable as the term progresses, maximizing their learning and understanding by the end of the term. A shorter job placement term would give rise to even fewer experiences from which the students would learn from and draw upon at a later date.

Perhaps most importantly, there is no information to suggest that the problem regarding the lack of articling placements for the number of candidates would change simply by it becoming an unpaid job placement within PLTC. Aside from paying salaries, there are other practical problems regarding finding office space and the time and resources to train students both from an

educational and operational standpoint. A shorter term with the same steep learning curve, may actually offer even less incentive for a firm to commit to take on students under a PLTC regime. The difficulty would then remain that a number of students may not be able to secure a job placement component within the PLTC course.

Regarding cost, the Australian examples indicate that the cost of the PLTC programme could be in the range of at least \$7000 to \$8000. This additional tuition burden would be placed on students who already pay significant law school tuitions. On the other hand, articling includes a salary, and even a modest one will not increase the student's tuition debt-load.

The TLA does not endorse the replacement of articling through either a post-licensing requirement (option 3) or through PLTC (option 5). Similarly, the TLA is concerned that if students and, more importantly, law firms, see articling positions as optional, with PLTC as an alternative (option 4), this could eventually lead to the elimination of articling altogether. Over time, firms may cease hiring articling students or candidates will increasingly opt for PLTC. This simply turns option 4 into a transition period for option 5.

The TLA believes that option 5 merely changes the problem of placing law school graduates from a pre-licensing issue, to a post-licensing issue. As indicated below, there is a serious concern that the diminishment of articling, or its elimination, would see fewer entry level positions for new lawyers to become associates. Accordingly, one can then expect an increase in partnerships, associations and sole proprietorships started by new lawyers. This may then affect the quality of the lawyers produced, as there may be little or no mentorship available during those early years - when a lawyer requires it the most. Professionalism, civility and collegiality among the profession could be impacted if new lawyers do not have the same mentorship that is provided under articling. Similarly, service to the public could be affected if substandard service is offered because of a lack of ongoing, formal mentorship and training of new lawyers. This is obviously a concern of the Law Society, but there could be an increase following the reduction or elimination of articling.

If any form of PLTC is to be pursued, it should be introduced as a pilot project which shall be assessed at the completion of the prescribed term to determine whether it ought to continue, and if so, what changes, if any, should be implemented. At the end of the term, other solutions to the current placement problem may have emerged, such as a stronger economy, generation of more articling positions, or more students pursuing career options that do not require articling or licensing.

PLTC when Necessary, but not Necessarily PLTC

The TLA believes that articling, especially in large centres such as Toronto, works and should be preserved. For the most part, students have fulfilling articling placements, which translate into hire-back positions or referrals to new positions. As noted below, the hire-back percentages for 2011 were over 10% higher than in 2010 and, in fact, the highest of all years where statistics are available, dating back to 1995.

For those who do not have a satisfactory articling experience, recourse should be sought to change the articling program, and should be indentified to the Law Society. In order to improve the quality of deficient articling programmes and principals, a discussion of the facts based on the actual number of complaints by articling students. This method is preferred over anecdotal suggestions that some students have poor articling experiences. Practitioners and firms who do not supply adequate articles are a serious issue and should be dealt with by the Law Society. Although this is not the problem addressed by the Report, it is an undercurrent in some of the comments of those encouraging the elimination of articling. In TLA's view, the fact that some students do not have good experiences is a reason to fix the problem, not destroy the programme.

As stated above, one of the goals to address the placement shortage is to create or encourage more placements, specifically in smaller communities. These communities have, or will have, their own access to justice issues without an influx of new lawyers.

Where a traditional articling position cannot be found, viable alternatives could include students articling for a non-profit legal clinic or with an in-house legal department. While it would be preferable that these jobs include a salary, some may be nominal or require the student to work as an intern, comparable to positions offered in many other business enterprises. Another option, which has been employed in the past by candidates, is to wait for the next articling term and, in the interim, work outside of law or continue with other studies, such as an LL.M.

If positions are still not available, how can otherwise deserving candidates who have demonstrated that they have explored every possible avenue be assisted to be called to the Bar? If a properly constructed PLTC programme could offer a fulfilling and rigorous pre-licensing experience, then indeed it may be an option worth considering, albeit on a very limited basis and as a last resort. TLA does not support PLTC as an open choice, as it is under option 4.

The general requirement to diligently pursue an articling placement means that a candidate cannot idly sit by while the articling selection process runs its course, and then expect to be accepted into the PLTC programme. Students should be encouraged to apply for articling positions throughout the Province, at firms or organizations of varying sizes and practice areas. The Law Society and other legal organizations throughout the province should also encourage their members to offer positions.

If articling remains the preferred pre-licensing placement, then the Law Society would continue to mandate it as the default option, with limited exceptions.

If indeed the economy is a contributor to the lack of articling placements, market corrections may reduce significantly or eliminate the problem altogether. If law schools, both in Ontario and abroad, continue to flood the market with students, they should (with warnings from the Law Society) be tempering expectations of the students they enroll. They should encourage a range of post-graduation options, some of which may not involve articling or the practice of law. Alternatively, more counseling ought to be provided while in law school to ensure that the students' paths of study may lead them to the type of articling position to which they would be best suited.

This model of using PLTC as a safety net is much different from the current option 4, which provides a choice from the outset whether or not one wants to article or take PLTC. The concern about PLTC becoming a second tier or second class would be minimized with this approach. PLTC would instead serve as an option of last resort, used only to assist otherwise deserving candidates who for various exceptional reasons are not able to find a law placement.

If a PLTC pilot project is made available in a limited capacity for eligible candidates, specific criteria should be outlined to illustrate whether a candidate has appropriately pursued an articling placement. Such criteria would include:

1. Candidates shall have applied for articling positions in accordance with the Law Society guidelines and deadlines.
2. Evidence must be provided regarding the number of articling positions applied for, where and when.
3. If candidates are unplaced after the formal application processes within and outside of Toronto, they shall vigorously continue to explore articling opportunities, specifically suited to their areas of study, interests and career objectives, until July of the year in which they would normally commence their articles.
4. Candidates shall reasonably pursue articling opportunities that may be available throughout the province and should be encouraged to consider re-locating to another geographic area.
5. Candidates shall, within reason, pursue and accept an articling position that may not fall within their areas of study, interests and career objectives.
6. Candidates should be in communication and working with the Law Society to search for an articling position and to provide periodic updates, as requested or required.
7. If an articling position cannot be obtained, a formal application for entrance into the PLTC programme shall be made by the candidate. The application must include supporting evidence and information to demonstrate that the above criteria have been satisfied. Upon receipt of such application, the student will be interviewed by the Law Society.
8. Acceptance into the PLTC programme shall be granted upon:
 - a. The candidate's successful completion of the application and interview process.
 - b. The candidate's successful completion of both of the licensing examinations.
 - c. The candidate meeting all licensing criteria established by the Law Society.

Transferring the Articling Problem to Job Placement for Early Year Calls

Currently, there is a problem with the number of people who are seeking entry level legal jobs in Ontario. This current problem is an articling/licensing one, as articling is usually the first level of legal employment for many candidates. If articling is but an option, or eliminated, then the problem regarding the number of entry level legal positions is pushed forward onto first year lawyers.

As indicated above, if there would be less interest in hiring associates on a yearly basis, as firms had done with articling students, this would further diminish the number of entry level positions available. New lawyers without a position at a firm would be free to start their own practice, on their own, in association or as a partnership. Some may succeed, but others will fail. This currently occurs with those who are not hired back or simply choose to start out on their own.

What about those lawyers who are interested in working at an established firm, be it a small, medium or large, for its reputation, collegiality, mentorship and the chance to advance through its hierarchy? Those opportunities, especially for the small to medium sized firms would be severely diminished with the elimination of articling, or making it an option. As is often the case in any field it is easier to find a legal position when you have one or have obtained experience. Articling provides that first job, and the experience needed in order to be hired back or obtain another job. Even in this moment of apparent crisis, 85 to 90% of candidates obtain placements. The TLA believes that the 85-90% of candidates who are able to secure articling positions, should not be placed at a disadvantage by eliminating or significantly modifying the current system. Those same students also receive the benefit of job opportunities within the same firm or elsewhere upon the completion of their articles.

It is noted from the statistics that even with the current placement issues, articling continues to provide significant hire back positions or employment elsewhere. The statistics at Appendix 5: Placement Report show that the percentage of students hired back after the June, 2011 call was 53.5% (of 88% reporting) the highest hire back percentage of the sampling provided, which dates back to 1995. Perhaps equally as important, 2011 hire back had increased by over 10% from the year prior. In June, 2011, beyond the 53.5% who were hired back, another 15.1% found employment elsewhere, thereby providing job placement at 68.6% post-articling in June, 2011. This was up from 55.5% in 2010.

Conclusions

The TLA has always supported, and will continue to support articling. It is hoped that with the publication of the Task Force's Report, firms and practitioners who previously did not offer articling positions may now consider doing so, and those that already do so, may increase the number of positions.


The core of the problem appears to be the increasing number of candidates seeking entry to the profession in Ontario. This has arisen due to the increase in the number of students graduating from law schools, both in Ontario and elsewhere. Students entering law school should be made fully aware of the increasing supply of students which may not meet market demands. Legal

training does not have to translate into a career as a practicing lawyer, and the multitude of other available options that do not require articling or licensing should be explored both by students and the institutions providing legal education. This not only would open articling positions, but would better direct students prior to graduation.

Where the problem continues to exist for candidates who want to be admitted into the profession, but cannot find an articling position, it should be incumbent upon them to diligently make every effort to secure an articling position. Articling should be the preferred pre-licensing requirement given that it is useful in the mentorship of young lawyers to provide them with practical experience, socialization, and adherence to the core principles of civility and professionalism. If an articling position cannot be found despite exhausting every reasonable effort to do so, PLTC may be the option of last resort. Limited PLTC spaces would also seem to make sense, as there currently is no commitment from the law schools or other institutions to offer widespread PLTC either during law school or thereafter. It has also been suggested that PLTC would still have a job placement component. This would simply return us to the root of the problem, and the lack of articling positions.

Reducing or eliminating articling will simply transfer the current entry level job placement issue to the ranks of first year lawyers. For the reasons and statistics cited above, it cannot be underestimated how important articling has been, and will continue to be, in securing early year lawyer positions, either through hire back or elsewhere.

Yours very truly,



President
Toronto Lawyers Association