

MINUTES OF SPECIAL CONVOCATION

Friday, 9th December, 2011
9:00 a.m.

PRESENT:

The Treasurer (Laurie H. Pawlitza), Aaron (by telephone), Banack, Boyd, Braithwaite, Brett, Callaghan, Campion, Conway, Daud, Dickson, Doyle, Dray, Elliott (by telephone), Epstein, Eustace, Evans, Falconer, Furlong (by telephone), Goldblatt (by telephone), Haigh, Halajian (by telephone), Hartman, Horvat, Hunter (by telephone), Krishna, Leiper, Lerner, MacKenzie, MacLean, McGrath, Marmur (by telephone), Matheson, Mercer, Minor, Murchie, Murphy, Murray, Porter (by telephone), Potter, Pustina, Richardson, Richer, Rabinovitch, Robins, Ross, Rothstein, Ruby (by telephone), Sandler, Scarfone, Schabas, Sikand, Silverstein (by telephone), C. Strosberg, H. Strosberg (by telephone), Sullivan (by telephone), Swaye (by telephone), Symes, Wadden, Wardle, Wardlaw and Wright (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer, on behalf of Convocation, congratulated Constance Backhouse who was awarded the Gold Medal for Achievement in Research awarded by the Social Sciences and Humanities Research Council.

The Treasurer announced that Convocation appointed Robert Lapper as the Chief Executive Officer of the Law Society, effective February 1, 2012.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCETo the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESSLicensing Process and Transfer from another Province – By-Law 4

Attached is the name of a candidate who has successfully completed the Licensing Process and has met the requirements in accordance with section 9.

This candidate now applies to be called to the bar and to be granted a Certificate of Fitness on Friday, December 9th, 2011.

ALL OF WHICH is respectfully submitted

DATED this 9th day of December, 2011

CANDIDATE FOR CALL TO THE BAR

December 9, 2011

Transfer from another province (Mobility)

Vincent de Paul Wafo

It was moved by Mr. Conway, seconded by Mr. Schabas, that the Report of the Director of Professional Development and Competence setting out the name of the deemed call candidate be adopted.

Carried

PRIORITY PLANNING COMMITTEE REPORT

The Treasurer presented the Report.

Report to Convocation
December 9, 2011

Priority Planning Committee

Committee Members
Laurie H. Pawlitza (Chair)
Marion Boyd
Christopher Bredt
Thomas Conway
Michelle Haigh
Carol Hartman
Janet Minor
Julian Porter
Paul Schabas

Purpose of Report: Decision

Prepared by the Policy Secretariat
(Jim Varro 416-947-3434)

COMMITTEE PROCESS

1. Following the Benchers Planning Session held in Hockley Valley from September 25 – 27, 2011, the Committee met on October 26 and November 23, 2011. In attendance on October 26 were Laurie Pawlitza (Treasurer and Chair), Marion Boyd, Christopher Bredt, Thomas Conway, Michelle Haigh, Carol Hartman, Janet Minor (by telephone) and Julian Porter. In attendance on November 23 were Laurie Pawlitza (Treasurer and Chair), Marion Boyd (by telephone), Christopher Bredt, Thomas Conway, Janet Minor, Julian Porter and Paul Schabas. Malcolm Heins, Jim Varro and Sheena Weir also attended both meetings.

FOR DECISION

CONVOCATION'S PRIORITY PLANNING – NEXT STEPS

MOTION

2. That Convocation:
 - a. approve the six priorities set out at paragraph 15 of this Report as Convocation's priorities for the next four years; and
 - b. affirm that effective communication and outreach and Convocation governance effectiveness are ongoing objectives that must be diligently pursued to enhance the Law Society's effectiveness as a regulator.
3. That Convocation affirm the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:

- a. the Committee will review the priorities as determined by Convocation;
- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers and elected paralegals who deal with the priority areas in the committees on which they serve;
- c. the Committee will establish workplans in consultation with the Chief Executive Officer and senior managers and identify goals to be achieved within each of the priority areas for Convocation's consideration; and
- d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2012.

INTRODUCTION AND BACKGROUND

4. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:
 - a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
 - b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,
 - i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
 - ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
 - iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
 - iv. The mandate of the Committee is to
 - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
 - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
 - C. report annually to Convocation on the status of Convocation's priorities.
5. This past spring and summer, the Priority Planning Committee ("the Committee"), in consultation with the Chief Executive Officer (CEO) and the Director, Policy and Tribunals, organized the Bencher Planning Session ("the Session") that was held in Hockley Valley on September 25 – 27, 2011.
6. In advance of the Session, a survey was sent to all benchers – elected, appointed, paralegal and *ex officio* – and to the three paralegal members of the Paralegal Standing Committee. The survey sought views on the mandate of the Law Society and the priorities on which the Law Society should focus. Thirty-six people responded – 26 elected benchers, one appointed bencher, four paralegal benchers/paralegals and five *ex officio* benchers.

7. At one of its summer meetings, the Committee also received information through the CEO about an issue that was the subject of review at the operational level. The issue related to business structures for the delivery of legal services. The Committee acknowledged that this issue should be included in the priority planning process.
8. At the Session, attendees identified five priority areas and focused on two other priority areas linked to the effectiveness with which the Law Society carries out its mandate. These seven areas are:
 - Access to Justice
 - Competency and professional standards
 - Equity, diversity and retention
 - Support and mentoring for members
 - Effective communication and outreach
 - Convocation governance effectiveness
 - Tribunals issues

PRIORITY SETTING

9. The Session gave benchers and elected paralegals an excellent opportunity to discuss the important issues facing the Law Society, including the environmental context in which they exist, and to articulate what the most important issues are that the Law Society should focus on for the next four years.
10. At its meetings on October 26 and November 23, 2011, the Committee reviewed and discussed the seven priority areas. It also considered the process to be applied in defining the scope of the priorities, determining the work that must be done and moving forward to implementation.
11. The Committee recognizes that priority setting is Convocation's responsibility and for this reason, the Committee believes that Convocation must determine whether the priorities identified are Convocation's priorities. In this respect, the Committee's responsibilities include presenting the information on priorities in a rational, understandable way for Convocation's decision.
12. In preparing the information in this report, the Committee understands that every priority or every aspect of a priority may not require significant study or change. Convocation already has initiatives underway with respect to some of the priorities it has previously set that relate to those identified during the Session.
13. Similarly, the Committee recognizes that benchers may identify areas or issues as priorities for a variety of reasons. The identification of a priority does not necessarily signal that the area requires improvement. It may be an acknowledgement that the area is a core function of the Law Society and must remain an important focus of the organization for the next four years.

DEFINING THE PRIORITIES

14. In considering the list of priority areas resulting from the Session and information provided to the Committee this past summer, the Committee took the following approach:

- a. The nature and scope of the priority areas were examined to determine if the list could be rationalized to minimize overlap and create cohesion, and whether other priorities logically flowing from the identified issues should be highlighted for priority planning;
 - b. The priority areas relating to processes, such as communications and Convocation governance effectiveness, were examined to determine if they could be accepted as ongoing objectives that transcend identification as specific priorities for the bench term; and
 - c. The process for monitoring the progress on a priority was discussed in terms of the need for measurable accountabilities and thresholds.
15. Based on this approach as applied to the issues identified at the Session, the Committee determined that the following, which as between them are not prioritized, represent the priorities that Convocation should consider for approval.

Priorities Resulting from the Session

1. ACCESS TO JUSTICE

The Law Society in regulating the legal profession is mandated by the governing legislation to act so as to facilitate access to justice for the people of Ontario. Access to justice generally and access as it relates to family law issues are two aspects of this priority. Addressing this priority will include review and consideration of:

- a. The Law Society's role, including resources, information/communications and leadership;
- b. Facilitating access to legal and administrative services, including publicly-accessible information, legal referral services, legal aid, alternative dispute resolution, legal expense insurance and *pro bono* services, including limited scope retainers;
- c. Licensing options as a means to increase access to justice; and
- d. Court and procedural reforms.

2. COMPETENCE AND PROFESSIONAL STANDARDS

Competence and professional standards are the foundations of the Law Society's regulatory authority. Ongoing review of competency and standards is necessary for the Law Society to fulfill its regulatory responsibilities in a changing legal landscape. As a core objective of the Law Society, the focus on competence extends to various forms of support to licensees with the end goal of ensuring and maintaining competence within the professions. This effort is both prophylactic and remedial. Addressing this priority will include review and consideration of:

- a. Entry level competencies;
- b. Competence in the early years of practice;
- c. Competencies by areas of practice;
- d. Licensing options as a means to promote competence;
- e. Measurable and enforceable practice standards;
- f. Mentoring and support for licensees, including mentoring programs, advisory services and practice supports;
- g. Technological applications for learning, assessment and assistance; and
- h. National standards.

3. EQUITY, DIVERSITY AND RETENTION

The Law Society promotes equity and diversity and seeks to integrate these values and principles in the professions. Through Equity Initiatives, it creates model policies, services, programs and procedures and thus is a resource for members of the public and the professions. The Law Society is a leader in the profession in this respect and is committed to continuing this important work. Addressing this priority will include review and consideration of:

- a. Processes and initiatives to ensure that equity principles are observed and promoted;
- b. The development of programs for other equity-seeking groups, using the Justicia model as a means to facilitate these initiatives; and
- c. Communications strategies for promoting equity and diversity.

4. TRIBUNAL ISSUES

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, steps need to be taken to enhance the way in which the Law Society delivers its regulatory mandate at the tribunal level. Addressing this priority will include review and consideration of:

- a. Adjudicator training;
- b. Quality of adjudication;
- c. Use of technology in the hearing process;
- d. Enhancements to procedures and processes to improve effectiveness and efficiency; and
- e. The appropriate model for the hearing process.

As reported to Convocation in October 2011, the Tribunals Committee has created working groups that are developing policy options for consideration by the Committee, and through the Committee for Convocation's consideration, on issues related to the hearings process. The issues identified above will logically flow into these initiatives.

Other Identified Priorities

5. BUSINESS STRUCTURES / LAW FIRM FINANCING

Since the mid-1990s, the Law Society has studied developments in the structures available to lawyers for delivering legal services. It has implemented regulatory schemes for professional corporations, MDPs and LLPs. These are in addition to the "traditional" partnership and sole practice vehicles for legal services. The Law Society also reviewed the feasibility of other structures, such as publicly-traded law firms, in 2005. The thinking globally on alternative legal services structures has been anything but static, and changes have occurred in other jurisdictions that may impact the Canadian legal marketplace. As a regulator, the Law Society needs to consider the implications, and should prioritize its review. As noted earlier, an initial review at the staff level has begun. The issues include:

- a. How to structure a regulatory scheme that may involve new methods of oversight to permit a more flexible delivery regime and alternate business structures;
- b. How licensees maintain independence and other core principles within new business structures;
- c. Ensuring competence, quality of work and value to the client;
- d. Transparency and the client's understanding of who is providing the legal services and addressing possible conflicts of interest in alternate delivery models;
- e. Balancing more accessible legal services potentially at a lower cost with accountabilities that maintain robust and meaningful regulation; and
- f. Financing of law firms and alternate business structures.

6. PROFESSIONAL REGULATION

Two of the priority areas noted above are related to the professional regulation process for investigation of complaints and discipline. Competence and professional standards intersects with the scope of regulation. The tribunals process is impacted by what occurs earlier in the regulatory process that leads to disciplinary action. These overlapping issues should be considered collectively rather than in isolation, and compel a holistic approach to priority review and planning. Issues relevant to professional regulation in this context include:

- a. Discipline diversion;
- b. Exploration of initiatives aimed at reducing the number of complaints arising from certain areas of legal practice;
- c. Expanding matters for which a single adjudicator hearing can be utilized;
- d. Exploring "paper" or document-based hearings (i.e. written hearings);
- e. Enhancing case management, including time limits, disclosure obligations and issue identification as it relates to the hearing process;
- f. Area-specific regulation, flowing from defining, establishing and enforcing practice standards in specific areas of law.

Ongoing Obligations – Convocation Governance Effectiveness and Effective Communications

- 16. The Committee proposes that the issues relating to Convocation governance effectiveness and effective communications and outreach be considered ongoing objectives that the Law Society must diligently pursue as a matter of course. The Committee believes that the Law Society's effectiveness as a regulator is directly linked to the efficacy of its processes and procedures, to its ability to evaluate the outcomes of its programs and to the scope and integrity of its communications.

Next Steps

- 17. Once Convocation determines the priorities, the Committee plans to follow the process below to move the priorities forward within the 2011 – 2015 bench term:
 - a. the Committee will review the priorities as determined by Convocation;

- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers and elected paralegals, as the case may be, who deal with the priority areas in the committees on which they serve;
 - c. the Committee will establish work plans in consultation with the CEO and senior managers and identify goals to be achieved within each of the priority areas for Convocation's consideration; and
 - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2012.
18. The process outlined in paragraph 17.b. has already begun. At its October 26 meeting, the Committee received from the CEO an outline of an initial assessment of the priorities based on information from senior management in the Law Society's operations.
19. The Committee will report its findings and recommendations to Convocation during the first half of 2012.

Re: Convocation's Priority Planning – Next Steps

It was moved by Ms. Hartman, seconded by Ms. Minor, that Convocation:

- a. approve the six priorities set out at paragraph 15 of the Report as Convocation's priorities for the next four years; and
- b. affirm that effective communication and outreach and Convocation governance effectiveness are ongoing objectives that must be diligently pursued to enhance the Law Society's effectiveness as a regulator.

That Convocation affirm the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:

- a. the Committee will review the priorities as determined by Convocation;
- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers and elected paralegals who deal with the priority areas in the committees on which they serve;
- c. the Committee will establish workplans in consultation with the Chief Executive Officer and senior managers and identify goals to be achieved within each of the priority areas for Convocation's consideration; and
- d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2012.

Carried

ARTICLING TASK FORCE REPORT

Mr. Conway presented the Report.

Report to Convocation
December 9, 2011

ARTICLING TASK FORCE

TASK FORCE MEMBERS

Laurie Pawlitza (Treasurer)
Thomas Conway (Chair)
Raj Anand
Adriana Doyle
Jacqueline Horvat
Vern Krishna
Dow Marmur
Janet Minor
Barbara Murchie
Paul Schabas
Joe Sullivan
Peter Wardle

Purpose of Report: Decision on Consultation

Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)

ARTICLING TASK FORCE

MOTION

1. That Convocation approve the dissemination of the Articling Task Force's Consultation Report (TAB A) to the profession, law societies, the Federation of Law Societies of Canada, law schools, law students, legal organizations and other interested parties, for the purposes of receiving written comments.
2. That written comments be accepted until March 15, 2012 after which the Task Force will prepare a final report for Convocation's consideration.

Introduction and Background

3. Convocation established the Articling Task Force (“the Task Force”) in June 2011 to examine issues related to articling, including the challenges facing the current articling program, the increasing number of unplaced candidates, the competency-related principles that articling is intended to address and its effectiveness, the articling program in the context of the licensing process overall, and additional or alternative approaches to articling.
4. The profession is highly engaged in the discussion of the issues. The Task Force has prepared a consultation report (set out at TAB 1), including background on the issues related to articling and a range of options for discussion and comment. It provides its views on the issues that arise under each option for the purpose of facilitating discussion. The input the Task Force receives in this consultation process will inform its next steps and ultimate recommendations to Convocation.
5. If Convocation approves the dissemination of the consultation report, the consultation and communication plans will include, among other features, the following:
 - a. An e-mail will be sent to all licensees for whom the Law Society has an e-mail address, advising them of the consultation report, providing them with a link to the report and setting out the deadline for comments. A reminder will be sent in February, 2012.
 - b. Notices concerning the consultation will be included in the January 6, 2012, January 20, 2012 and February 3, 2012 Ontario Reports.
 - c. A Notice will be posted on the Law Society’s website.
 - d. Letters advising of the consultation process will be sent to interested parties including,
 - i. legal organizations, including the Ontario Bar Association, the County and District Law Presidents’ Association, the Advocates’ Society and the Criminal Lawyers’ Association;
 - ii. legal organizations representing Aboriginal and equality-seeking groups;
 - iii. law firms that hire articling students;
 - iv. law schools and Law Deans, both within and outside of Ontario;
 - v. law student organizations;
 - vi. law societies and the Federation of Law Societies of Canada;
 - vii. the Government of Ontario;
 - viii. Legal Aid Ontario;
 - ix. the Law Foundation of Ontario;
 - x. bench committees; and
 - xi. the judiciary.
 - e. The Task Force will conduct eight regional meetings with interested licensees to discuss the consultation report.

- f. For those organizations and groups that would like Task Force members to attend one of their meetings to discuss the issues, in preparation for their written submissions, the Task Force will endeavour to do so. The Chair has already attended a number of meetings to discuss the Task Force's work.
- 6. A detailed Communications Plan to support the consultation is being prepared. It will include all the various channels to be used to advise the profession of the consultation report and to encourage participation in the consultation activities.
- 7. At the conclusion of the consultation period (March 15, 2012) the Task Force will consider the comments it has received and develop its final report for Convocation's consideration. The Task Force plans to complete its report for May 2012 Convocation.

ARTICLING TASK FORCE
December 9, 2011

CONSULTATION REPORT

TASK FORCE MEMBERS

Laurie Pawlitza (Treasurer)
Thomas Conway (Chair)
Raj Anand
Adriana Doyle
Jacqueline Horvat
Vern Krishna
Dow Marmur
Janet Minor
Barbara Murchie
Paul Schabas
Joe Sullivan
Peter Wardle

Purpose of Report: Consultation

Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)

NOTICE TO THE PROFESSION

ARTICLING TASK FORCE CONSULTATION REPORT

The licensing of lawyers is an integral part of the Law Society of Upper Canada's mandate to regulate in the public interest. The Law Society's Articling Task Force is currently considering a number of issues related to the articling component of the *lawyer* licensing process.

The profession is encouraged to review this consultation report and to provide written comments. The goal of the consultation is to consider practical solutions to the issues the consultation report raises.

Written comments are welcome until March 15, 2012. Please direct them to,

Sophia Sperdakos, Policy Counsel
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EXECUTIVE SUMMARY

Legal education in Ontario has changed significantly over the last century. Lawyers were once trained through a system of apprenticeship in which those seeking to join the profession learned their craft by observing and working with established lawyers. There was little or no academic component to their training. Over decades, the system evolved to become one of primarily university-based legal education. Within this current system, however, the Law Society of Upper Canada and the other Canadian law societies have continued the “practice-oriented” philosophy of apprenticeship by requiring those seeking to be licensed to complete a post-law school articling requirement.

Generations of Ontario’s lawyers have met this articling requirement. The goal of articling has remained essentially the same - to provide law school graduates with orientation to the “real world” of the legal profession, assist them to understand the role of lawyers in representing clients and as officers of the court, provide guidance on the ethical responsibilities they must address as they navigate their way through professional situations, facilitate mentoring and other networks and provide some exposure to the practice of law as a business enterprise.

What has become increasingly apparent over the last decade in particular, however, is that the supply of articling placements is not keeping pace with demand. Although the number of lawyers in the profession and the number of candidates seeking to be licensed have risen steadily over the last 10 years, the number of articling positions has remained largely static. The placement issue is further affected by the increasingly more restricted location, size and substantive practice profile of those firms choosing to hire articling students.

The need to address articling placement issues has provided an opportunity to also consider whether the articling system is meeting the Law Society’s regulatory objectives. Because articling students’ competence and performance are not systemically assessed against established standards and because principals are effectively volunteers, the unevenness of students’ articling experiences and the quality of the system overall continue to be topics of discussion.

The Task Force's mandate is broad. In addition to considering the challenges facing the current articling program, including the increasing number of unplaced candidates, it is considering the competency-related principles that articling is intended to address and its effectiveness, the articling program in the context of the licensing process overall and additional or alternative approaches to articling.

Why does articling exist in the year 2011? Does it accomplish what it should be accomplishing? Can its results be measured and is there consistency across the system? Is it the only approach that can accomplish these goals? What are the causes of placement shortages? How can the issue of shortages be analyzed and resolved as part of an overall assessment of the merits of articling? Are there "solutions" to the articling shortages situation that have yet to be explored? Is it the profession's responsibility to solve the issue or should the market be allowed to govern?

This consultation report is intended to foster and stimulate constructive engagement on meaningful solutions to the issues, rather than proposals that will result in band-aid remedies or *ad hoc* approaches to the problem.

The Licensing Process

The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry level to provide legal services effectively and in the public interest.

In the Task Force's view, transitional training (currently articling) is intended to address at least the following five goals ("the five goals"):

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

The Law Society must ensure that any transitional training that is part of its licensing process contributes demonstrably and significantly to the development of competent and ethical entry-level lawyers who have practical problem-solving skills, in addition to academic and analytical ability. The Task Force's discussion and the options it has developed in this report for consultation emerge from two principles:

1. Transitional training, with at least the five goals discussed above, has a valid regulatory *purpose*.
2. For transitional training to be a valid regulatory *requirement* its design, implementation and measurement should be transparent, objective, impartial and fair.

To date, systemic assessments or benchmarks against which to determine articling students' competence have not been part of the licensing process. It is therefore somewhat difficult to objectively measure whether articling, as a regulatory requirement, actually accomplishes its objectives.

If articling is a valuable process, it is essential that as a requirement or prerequisite to entry to the profession it should have objective and demonstrable standards, just as other competency-based regulatory requirements have. The Law Society must be able to,

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

Articling Placement Shortages

It is equally important that transitional training (articling) not have the unintended effect of creating unfair barriers to licensing. The Law Society has been increasingly concerned about the issue of placement shortages for this and other reasons. Most articling placements are located in the larger metropolitan areas and are offered by medium and large firms and government. Those who want experience in sole practices and small firms are less and less likely to find such articling jobs. The unplaced rate for articling students went from 5.8% for the 2007/2008 licensing group in March 2008 to 12.1% for the 2010/2011 licensing group in March 2011. There is no indication that the shortages are related to current economic factors. Moreover, the group of unplaced individuals includes those with good law school grades.

Because the Law Society *requires* completion of articles as a condition of licensing the question for consideration is whether it should be concerned if unfair barriers to licensing exist because there are too few jobs for the number of candidates. The question does not imply that the process must guarantee every candidate for licensing a place *regardless of competence*, but rather speaks to the issue of regulatory fairness.

The statistics reveal that small firms and sole practices no longer play a significant part in the articling system. Whatever the reasons for the lack of small firm placements, it appears unrealistic for the Law Society and the profession to *depend* upon increased law firm hiring to solve the placement shortage issue.

Some have suggested that the Law Society should provide incentives, such as subsidizing certain types of firms to hire articling students. It is important to remember that the Law Society's primary source of revenue is through the licensee annual fee. Any subsidization is paid for by those licensees.

Other possibilities for hiring opportunities have also been brought to the Task Force's attention, largely linked to addressing another of the Law Society's priorities, namely "facilitating access to justice for the people of Ontario." These too have financial implications that are discussed further in the consultation report.

If, as the current trend suggests, placement shortages may now be endemic to the system in its current form, and if the profession continues to believe, as it did in 2008, that it is unacceptable for the Law Society to do nothing to address the issue, it is inevitable that alternatives to the current system must be considered. If, as the Task Force believes, the key to transitional training, whatever its form, is that it address the five goals discussed above, and that its design, implementation and measurement are transparent, objective, impartial and fair, then it is appropriate to consider other means beyond articling for achieving those goals.

Options for Consultation

The background set out in this report underlies the options on which the Task Force seeks comment. The options reflect the broad spectrum of opinion on this issue, but the Task Force points out the relative weakness of some when measured against the goals it believes transitional training should address. In considering each option the relevant questions to consider are whether the option,

- addresses the competency requirements of the licensing process;
- provides measurable standards;
- is fair; and
- may be reasonably implemented.

The five options can broadly be identified as follows:

Option 1: The Status Quo

Under this option the Law Society would continue its current approach, with no major changes to the articling system. Given recent unsuccessful efforts to make an appreciable difference in the number of available placements, this option essentially accepts the notion that the market acts as a gatekeeper to those otherwise qualified licensing candidates and prevents them from completing an essential component of the licensing process. Under this option, the number of positions is dependent upon those who choose for their own varied reasons to become articling principals and the hiring of articling students is left entirely to that market to decide, based on its priorities. Salaries continue to be unregulated, as is location and type of placements. The Law Society might continue to use its best efforts to address shortages through awareness campaigns and publicizing issues and by trying to persuade firms to hire, but the market would essentially govern.

Option 2: The Status Quo with Quality Assurance Improvements

This option adds to Option 1 by accepting that there should be systemic assessments or benchmarks against which to evaluate articling students' competence. Given the Law Society's mandate to ensure that all persons who practise law in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide, this option accepts the need to create systemic quality controls in the current system.

Option 3: The Replacement of a Pre-licensing Transition Requirement with a Post-licensing Transition Requirement

Option 3 is premised on a view that successful completion of the Law Society's licensing examinations is a sufficient threshold for licensing, *if* coupled with specific transitional training for the newly-licensed lawyer based on the employment or practice structure the newly licensed lawyer enters. This approach addresses the challenging nature of sole and small firm practice and the higher risks for complaints and negligence claims that those challenges sometimes engender. Under this option those who are entering these higher risk practice structures would complete transitional training. They could begin working in a sole or small firm practice setting, but at the same time would be required, for example, to complete a rigorous curriculum focusing on sole and small firm practice issues, have a mentor and be assessed during their first year. There would be regulatory implications for failure to meet the requirement. Lawyers who could demonstrate that they are "under supervision" (e.g. in an appropriate employment situation of six or more lawyers) in their specific practice area would not be required to meet any additional requirements *provided* they remain employed in that environment or another supervised environment for a year.

Option 4: A Choice of Either an Articling Requirement or a Practical Legal Training Course (PLTC) Requirement (“after law school” model or “during law school” model)

This option continues articling but, recognizing that increasing placement shortages may pose an unreasonable barrier to licensing, provides a two pronged approach to meet transitional training goals, using a practical legal training course as the alternative. Under Option 4 the Law Society would develop and articulate the standards that candidates completing an articling placement or the PLTC requirement would be obliged to meet. The Law Society would not deliver the PLTC. Rather, third party providers would agree to design and deliver the program, meeting the Law Society’s standards and requirements. As is the case in other jurisdictions, the PLTC could be provided by a number of institutions on a not-for-profit basis and could include law schools or other professional development providers who would design a program to meet the Law Society’s pre-determined standards.

The current articling program would be revised to ensure that the standards are clearly articulated and met. Assessment tools would be developed for both articling and the PLTC students.

The current articling shortages issue would be addressed by the availability of the PLTC option as a viable alternative for many and might become the preferred alternative for some. For those, for example, who want the kind of training they need to establish sole and small firm practice, a PLTC would provide the guidance that the absence of sufficient sole and small firm articling placements currently impedes. At the same time there would be nothing to preclude some of the efforts to increase articling placements that are discussed in the consultation report respecting “access to justice” initiatives. The PLTC requirement would also have a law setting placement requirement, to address one of the goals of transitional training to socialize law graduates to the profession and provide mentoring opportunities. The placement would be unpaid and would be shorter in duration than articling.

The PLTC requirement component of this option requires students to pay for the course. OSAP loans and additional grants for those in need and other sources of funding would be explored. Law graduate debt is an important issue to consider in this option. Given current and likely ongoing placement shortages, incurring some additional debt might be preferable to students than being unable to qualify at all for a license because of an inability to secure an articling placement.

This option would also allow for exploration of the possibility that PLTC could take place either after law school, as described above, or as part of law school education as described by the Carnegie Foundation in its report entitled *Educating Lawyers: Preparation for the Profession of Law*, discussed further in this consultation report.

Option 5: Only a Practical Legal Training Course (PLTC) Requirement

Under this option, articling would be abolished and replaced with a PLTC requirement (whether after or during law school) for *all* candidates for licensing. The PLTC structure already discussed in Option 4 could apply with necessary modifications to reflect that it is the only transitional training approach. The Law Society would set standards and assessment criteria and third parties would deliver the program.

Consultation Process

The issues surrounding articling and transitional training are complex and interwoven. The Task Force welcomes broadly based comments on all the options, as well as more limited comments on particular points. It encourages comments on what it has provided here and comments that go beyond this report. Without in any way seeking to limit or direct input, but to assist those who wish some guidance for their responses the Task Force includes the following questions for consideration:

1. Should transitional training form part of the Law Society's licensing requirements as discussed in this consultation report?
2. If so, has the Task Force accurately described the goals of transitional training as part of the Law Society's licensing process?
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?
4. Should the Law Society address the issue of articling shortages and, if so, how?
5. What are your views on the introduction of financial incentives to encourage increased articling placements? (page 14) Should Law Society fees fund such incentives?
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? (pages 15-16) What is your view of such an initiative being funded through law society fees?
7. Should successful completion of the licensing examinations be a prerequisite to commencing transitional training?
8. What are your views on the five options presented in this consultation report?

INTRODUCTION

History

Legal education in Ontario has changed significantly over the last century. Lawyers were once trained through a system of apprenticeship in which those seeking to join the profession learned their craft by observing and working with established lawyers. There was little or no academic component to their training. Over decades, the system evolved to become one of primarily university-based legal education. Within this current system, however, the Law Society of Upper Canada and the other Canadian law societies have continued the "practice-oriented" philosophy of apprenticeship by requiring those seeking to be licensed to complete a post-law school articling requirement.¹ Although law school curricula have changed over recent decades to include significantly more hands-on training through clinical programs, *pro bono* requirements and student legal aid societies, Canadian law societies and the profession have continued to consider articling as a necessary requirement and prerequisite to licensing.

¹ Law Society licensing processes across the country also include skills training and examinations.

Generations of Ontario's lawyers have met this articling requirement. Although changes have been made to the system over the years, its essential overall reason for being has remained the same - to provide law school graduates with orientation to the "real world" of the legal profession, assist them to understand the role of lawyers in representing clients and as officers of the court, provide guidance on the ethical responsibilities they must address as they navigate their way through professional situations, facilitate mentoring and other networks and provide some exposure to the practice of law as a business enterprise.

The articling system in its present form has been possible to sustain because of the dedication of many thousands of lawyers throughout the province who year after year complement the academic component of legal education by supervising experiential learning, taking their role as mentors and teachers seriously.

Articling is a requirement in Ontario, but it is also a long-standing tradition.²

What has become increasingly apparent over the last decade in particular, however, is that the supply of articling placements is not keeping pace with demand. The Task Force examines the placement issues in detail later in this report, but the important fact to note at the outset is that although the number of practicing lawyers in the profession and the number of candidates seeking to be licensed have risen steadily over the last 10 years, the number of articling positions has remained largely static. See Appendix 1.

While some might argue that these statistics simply point to there being too many law graduates and too many internationally trained candidates seeking to be licensed, the Task Force believes the issue is more complex. Indeed with the "greying of the bar" phenomenon continuing, particularly outside larger metropolitan areas, there may soon be a greater need for lawyers throughout the province. Law societies in Canada have no jurisdiction over the number of students admitted to law schools or international candidates qualifying. Entry to the profession should be based on competence, not unfair barriers.

The placement issue is further affected by the increasingly more restricted location, size and substantive practice profile of those firms choosing to hire articling students, with medium and large firms in larger metropolitan centres and government providing the majority of placements.

² Other professions such as medicine, nursing, teaching, architecture and engineering also require students to meet an experiential training requirement, using a variety of approaches.

In addition, because articling students' competence and performance are not systemically assessed against established standards and because principals are effectively volunteers, the unevenness of students' articling experiences and the quality of the system overall continue to be topics of discussion.³

These issues have become increasingly important to consider given the Law Society's commitment to regulatory requirements that are transparent, objective, impartial and fair. They raise a number of questions, including whether,

- insufficient articling placements are resulting in the requirement becoming an unreasonable and unfair barrier to entry to the profession;
- articling continues to offer sufficiently broad experience across geographic locations, practice areas and firm sizes to ensure that graduates receive experiential learning of a type that will prepare them for the kinds of practices they want to pursue;
- the barrier of insufficient placements and the limitations on the types of available placements has a negative effect on the number of lawyers available to provide legal services to the public across the province; and
- the articling program could be improved through the articulation of standards and systemic development of measurement tools.⁴

³ There are many views on the merits of articling. Some view it as an irreplaceable component of the lawyer licensing process, while others question its merits and quality. For many, it is a realistic and effective transition from law school to practice. Some imbue it with a mystique that militates against analysis - it has always existed and should always exist. Others question whether concerns about placement shortages will result in the "baby being thrown out with the bathwater." For them, the Law Society should not be in the business of guaranteeing placements. They wonder if only the weakest are failing to find placements. In contrast, some believe that because placement depends entirely on what hiring law firms are seeking in future associates, those who do not fit the mould are vulnerable. Still others wonder whether there is any evidence that the American legal education model, which does not include articling, produces lawyers of lesser competence than the Canadian model. A number of people have also begun suggesting that inventive solutions to placement issues could also address access to justice issues.

⁴ Currently, the primary objectively measurable component of the articling process that the Law Society requires relates to the professional responsibility and practice management "course" articling students must complete in conjunction with their articles. It contains four modules - professional responsibility, client communication, managing a client file and practice management. Following completion of the course the student must complete a professional responsibility and practice management assessment.

The Law Society has studied the issue of articling shortages a number of times,⁵ most recently in 2008. Despite efforts to address placement shortages, their continuation and the increasing numbers resulted in the establishment in June 2011 of this Articling Task Force (“the Task Force”).⁶

The Task Force’s mandate is broad. In addition to challenges facing the current articling program, including the increasing number of unplaced candidates, it is considering the competency-related principles that articling is intended to address and its effectiveness, the articling program in the context of the licensing process overall and additional or alternative approaches to articling.

A number of commentators have suggested that articling can no longer be treated as the “sacred cow” of the licensing process. The Task Force agrees. Although articling has been a long-standing part of the licensing process and many lawyers in practice today (some of whom are now principals) feel strongly that it is a valuable and essential part of the legal learning process, its continued value and viability must be open to discussion and debate if it is to be able to stand up to and address the challenges that it currently faces.

Why does articling exist in the year 2011? Does it accomplish what it should be accomplishing? Can its results be measured and is there consistency across the system? Is it the only approach that can accomplish these goals? What are the causes of placement shortages? How can the issue of shortages be analyzed and resolved as part of an overall assessment of the merits of articling? Are there “solutions” to the articling shortages situation that have yet to be explored? Is it the profession’s responsibility to solve the issue or should the market be left to govern?

In considering articling issues and the options for addressing them the Task Force has benefited from the research and reports that have previously studied this and related issues, both in Canada and internationally. The Task Force provides a range of options for input, some of which have appeared in previous consultations on articling. It provides its views on the issues that arise under each option for the purpose of facilitating discussion. The input the Task Force receives in this consultation process will inform its next steps and ultimate recommendations to Convocation.

This issue is complex. The profession is highly engaged in the debate about the issues and how to address them. Whatever views lawyers, law societies, the legal academy, law students and others have about articling they are passionate about the issue, a fact that can only benefit the discussion to come.

⁵ See the 1972 Report of the Special Committee on Legal Education, the Law Society’s 1990 report entitled *Proposals for Articling Reform* (The Epstein Report) and the 2005 Report of the Task Force on Employment Opportunities for Articling Students (The Carpenter-Gunn Report). The 2008 Licensing & Accreditation Task Force (the L&A Task Force) articulated its concern with articling shortages and consulted the profession on a number of options to address the issues. Given the strong support for the continuation of articling expressed during that consultation, the L&A Task Force focused its final recommendations on renewed efforts to increase the number of placements. Those efforts have not resolved the issue.

⁶ The Task Force’s amended mandate (September 2011) and its membership are set out at **Appendix 2**.

This consultation report is intended to foster and stimulate constructive engagement on meaningful solutions to the issues, rather than proposals that will result in band-aid remedies or ad hoc approaches to the problem.

The Task Force is optimistic that interested parties and, in particular the profession, will consider this consultation report with the clear and unsentimental eye that the articling issue merits and which current circumstances necessitate.

The profession, legal organizations, law firms, law societies, the Federation of Law Societies of Canada, law schools and any others interested in the issues discussed here are encouraged to provide written comments, which will be accepted until March 15, 2012. Thereafter, the Task Force will consider the comments and prepare its final report by May 2012, in keeping with the terms of its mandate.

COMPETENCY-RELATED PRINCIPLES THAT ARTICLING IS INTENDED TO ADDRESS, AND ITS EFFECTIVENESS IN DOING SO

The Licensing Process

The focus of the Law Society's licensing process is to ensure that candidates have demonstrated that they possess the required competencies at an entry level to provide legal services effectively and in the public interest. For lawyer licensee candidates, that process currently includes licensing examinations and articling. The former represents a tool to measure whether candidates for licensing have acquired certain predetermined barrister and solicitor competencies grounded in the context of substantive law subjects.

As a component of that licensing process, articling is presumed to contribute to the acquisition of entry level competencies, as part of necessary "transitional training" between law school and practice.

Transitional Training

Transitional training is part of a continuum of learning that interweaves theory with practice, a process that should continue throughout a competent lawyer's career. Properly undertaken, transitional training should assist students to integrate and apply knowledge, skills and attitudes of the profession they are joining in a practical context. In his book, *Continuing Learning in the Professions*, Cyril O Houle writes,

The lives of some men and women are structurally shaped by the fact that they are deeply versed in advanced and subtle bodies of knowledge, which they apply with dedication in solving complex problems. They learn by study, apprenticeship, and experience, both by expanding their comprehension of formal disciplines and by finding new ways to use them to achieve specific ends, constantly moving forward and backward from theory to practice so that each enriches the other.⁷

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

⁷ Cyril O. Houle, *Continuing Learning in the Professions*, Jossey-Bass Publishers, 1981, p. 1.

1. Application of defined practice and problem solving skills through contextual or experiential learning.⁸
2. Consideration of practice management issues, including the business of law.
3. Application of ethical and professionalism principles in professional, practical and transactional contexts.
4. Socialization from student to practitioner.⁹
5. Introduction to systemic mentoring.

The profession may have an additional perspective on the purpose of transitional training, particularly in the articling context. It may view it as a vehicle through which firms have the opportunity to assess the next generation of lawyers, evaluate law school education, consider whom they may wish to hire following licensing, and advance their firm's succession plan by considering the addition of associates. Firms may also see transitional training as part of their mentoring responsibility to assure continuity from one generation to the next within the profession. From articling students' perspective the process may be seen as providing a setting in which to explore post-licensing employment opportunities.

While the profession's perspective is important, what is paramount for the Law Society is ensuring that any transitional training that is part of its licensing process contributes demonstrably and significantly to the development of competent and ethical entry-level lawyers who have practical problem-solving skills, in addition to academic and analytical ability.

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

1. Transitional training with at least the five goals discussed above, has a valid regulatory *purpose*.
2. For transitional training to be a valid regulatory *requirement*, its design, implementation and measurement should be transparent, objective, impartial and fair.

The Effectiveness of the Current Articling Program

In considering the effectiveness of the current articling program as transitional training, the Task Force first addresses whether it accomplishes the two principles.

⁸ e.g. File and practice management, client interviewing, advising, fact investigation, research, planning and conduct of a matter or transaction, negotiation, drafting, legal writing, advocacy.

⁹ This may include opportunities to explore different practice areas and practice structures, develop an understanding of practical realities of practice and begin building the social network that is vital to a successful career in a learned profession.

Few would disagree that the long tradition of articling has been theoretically based on the five goals discussed above. Indeed, many articling programs have sophisticated systems in place to ensure that a broad range of “practical” learning takes place. Many smaller firms provide meaningful one on one mentoring and teaching of students, inculcating them with values and insights the principal has learned about practice.

Although the Law Society has always had some regulatory influence over the apprenticeship or articling phase of lawyer qualification, the process has been and continues to be primarily left to articling principals to direct and implement. Most lawyers remember their articling experience as having been a valuable one, but the reasons for this are as varied as the lawyers who have been through the process. At the same time, some lawyers have described negative articling experiences and even, on rare occasions, concerns about how a principal approached his or her responsibility. Further, since 71% of articling placements are in medium and large firms and government, but the majority of practice structures in Ontario are firms of five or fewer lawyers, the articling experience may not be providing the transitional training that covers all types of practice.

It is generally, anecdotally accepted that articling experiences vary, often depending upon the type and size of firm, dedication of principals, nature of the law firm’s work, the principals’ faith in the individual student’s ability, the business model of the firm, client wishes, the amount of work available in the practice and other variables that may have little to do with the competency-related goals of articling.

Despite the Law Society’s introduction of well articulated goals and objectives for articling and a statement on the obligations of principals,¹⁰ a process for assessing the consistency of articling experiences across the province does not exist. To date, systemic assessments or benchmarks against which to determine articling students’ competence have not been part of the licensing process. It is therefore somewhat difficult to objectively measure whether articling, as a regulatory requirement, actually accomplishes its goals. The evaluation of the system falls back upon anecdotal evidence or vague generalizations,¹¹ often with no empirical evidence to back them up. Thus, although the system may well be accomplishing its goals the Law Society cannot demonstrate, through objective measures, that it is doing so.

The Law Society has only limited influence on principals under the current system. The role of the articling principal is a voluntary one and principals who find it too onerous may simply cease to act. When the Law Society introduced a number of reforms to the articling process in 1990¹² designed to enhance the quality of articles, some principals ceased taking articling students on the basis that the administrative work was too onerous. Subsequent changes again reduced the requirements on principals, with the goal of increasing the number of lawyers prepared to perform this function.

Without a standardized assessment tool against which to ground their evaluation of articling students, principals with concerns about a student’s competence or understanding of ethics may

¹⁰ See **Appendix 3**.

¹¹ e.g. Articling must be good because relatively few lawyers end up in discipline; articling hiring weeds out the weakest candidates; articling exposes articling students to the rigours of working in a law office.

¹² Epstein report, *op cit*.

be reluctant to stand in the way of the student's progression toward licensing after such a lengthy educational process. Articling students may be reluctant to complain about a principal given the possibility or perception that the principal might then use his or her influence against them in the future.

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

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

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

THE SHORTAGE OF ARTICLING PLACEMENTS

If, as the Task Force states, it is essential that a transitional training requirement, such as articling, be able to demonstrate that it meets regulatory competency-based objectives, it is equally important that it not have the unintended effect of creating unfair barriers to licensing. The Law Society has been increasingly concerned about the issue of placement shortages for this and other reasons.

The Task Force has considered the placement statistics, the geographic and firm location of placements, the efforts the Law Society has made since 2008 to increase the number and diversity of placements, the increase in the number of applicants for jobs and the likelihood of that trend continuing, current economic conditions, the demographics of the unplaced law graduates and the possibility of new sources for placements.¹³

The information on placements set out in Appendices 4 and 5 reveals the following:

¹³The Task Force was aided in this inquiry by the May 2011 Professional Development & Competence Department Resource and Program Report (The PD&C Report) that includes a section addressing the articling program in detail. Relevant sections of that report are set at **Appendix 4**. The Professional Development & Competence Department 2010 Placement Report is set out at **Appendix 5**. The timing of the statistical reports makes it difficult to correlate numbers directly. For ease of reference reports are based on calendar years. In fact, articling placements and licensing are constantly shifting as candidates move in and out of the process. As well, to the extent the Task Force is considering demographic representation, the statistics are limited to those candidates who have voluntarily self-identified as coming within a particular group. Despite these limitations, the Task Force is satisfied that the information it has considered provides a reasonably accurate portrait related to placement issues.

- a) Sixty-five percent of all articling positions are located in Metropolitan Toronto. Ottawa, London, Hamilton and Windsor are the next most represented articling locations. Only 2% of placements can be found in the Northwest and Northeast regions of the province.
- b) The majority of placements (71%) are in medium to large size law firms.
- c) The number of candidates for licensing seeking placements has been increasing steadily. The likely reasons for this increase include the addition of new law schools, increases in the number of places offered at established law schools and increases in the number of internationally educated applicants seeking entry to the Law Society's licensing process.¹⁴ Ontario Law School Enrolment between 2001 and 2011 reveals a range of increases across schools, with the lowest at 1.2% and the highest at 33.2% as follows:

School	2001	2011	% increase
Osgoode Hall	291	297	2.1
University of Toronto	181	214	15.4
University of Windsor	179	195	8.2
University of Western Ontario	142	165	13.9
University of Ottawa	197	295	33.2
Queen's University	162	164	1.2
Total	1152	1330	15.5

In the 2007/08 licensing year there were 93 international candidates registered. In the 2010/11 licensing year there were 272 international candidates registered.

- d) The size of the profession has grown significantly over the last 10 years. In the 100% fee paying category (practicing lawyers), in 2001-2002 there were 23,833 lawyers and in 2011 there are 31,984. In contrast, the number of law firms hiring students has remained more or less unchanged. Growth in the number of articling placements appears unlikely in the future.

Economic uncertainties that have occurred since 2008 have not significantly reduced the number of articling placements. Shortages are not grounded in the current economic situation. Indeed, medium and large firms continue to hire back a significant percentage of their articling students. The relatively small percentage of placements in the north and overall in firms of one to ten lawyers is not a new or short term situation.

- e) Between March 2008 and March 2011 the statistics on unplaced candidates are as follows:

March 2008, unplaced rate for 2007/2008 licensing group	81 of 1391 = 5.8%
March 2009, unplaced rate for 2008/2009 licensing group	125 of 1493 = 8.3%
March 2010, unplaced rate for 2009/2010 licensing group	115 of 1496 = 7.7%
March 2011, unplaced rate for 2010/2011 licensing group	214 of 1767 = 12.1%

¹⁴ The latter includes both Canadians who attend law school outside of Canada and then return to be licensed by the Law Society and those who are lawyers in international jurisdictions who seek to re-qualify in Canada and be licensed in Ontario.

Unplaced candidates from one year, who continue to look unsuccessfully for articling placements in subsequent years, will increase the unplaced statistics, year over year.

- f) To the extent that there is a preconception that unplaced candidates come solely from among those whose marks are below average, the law school grade average of students from the six Ontario law schools¹⁵ who were unplaced in 2010 contradicts this view. The group of unplaced individuals includes those with good grades. See Appendix 6.
- g) In 2010 26.6% of the total number of candidates in the licensing process voluntarily self-identified as belonging to the following groups:

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%

Ninety percent of all 2010 Licensing Process candidates had secured an articling placement by June 2011. This figure had decreased by 3.1% as compared to the previous year. Of the 26.6% of licensing process candidates who had identified themselves as being from an equality seeking group 86% secured an articling placement, 4% lower than the group overall.¹⁶

The Implication of the Placement Shortages

There are some in the profession who suggest that insufficient numbers of articling placements is not a Law Society responsibility. Just as not everyone who applies to law school is accepted, in many cases despite excellent marks and qualifications, so graduation from law school should not be a guarantee of an articling job. Those who do not obtain an articling placement with their cohort are free to continue to seek employment for a number of years and many eventually find work, even if it is not their first or second choice. Moreover, the argument goes, there must be jobs outside of the more urban locations that go unfilled because candidates do not wish to re-locate. This is a choice and those who choose not to take those opportunities (however limited they may be in number) are not really part of the unplaced.

In the Task Force's view, there is a distinction between the law school analogy and the mandatory current requirement to complete articles prior to licensing. In the case of the law school applicant, there has been no investment in the process at the point of refusal of entry. Those who fail to obtain articling positions have in most cases invested three years in a process that they are at least impliedly led to believe, if they apply themselves, leads to licensing.

Because the Law Society *requires* completion of articles as a condition of licensing, the question for consideration is whether it should be concerned if unfair barriers to licensing exist because there are too few jobs for the number of candidates. The question does not imply that the process must guarantee every candidate for licensing a place *regardless of their competence*, but rather speaks to the issue of regulatory fairness.

¹⁵ These statistics do not include grades for NCA candidates, who are accepted into the Law Society's licensing process once they have obtained a Certificate of Qualification from the NCA.

¹⁶ Placement Report, 2010. Appendix 5.

The Law Society of Scotland's website advises that before embarking on the study of law a person should "be aware that acceptance by a university law faculty does not guarantee future employment in the legal profession in Scotland, nor even a place in the vocational post-graduate Diploma in Legal Practice."¹⁷

The profession's views on the Law Society adopting such an approach will presumably be reflected in the consultation process through support for some options over others. In the 2008 consultation process, however, the profession did not endorse this approach.

Possible Increase in Placements

A discussion of shortages in the past has invariably led to consideration of whether the number of available placements could be increased. The Task Force has considered those previous discussions as well as addressing the issue itself.¹⁸

Sole Practices and Small Firms

The statistics reveal that small firms and sole practices no longer play a significant part in the articling system. This has implications not just for the ability of students to find jobs, but potentially for longer term access to justice issues. Without the opportunity to observe and be mentored by lawyers with practices in diverse geographic locations, in sole and small firm settings, or with principals from equality-seeking groups who often practise in such settings and could be mentors to the next generation of lawyers from these groups, new graduates may choose not to offer these kinds of services or practise in these settings themselves. The greying of the bar means that legal service providers are decreasing in these settings, making it more difficult for Ontarians to find the legal representation they need.

A combination of factors and perceptions may contribute to fewer articling placements in sole practices and small firms:

- Small firms cannot, or believe they cannot, compete with large firm salaries and summer hiring to attract the best candidates.
- Graduates do not want to leave Toronto, Ottawa and some of the other large centres such as Windsor, London and Hamilton.

¹⁷ <http://www.lawscot.org.uk/becomingasolicitor/students/studying-the-llb>

¹⁸ In 2008 the Licensing & Accreditation Task Force concluded the following:
 ...while the enthusiasm with which the profession supported articling in this consultation process is heartening, it will be of limited value if not accompanied by a commitment among those who have not traditionally hired students to now do so. The willingness of more lawyers to play a role in training the next generation is essential to a re-vitalized articling program.

L&A Task Force Report, September 25, 2008. Executive Summary. See **Appendix 7**. Following the L&A Task Force's report the Law Society undertook a survey of the profession to consider the placement numbers and the possibility of an increase in placements among the province's law firms. The PD&C Report (Appendix 4) sets out the process undertaken to survey the profession and its results. Although 7749 of 8209 firms in the province participated in the survey, no additional positions have emerged from the process.

- Paying articling salaries would reduce the hiring lawyer's or firm's earnings.
- It is time consuming and inconvenient to train articling students.
- Office spaces may not be physically large enough to accommodate articling students.
- In smaller communities, in particular, articling students may become competition once licensed. Correspondingly, firms in smaller communities may not be prepared to train articling students they perceive will leave for larger cities immediately after articles are completed.
- Some firms may be unaware of the value of articling students to their firm growth and succession planning.
- Some practices do not have sufficient work to delegate to an articling student.

Whatever the reasons for the lack of small firm placements, it appears unrealistic for the Law Society and the profession to *depend* upon increased law firm hiring to solve the placement shortage issue.

Hiring Incentives

Some have suggested that the Law Society should provide incentives to encourage an increase in articling placements or encourage students to go outside metropolitan areas. The incentives within the Law Society's control that have been suggested most often include,

- subsidizing certain types of firms to hire articling students; and/or
- capping all articling salaries (\$45,000 has been suggested as a reasonable figure), so small firms would be more attractive options or large firms could hire more students for the same amount of money they are now paying one student;¹⁹ and/or
- forgiving certain fees for articling students who take jobs outside the larger centres to encourage them to leave the larger metropolitan centres.²⁰

It is important to remember that the Law Society's primary source of revenue is through the licensee annual fee. Any subsidization would be paid for by those licensees. In the case of subsidizing law firms to hire articling students, this would mean that lawyers in firms already hiring law students would also be subsidizing other lawyers to hire and, if the levy was across

¹⁹ There is no empirical evidence to evaluate whether capping salaries would accomplish either of the results set out here.

²⁰ There may be reasons beyond law graduates' control for not locating to smaller centres. These include family responsibility, high debt loads that necessitate seeking higher paid articles, housing considerations, availability of articles in the area of practice the graduate plans to pursue, etc.

the profession, lawyers being subsidized would be contributing. The process would presumably require a determination of what criteria an applicant for subsidy should meet and perhaps some kind of “means testing” to determine why a firm required a financial subsidy. Moreover, if this approach is being proposed on the basis that it can make a substantial difference in the shortage issue it would need to provide at least 100 - 200 placements. Depending upon the size of the subsidy this could add substantial amounts to licensees’ annual fees.

Since factors other than monetary ones also appear to be influencing the reluctance of smaller firms to hire articling students, however, it is questionable whether incentives alone would resolve the issue. Moreover, if the discussion about objective and measurable standards in the articling process ultimately entails more duties and responsibilities on principals, the willingness to hire articling students may be further reduced, regardless of subsidy.

Addressing Access to Justice

Other possibilities for increasing placements have been brought to the Task Force’s attention, largely linked to addressing another of the Law Society’s priorities, namely “facilitating access to justice for the people of Ontario.”²¹ Access to justice issues include the need for better access to legal services for low income Ontarians, Ontarians living in regions outside the major metropolitan areas of the province and equality-seeking groups.

To date the suggestions the Task Force has heard include,

- Legal Aid Ontario providing an incentive to lawyers who accept legal aid to hire articling students, by increasing the amount they may bill if they use an articling student;²²
- the Law Foundation of Ontario increasing funding to augment the number of articling students working in not-for profit organizations and clinics;²³ and

²¹ As the regulator of the profession in the public interest and a central participant and sponsor of the Ontario Civil Legal Needs Project, the Law Society is concerned about the number of Ontario’s citizens who are self-represented or unrepresented in legal matters. This issue affects the public across the country and law societies are all making efforts to address it. The Task Force has noted the Law Society of British Columbia’s recent approval of changes to its rules to permit articling students to provide all the legal services a lawyer is permitted to provide, with some exceptions. The articling principal is responsible for ensuring that the student is competent and prepared and remains responsible and accountable for the actions of articulated students. http://www.lawsociety.bc.ca/docs/bulletin/BB_2011-03-fall.pdf, p.7

²² Clayton Ruby, “A Proposal for Improving Access to Justice,” <http://www.lawyersweekly.ca/index.php?section=article&articleid=1527>

²³ See: <http://www.lawfoundation.on.ca/fellowships.php>. Currently in Ontario there are 78 community legal clinics and 6 clinic programs in law schools. There are articling positions in some clinics, but a number of clinics have none. The Law Foundation of Ontario funds articling positions, many of which are awarded to clinics. Given that clinics provide legal services for low income Ontarians who may still not be eligible for legal aid and specialized clinic services for equality-seeking groups, additional articling students in these settings could, in theory, address both the access to justice issue and the articling shortage.

- the establishment of a body made up of lawyers and articling students to provide legal representation to underserved communities across the province and specialized clinic and other legal services for various equality-seeking groups.²⁴

As with the discussion about hiring incentives above, these suggestions have financial implications. The first two suggestions are not within the Law Society's control. Given the financial constraints under which both Legal Aid Ontario and the Law Foundation of Ontario are currently operating, it is not clear whether these suggestions could provide sufficient jobs to significantly reduce placement shortages.

The third suggestion is an ambitious one and, as described, would require significant planning and organization. To be financially viable it would likely entail a levy on the profession. If it were intended to develop sufficient jobs to substantially address the shortage issue (200 might be estimated) and \$45,000 were used as the annual salary, this could require approximately \$9,000,000 or \$250 per lawyer licensee a year for salaries alone.

Alternatives to Articling

If, as the current trend suggests, placement shortages may now be endemic to the system in its current form, and if, the profession continues to believe, as it did in 2008, that it is unacceptable for the Law Society to do nothing to address the issue, it is inevitable that alternatives to the current system must be considered.

Other jurisdictions have introduced alternatives to articling, most notably states in Australia that have professional legal training programs either instead of articling or in addition to it. The Task Force has researched these jurisdictions and how an approach along those lines could operate in Ontario.²⁵

If, as the Task Force believes, the key to transitional training is that, in whatever form, it addresses the five goals discussed above and that its design, implementation and measurement are transparent, objective, impartial and fair then it is appropriate to consider other means beyond articling for achieving those objectives.

THE RELATIONSHIP OF THE LICENSING EXAMINATIONS TO TRANSITIONAL TRAINING

The Law Society offers the barrister and solicitor licensing examinations three times per licensing year in June, November and March. The majority of lawyer candidates write their

²⁴ It is suggested that this system could provide hundreds of articling placements, address access to justice issues in a concrete way and facilitate the development of demonstrable articling standards that could be applied across the system. Although third party funding could also be sought for this approach, it has been suggested that the profession itself could be levied as a way to contribute to the development of the next generation of lawyers and to reflect its commitment to access to justice. This approach would provide stable funding and would allow the many members of the profession who cannot take on an articling student to nonetheless contribute to the continuation of the articling system they believe to be a valuable process. For an articulation of this approach see SLAW, Adam Dodek <http://www.slaw.ca/2011/10/25/articling-and-access-to-justice-an-ontario-legal-corps-why-not/>.

²⁵ For a discussion of the development in Victoria, Australia of training contract standards and a Practical Legal Training Course (PLTC) see **Appendix 8**. This is relevant to Options 4 and 5 discussed below.

examinations in the first available examination session following registration in the licensing process. Most of those rewriting an examination or splitting examination writings complete the process within one year.

The focus of the licensing process is to ensure that candidates have demonstrated the required competencies at an entry level to provide legal services effectively and in the public interest. Entry-level competency assessments should be vigorous and measure appropriate skills and knowledge. Any process must be flexible enough to provide a fair amount of time within which to satisfy the requirements and a reasonable opportunity to attempt failed examinations again, while at the same time paying attention to the process's credibility as a licensing tool.

The Law Society's licensing examination development process is a thorough, objective, validated one. The licensing examinations are the component of the licensing process that evaluates substantive competence in specified practice areas. A summary of the process is set out at Appendix 9.

There may be merit in requiring that successful completion of the licensing examinations be a *prerequisite* to commencing articling or transitional training. Currently, whereas most candidates for licensing complete their examinations at the June sitting before their articling term begins, some do not. The Task Force suggests that successful completion of the licensing examinations enhances the competency-based foundation that the licensing process should model. For some of the options in this consultation report that propose alternatives to the articling requirement, the completion of the licensing stage before the "experiential" phase begins may be advisable.

OPTIONS

The background set out in this report underlies the options on which the Task Force seeks comment. The options reflect the broad spectrum of opinion on this issue, but the Task Force points out the relative weakness of some when measured against the objectives it believes transitional training should address.²⁶ In considering each option the relevant questions to consider are whether the option,

- addresses the competency requirements of the licensing process;
- provides measurable standards;
- is fair; and
- may be reasonably implemented.

The five options discussed here can broadly be identified as follows:

Option 1: The Status Quo

Option 2: The Status Quo with Quality Assurance Improvements

Option 3: The Replacement of a Pre-licensing Transition Requirement with a Post-licensing Transition Requirement

²⁶ Although the Task Force presents five options for comment and input in this consultation report, there may overlap among the options and additional options that those providing input should feel free to suggest. The Task Force is, however, of the view that the options presented reflect a reasonable range for discussion and input.

Option 4: A Choice of Either an Articling Requirement or a Practical Legal Training Course (PLTC) Requirement (“after law school” model or “during law school” model)

Option 5: Only a Practical Legal Training Course (PLTC) Requirement

Option One: The Status Quo

Under this option the Law Society would continue its current approach with no major changes to the articling system. Given recent unsuccessful efforts to make an appreciable difference in the number of available placements, this option essentially accepts the notion that the market acts as a gatekeeper to those otherwise qualified licensing candidates and prevents them from completing an essential component of the licensing process. The number of positions is dependent upon those who choose for their own varied reasons to become articling principals. The hiring of articling students is left entirely to that market to decide, based on its priorities. Salaries continue to be unregulated, as is location and type of placements. The Law Society may continue to use its best efforts to address shortages through awareness campaigns and publicizing issues and by trying to persuade firms to hire, but the market essentially governs.

Under this option the Law Society would convey to those entering law schools that they may not find articling placements, with data to explain the degree of risk. This approach is accepted elsewhere. The Law Society of England and Wales, no longer the regulator of solicitors, but rather its representative body, explains on its website the challenges inherent in studying to become a solicitor.²⁷

Members of professions in Canada and elsewhere already accept this market-based approach for the post-licensing stage. No one suggests that, once licensed, lawyers or other professionals should be guaranteed employment.

In this option, there would be no changes to the substance of the articling program to institute more effective tools to assess quality. In addition, this option does nothing to address the fact that for the many graduates who will ultimately enter sole and small firm practice there is little likelihood of their obtaining articling experiences in these types of practices.

In 2008 the profession rejected an option in the L&A Task Force consultation report that was similar to this option. For reasons discussed in earlier sections of this report, this Task Force questions whether this option is viable in the long term, either from a competence or fairness perspective.

Option 2: The Status Quo with Quality Assurance Improvements

This option adds to Option 1 by accepting that there should be systemic assessments or benchmarks against which to determine articling students’ competence. Given the Law Society’s mandate to ensure that all persons who practise law in Ontario meet standards of

²⁷ <http://www.lawsociety.org.uk/careersinlaw/becomingasolicitor.page> It is an accepted fact in England and Wales, among both barristers and solicitors, that being able to meet all the apprenticeship requirements (both pre and post-licensing) may not be possible due to a limited number of placements.

learning, professional competence and professional conduct that are appropriate for the legal services they provide, this option accepts the need to create systemic quality controls in the current system.²⁸ In this option, the quality assurance improvements could include some or all of the following:

- A requirement that licensing examinations be successfully completed before articling begins.
- An evaluation of requirements for principals - qualifications, training, etc.
- The establishment of clear standards for what kind of articling placements would be acceptable.²⁹
- The development of measurement tools or assessments reflecting the goals of the articling requirement, including that,
 - o principals be required to demonstrate how they meet certain established criteria for training articling students; and/or
 - o articling students be required to successfully complete assessments to demonstrate they have met the goals of articling; and/or
 - o workplace audits be conducted regularly.

Implementation of this option could, of course, result in fewer firms being prepared to hire articling students. If past experience with attempted changes to the program to improve quality is any guide, such a result, at least in the short term, is likely. In this option, with no alternatives to articling presented, quality assurance improvements may lead to further increases in placement shortages.

Nonetheless, this option emphasizes that the quality assurance issue is an important one. The only true rationale for articling or transitional training is that it contributes to competence.

Option 3: The Replacement of a Pre-Licensing Transition Requirement with a Post-Licensing Transition Requirement

²⁸ Appendix 3 sets out the objectives that the Law Society has already articulated for the articling component of the licensing process, expressed as tasks and skills that should be completed or achieved during the training period. They are broadly stated and provide flexibility in the way in which articling students and principals can achieve them. Option 2 could continue to use these as standards for the articling program or undertake the development of new or additional standards and would include the creation of demonstrable measurement tools to assess the delivery and acquisition of the program objectives. This addition would enhance the Law Society's quality assurance responsibility to the public, articulated in the *Law Society Act*, and provide greater consistency and value to the program.

²⁹ For example, in Ontario students are given full articling credit for clerking at the various courts. Other provinces do not allow this on the basis that although the experience is a valuable one it is too narrow to satisfy the goals of articling.

Although the Task Force discussed the abolition of articling with no replacement, it determined that this would not be in keeping with the Law Society's mandate. Transitional training is a valuable and necessary component to enhance the quality and preparedness of new lawyers. While the American licensing process operates without any transitional training requirement, it is interesting to note that U.S. studies on the reform of legal education often comment on articling as an illustration of valid transitional experiential training. In 2008, the L&A Task Force's consultation options included the abolition of articling. Those who commented on the option overwhelmingly rejected it.

Having chosen not to include abolition as an option, however, the Task Force nonetheless examined whether the pre-licensing requirement could be replaced with a more focused requirement, post-licensing. The Task Force is of the view that there is nothing per se that precludes transitional training occurring at a point other than immediately following law school and before licensing. Legal education is frequently described as a continuum that begins with law school and continues throughout a lawyer's career. Throughout that process, the lawyer's knowledge, skills, experience and ability are said to increase and become more subtle and sophisticated. Transitions occur as a person moves from law student to newly-licensed lawyer to more experienced lawyer, along a continuum. The Task Force has identified the five goals of transitional training. It is possible for these to be addressed at various points along the continuum.

Option 3 is premised on a view that that successful completion of the Law Society's licensing examinations is a sufficient threshold for licensing, if coupled with specific transitional training for the newly-licensed lawyer based on the employment or practice structure the newly-licensed lawyer enters. This approach addresses the challenging nature of sole and small firm practice and the higher risks for complaints and negligence claims that those challenges engender. The Law Society already directs additional supports, safeguards and requirements to newly-licensed and other lawyers in these groups.³⁰

Under Option 3, those who are entering these higher risk practice structures would complete transitional training. They could begin working in a sole or small firm practice setting, but at the same time would be required, for example, to complete a rigorous curriculum focusing on sole practice issues, have a mentor and be assessed during their first year. There would be regulatory implications for failure to meet the requirement.

Lawyers who could demonstrate that they are "under supervision" (e.g. in an appropriate employment situation of six or more lawyers) in their specific practice area would not be

³⁰ Beginning in 2007, for example, the Law Society implemented a Convocation approved practice management review program for lawyers in private practice one to eight years from licensing, regardless of the size of their practice. In the reviews completed between January 2007 and June 2008 reviewers found that lawyers in firms of five or fewer fell below minimum standards significantly more often than lawyers in firms of six or more. In November 2008 Convocation agreed with the recommendation of the PD&C Committee that the selection criteria be refined to focus on providing assistance and resources to those who could benefit the most from them, namely those in sole and small firms. In the case of those lawyers in firms larger than six lawyers, it would appear that systemic controls provide greater opportunity for internal training and support, giving newly-licensed lawyers the transitional experiential training they need.

required to meet any additional requirements, *provided* they remain employed in that environment or another supervised environment for a year. This is based on a risk factor analysis that those under supervision in larger practice settings are less likely to run into difficulty, often receiving transitional training within the firm structure. At the same time, however, those who employ and supervise these newly-licensed lawyers would have to confirm that they address pre-specified supervisory criteria, such as formal mentoring and provision of certain kinds of CPD and training.

Although this option has the benefit of focusing resources on higher risk practice areas, its limitation is that it does so while the lawyer is actually delivering services to the public. Even with educational requirements, rigorous mentoring and an assessment component it may be difficult to monitor a lawyer's progress, making the effectiveness of this option as a quality assurance program difficult to ensure. Moreover, the implication of a regulatory intervention if the lawyer does not meet the requirement is complicated by the fact that the lawyer would have clients whose legal services may be disrupted.

In contrast to this approach, other jurisdictions prohibit newly-licensed lawyers from obtaining a practising certificate that allows them to be in sole or small firm practice until they have worked under supervision for a year or more.³¹ The Task Force has not pursued this as a possibility under this or any other option, but those commenting may wish to address this issue.

This option also leaves open for discussion the question of whether sole and small firm practice is sufficiently unique that lawyers moving from other supervised settings to sole and small firm practice, regardless of their year of licensing, should also be required to meet transitional requirements.

Finally, since this option would create a system very different from that used by other law societies in Canada, it could have implications for mobility and other national initiatives.

Option 4: Either an Articling Requirement or a Practical Legal Training Course Requirement ("after law school" model or "during law school" model)

This is the most multi-layered of the options. It would also appear to be the broadest and potentially most inclusive approach. Its focus would be on assuring a competency-based approach to transitional training, with alternative ways to meet the requirement. This option respects articling but, recognizing that continuing shortages may pose an unfair barrier to licensing, provides a two-pronged approach to meet transitional training goals, using a practical legal training course as the alternative. It also raises the possibility, for discussion, of the alternative to articling occurring either after law school or during the law school program.

³¹ In jurisdictions in Australia there is a post-licensing requirement that new lawyers must work in supervised settings for a specified period, between 18 months and two years, before they can practise unsupervised. This requirement exists in addition to a pre-call training contract or practical legal training course requirements. In a more limited way, the Law Society has accepted this premise to some degree by requiring newly-licensed lawyers to take focused CPD and those in practice in firms of five or fewer lawyers to undergo a practice review within the first eight years of practice. Law Society of Upper Canada. By-Law 11, clause 27(1) (b). The Task Force is not suggesting an additional period of supervision under options 4 or 5.

a) Practical Legal Training Course (PLTC) – “After Law School” Model

(i) Program Delivery

In general, under Option 4 the Law Society would develop and articulate the standards that candidates completing an articling placement or the PLTC requirement would be obliged to meet. The Law Society would not deliver the PLTC. Rather, third party providers would agree to design and deliver the program meeting the Law Society’s standards and requirements. As is the case in other jurisdictions, the PLTC could be provided by a number of institutions on a not-for-profit basis, including law schools or other professional development providers who would design a program to meet the Law Society’s pre-determined standards. This could be a collaborative developmental process.

The current articling program would be revised to ensure that the standards are clearly articulated and met.

(ii) Law Firm Placements

(a) For Articling

As articling will continue to exist under this option there would continue to be a demand for paid articling placements, but the phenomenon of unplaced candidates would be addressed by the availability of a PLTC. The PLTC option would provide a viable alternative for many and might become the preferred alternative for some. For those, for example, who want the kind of training they need to establish sole and small firm practices, a PLTC would provide the guidance that the absence of sufficient sole and small firm articling placements currently impedes.

At the same time, there would be nothing to preclude the kinds of initiatives to increase articling placements that have been discussed in the section on “access to justice” discussed above.³²

(b) For PLTC

The PLTC requirement would also have a law setting placement requirement, to socialize law graduates to the profession and provide mentoring opportunities, but the placement would be unpaid and would be shorter in duration than articling. Short term placements in firms might be more readily available if the firms are not required to pay the students.

Since the PLTC placements would be in addition to the articling placements, this is one of the challenges for this option. Third party providers interested in offering the PLTC would be

³² pp. 15-16.

required to address this issue, committing to the delivery of an approach that includes a placement component.³³ Ideas and input on this would be welcome during this consultation process. It may be that third party providers could themselves pursue some of the placement suggestions discussed above.

(iii) Assessment Tools

Assessment tools would be developed for both articling and PLTC students. While it might be open to develop somewhat different tools to reflect the differences in the two streams, both would be assessed on the same competencies.³⁴ The standards and assessments would focus on practice skills and ethics and law practice management, including the business of practising law, more than on substantive law.³⁵ The latter would have already been assessed in the licensing examinations that all candidates would complete, perhaps as a prerequisite to commencing the articling /PLTC phase.

The two programs would have differences, some inherent and some by design. Each would implement the articulated objectives and standards in the manner that best suits the particular program.

(iv) Choosing Articling or PLTC

Candidates for license would “choose” which stream to follow. A system would be developed to coordinate the timing of articling hiring and the PLTC application process as fairly as possible. Candidates who take the PLTC in Australia include those who prefer that approach to meet their licensing requirement, as well as those who are unable to secure traineeship contracts. In Victoria, Australia some large firms send their “hires” to the PLTC, rather than sustaining an independent traineeship program.

(v) Program Length

The PLTC program could potentially be shorter than the articling term. This would reflect both the more concentrated approach to skills learning that is feasible in a simulated environment and an effort to assist PLTC students, who would be paying for their training, while articling students would be paid. In Victoria, Australia, for example, the Leo Cussen Institute course lasts 24 weeks, five days a week of full time attendance from 9:00 a.m. - 5:00 p.m. plus three weeks in a professional placement. The traineeship contracts are 12 months long.

³³ An alternative approach might involve the profession in other ways to provide the socialization and mentoring components. Students could be assigned mentors who would agree to take on certain responsibilities and perform certain functions. As is currently the case, the mentor could satisfy a portion their yearly CPD requirements through such mentoring. This would be guided mentoring with standards to which the mentors would commit. Currently six hours of the required 12 CPD hours can be claimed for mentoring. An increase would require a policy change.

³⁴ It might be more consistent to have articling students complete some or all of the assessments that those in the PLTC stream would do. This approach is followed in Victoria, Australia, which applies national competency standards for entry level lawyers. The traineeship (articling) requirements can be met in a number of ways, within law firms or through contracting with PLTC providers to address some or all of the competency standards. The Leo Cussen Institute provides traineeship support. See **Appendix**

8.

³⁵ See footnote 8.

Those who are of the view that the Law Society should not “guarantee” licensing to every candidate, may feel that this option has the potential to backstop weaker students by moving them further along the process. A rigorously designed program may in fact provide more focused attention than some articling placements can do. Moreover assessments would address issues related to competence.

(vi) Cost

The PLTC requirement component of this option would require students to pay for the course. For those who will have just completed three years of law school, preceded in most cases by three to four years of undergraduate education, additional debt might seem onerous. The Victoria and New South Wales PLTC programs cost approximately \$7500 Australian (approximately \$7600 Canadian) and it is unlikely that an Ontario program would cost less than that.

OSAP loans and additional grants for those in need and other sources of funding such as a program in which interested employers who cannot hire a trainee can voluntarily choose to sponsor a PLTC student, could be explored.³⁶ Those who seek to provide the PLTC programs could be required to meet certain criteria to keep fees reasonable.

Law graduate debt is an important issue to bear in mind in weighing this option. Given current and likely ongoing placement shortages, however, incurring some additional debt might be preferable to students than being unable to qualify at all for a license because of an inability to secure an articling placement. In Australia, being able to complete the PLTC part-time has allowed candidates to earn money from other employment and complete licensing requirements at the same time.

(vii) Attitudes to PLTC

Another potential concern under this option is that it might create two classes of lawyers, those who article, who could be perceived as the “preferred” graduates, and those who complete the PLTC. New South Wales has not had to address this issue because in 1970 it opted to introduce a PLTC requirement for all candidates (Option 5 below). Victoria, however, has a dual system and has indicated in response to the Law Society’s questions about the potential for “stigma” in the dual system, that this has not been its experience.³⁷ Indeed, as mentioned above, some large law firms opt to put their new hires through the PLTC instead of offering a training contract on site. Others contract with the PLTC to offer aspects of their traineeship programming.

³⁶ The Leo Cussen website states: “In some cases employers who do not wish to employ an individual to do a [Traineeship](#) may wish to sponsor an individual to complete the [PTC \(Onsite or Online\)](#). The decision to sponsor is very much up to the particular firm or legal practice. If you are an interested employer, then please contact...”

³⁷ Leo Cussen points to one of its PLTC alumni, the Hon Julia Gillard, who is the current Prime Minister of Australia.

At the same time, however, it is conceivable that at least in the early years there might be some negative perceptions about the PLTC. The success of this option would depend upon the extent to which the profession accepts it and participates in it through a variety of mentoring, placement or other roles. Those delivering the program would also have a significant role to play in supporting their graduates.

One of the critiques of this option might be that because the PLTC is not taking place in a “real” work setting, simulated exercises can never take the place of the authentic experiential articling placement. As discussed above, articling has no measurement tools by which to assess the validity of that statement and no jurisdiction in Canada has ever had a PLTC of the type being described. Even the best articling experience, however, may not equip a candidate for the type of practice setting he or she moves to after licensing. The worst, or even indifferent, quality articles may contribute nothing lasting to a candidate’s education. Some may argue that poor articles teach poor habits that are difficult to overcome. A quality articling experience in a large firm may be the very best training possible if the student is hired back as an associate, but would the same necessarily be true if the newly-licensed lawyer moves to a different kind of practice?

Although a PLTC experience would be different from articling, a coherent, well-developed PLTC with a mentoring component may provide a focused learning experience that better prepares candidates for certain kinds of practices than articling does. This may be particularly true for those who will enter sole or small firm practice. A PLTC program could provide the very best and focused training for these environments.

At the same time, this option preserves articling and may better ensure its value, allowing firms that support the program to continue to offer placements.

(viii) Implementation

If the Law Society were to choose this option or a variation on it, it would be embarking on a road that is untried so far in Canada. While the PLTC programs in Australia may provide some guidance, the Law Society would need to develop standards that meet its requirements and address myriad issues. It may be that a pilot project would be the best means through which to develop this, if third party providers could be found to participate.

(ix) National Implications

As a new and previously untried option, this option may have national implications. The Task Force will be interested in the views of other law societies on this option. The National Mobility Agreement allows lawyers from common law jurisdictions to transfer across Canadian jurisdictions, premised on what is currently a similar licensing/bar admission requirement across the country. Moreover, the Federation of Law Societies of Canada is currently working on a national admissions standards project whose development is relevant to this discussion.

(b) Practical Legal Training Course - “During Law School” Model

In 2007 the Carnegie Foundation for the Advancement of Teaching (Carnegie), an independent American policy and research centre, published a study entitled *Educating Lawyers: Preparation for the Profession of Law*. In the introduction the authors articulate their proposal for legal academic education:

How then can we best combine the elements of legal professionalism-conceptual knowledge, skill, and moral discernment-into the capacity for judgment guided by a sense of professional responsibility? We are convinced that this is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice. We therefore attempt in this report to imagine a more capacious, yet more integrated, legal education. Our primary concern is both curricular (in particular, how to use the second two years of law school more effectively) and pedagogical (how to bring the teaching and learning of legal doctrine into a more fruitful dialogue with the pedagogies of practice). Throughout, however, our emphasis is on fostering in the legal academy more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.³⁸

The Carnegie Report illustrates that exposure to the “experience of practice” can effectively happen at a variety of stages and can be accomplished in a variety of ways both in “real-life” settings and through simulation exercise and with a view to integrative education.

Because the Canadian legal education landscape has developed in the three distinct stages of law school education, licensing requirements and post-call professional development, little attention has been paid to considering a Carnegie-type approach. The Task Force understands that such an approach has never been attempted in Canada, but it believes that as a discussion about alternatives to articling is undertaken there is no reason not to consider the variety of ways a practical legal training requirement might be delivered and every reason to explore creative solutions.

The Task Force has included under Option 4 (and Option 5) a PLTC delivery method that could integrate the Carnegie report’s recommendations for third year law school experiential learning with the Law Society’s requirement for transitional training, thereby creating innovation in legal education across the continuum.³⁹ In this variation, students who take a third year practical program that addresses the Law Society’s standards might be credited with their PLTC requirement (or part of it). This would shorten the licensing program for those students and address some of the financial challenges of a PLTC that occurs after law school. This would not have to be an option that precludes either articling or a PLTC after law school, but might be an optional approach particular schools wish to pursue.

The Task Force invites law schools and others to provide input on this idea during the consultation. It is convinced that there is great potential in this idea and looks forward to engaging any interested law schools in discussing it.

Option 5: Only a Practical Legal Training Course (PLTC) Requirement

Under this option, articling would be abolished and replaced with a PLTC requirement (whether after or during law school) for *all* candidates for licensing. The PLTC structure already discussed

³⁸ Sullivan et al. *Educating Lawyers: Preparation for the Profession of Law*. John Wiley & Sons, Inc. 2007, p.12. [Carnegie Report]. The summary to the Carnegie Report is set out at **Appendix 10**.

³⁹ If the general rule were adopted that successful completion of licensing examinations is a prerequisite to commencing transitional training, there would need to be an exemption for those in any Carnegie-type model of transitional training.

in Option 4 could apply with necessary modifications to reflect that it is the only transitional training approach. The Law Society would set standards and assessment criteria and third parties would deliver the program.

There would be a transition period of a set number of years, while the new program was being developed and to allow those who had already secured articling jobs to complete them. Practically speaking, the transition period would resemble Option 4 without the efforts to develop new articling positions. The involvement of the profession would still be necessary under this option for the unpaid practice placements. There might be a concern under this option that firms would not want to take students for brief periods.

If the PLTC is shorter than the current articling term, this option would shorten the qualification process for all candidates. With PLTC being the only requirement there may develop greater interest in a clinical third year in law schools that could take the place of the PLTC. Also, with all attention focused on this program, rather than a bifurcated approach, it is possible that the PLTC would become increasingly sophisticated, with performance assessments akin to the simulated patient examinations that qualifying doctors undergo.

On the other hand, many may view this as a premature step that unnecessarily removes the articling program, which has a long and for many, successful history. Option 4 allows a broader approach. It is possible that over time Option 4 might evolve into Option 5, particularly if large firms decide over a number of years to send their “hires” through a PLTC rather than the articling process.

For those who believe the time has come for radical change this option may represent the cleanest approach. The development and application of standards would be the central feature of this option.

CONSULTATION PROCESS

As the Task Force suggested at the outset of this consultation report, the issues surrounding articling and transitional training are complex and interwoven. In providing distinct options it seeks to place a frame around the discussion, but it recognizes that each option has permutations or possible additions that might make it more or less attractive or more or less viable, depending on the perspective of those commenting.

The Task Force welcomes broadly based comments on all the options, as well as more limited comments on particular points. It encourages comments on what it has provided here and comments that go beyond this report.

Without in any way seeking to limit or direct input, but to assist those who wish some guidance for their responses, the Task Force includes the following questions for consideration:

1. Should transitional training form part of the Law Society's licensing requirements as discussed in this consultation report?
2. If so, has the Task Force accurately described the goals of transitional training as part of the Law Society's licensing process?

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?
4. Should the Law Society address the issue of articling shortages and, if so, how?
5. What are your views on the introduction of financial incentives to encourage increased articling placements? (page 14)? Should Law Society fees fund such incentives?
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? (pages 15-16) What is your view of such an initiative being funded through law society fees?
7. Should successful completion of the licensing examinations be a prerequisite to commencing transitional training?
8. What are your views on the five options presented in this consultation report?

The Task Force encourages the profession to provide input on this important and complex issue and welcomes written comment by March 15, 2012, to be sent to,

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APPENDIX 2

LAW SOCIETY OF UPPER CANADA ARTICLING TASK FORCE REVISED MANDATE AND MEMBERSHIP

Revised Mandate

Since the adoption in September 2008 of the recommendations of the Licensing & Accreditation Task Force concerning articling, pressures continue to mount on the articling system, necessitating further consideration of the issue. The Articling Task Force will,

- a. consider the competency-related principles that articling is intended to address, and its effectiveness in addressing those principles,
- b. examine the historic and current approaches to articling,

- c. identify the challenges facing the current program, including the increasing number of unplaced candidates,
- d. consider the articling program in the context of the licensing process overall,
- e. consider additional/alternative approaches to articling and any proposed changes to the licensing process overall as a consequence of those additional/alternative approaches to articling, and
- f. make recommendations to Convocation respecting the articling system, including any recommended changes to the licensing process overall that are appropriate.

Membership

Laurie Pawlitza (Treasurer)
 Tom Conway (Chair)
 Raj Anand
 Adriana Doyle
 Jacqueline Horvat
 Vern Krishna
 Dow Marmur
 Janet Minor
 Barbara Murchie
 Paul Schabas
 Joe Sullivan
 Peter Wardle

Staff:
 Diana Miles
 Sophia Sperdakos

To date the Task Force has met six times. Given the national significance and implications of the Task Force's work, John Hunter, Q.C., the President of the Federation of Law Societies of Canada (the Federation), and Frederica Wilson, Director Policy and Public Affairs for the Federation, have attended one of the Task Force's meetings and will continue to liaise with the Task Force.

Appendix 3

THE LAW SOCIETY OF UPPER CANADA

ARTICLING GOALS AND OBJECTIVES

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

PROFESSIONAL RESPONSIBILITY

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

INTERVIEWING

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

ADVISING

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

FACT INVESTIGATION

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

LEGAL RESEARCH

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

PLANNING AND CONDUCT OF A MATTER

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

FILE AND PRACTICE MANAGEMENT

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

DRAFTING and LEGAL WRITING

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

NEGOTIATION

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

ADVOCACY

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

ARTICLING

Guide to the Professional Responsibility and Practice Course
for Articling Principals

Background

Requirements for call to the Bar in Ontario include the successful completion of the online Professional Responsibility and Practice (PRP) Course, the Assessment, the 10-month articling requirement and the Barrister and Solicitor Licensing Examinations.

The PRP Course, which is available to candidates during their 10-month articling term, is designed to expand the candidates' knowledge of lawyers' duties, tasks, and challenges, and to provide them with a suggested approach for analyzing common ethical and practice dilemmas. The Course takes approximately 30 hours to complete and is integrated with articling to enable candidates to apply the principles they are learning to day-to-day practice, as well as to involve Articling Principals as mentors in the training process. By the end of the articling term, candidates will meet with their Articling Principals and complete the PRP Course Assessment, an informal assessment based on Course content.

Course Structure

The Course is organized into four modules:

- Module 1 focuses on the basic principles of professional responsibility and ethics in the practice of law
- Module 2 analyzes the best practices and potential pitfalls in lawyer-client communications
- Module 3 provides candidates with techniques for identifying and managing the key stages in a client file, and
- Module 4 introduces candidates to essential practice management skills and methods

Each module contains the following sections and supplementary resources:

- Presentations
- Panel discussions
- Demonstrations and debriefs

- Mentor Minutes (interviews with senior counsel and judges)
- Hypothetical case scenarios
- Readings
- Exercises

Each module also contains a guide. Candidates can complete the sections in the order provided in the Module Guide, or in any order.

Course Format

The Course is designed for online presentation and self-paced learning. This relieves candidates of the burden of travelling from their articling location to take the Course. The modules can be taken individually at any time during the articling term and will be available for repeat viewing. This format addresses the need for flexible learning opportunities to accommodate the increasing number of licensing candidates. It also allows for consistency: all candidates will see the same lectures, demonstrations, hypothetical scenarios, panel discussions and interviews with exemplary mentors and practitioners from a variety of practice areas.

Your Role as Articling Principal

The PRP Course invites you to play a mentoring role in the candidate's training by discussing issues raised by the Course material with the candidate, and ensuring that the PRP Course Assessment is successfully completed.

As Articling Principal, you are responsible for

- Ensuring that the candidate has time during the articling term to complete the Course
- Administering the PRP Course Assessment
- Reviewing the candidates' answers to the questions in the Assessment and providing input
- Verifying completion of the Assessment

The candidate is responsible for

- Completing all four modules of the Course during the articling term
- Completing the PRP Course Assessment
- Discussing his or her answers with the Articling Principal
- Verifying completion of the Course

We encourage you to use this Course as an opportunity to provide mentoring and support to the candidate during the 10-month articling period. The Course is specifically designed to provide candidates with ethical approaches to practical issues that arise in practice.

FAQ

- 1) What steps do I need to take to ensure that the candidate completes the Course?

You should ensure that the candidate has a reasonable opportunity to complete the Course by allowing for sufficient time during the articling term. You are not required to monitor the candidate while he or she is taking the Course. Your role is to administer the PRP Course Assessment, which is designed to confirm that the candidate has a firm grasp of the principles and concepts contained in the Course.

- 2) When is the candidate required to complete the Course?

The candidate must complete the Course and the PRP Assessment by the end of his or her articling term. The Course takes approximately 30 hours to complete. The Course modules can be accessed at any time during the articling term and may be repeated if necessary.

- 3) Is the Course accessible to candidates with special needs?

Yes, the Course is designed to be accessible to all candidates, including those with special visual or aural needs.

- 4) Who should the candidate contact if he or she has questions about the Course?

The Course contains FAQ and a support website where candidates find answers to their questions or post support tickets for any issues they are experiencing.

- 5) Am I required to review the Course exercises with the candidate?

No, you are not obliged to review the exercises, but if you wish to do so, the candidate can print his or her answers, as well as the model answers to the questions contained in the Course.

- 6) Do I require access to the Course to administer the Assessment?

No, you do not require access to the Course to complete the Assessment. However, if you are interested in viewing the Course or any of its modules, you may request special access by contacting the Articling Office at 416-947-3315 or articling@lsuc.on.ca. Only approved Principals who have entered into Articles of Clerkship with a candidate may receive access.

- 7) In what form must I notify the Law Society of completion of the Assessment?

The "Certificate of Services under Articles" is the form that the Principal and the candidate complete at the end of the articling term. This form also serves as a verification of the Principal's completion of the Assessment.

- 8) May I delegate the administration of the Assessment to another lawyer in my firm?

The Certificate of Service Under Articles serves as a confirmation that the Principal has completed the Assessment and has fully discussed the answers with the candidate. This form must be signed by the Principal.

- 9) May I obtain any Continuing Professional Development (CPD) credit for administering the PRP Course Assessment?

Administration of the Assessment is an alternate eligible educational activity that may qualify Principals for CPD credit in the area of professionalism. Principals seeking to obtain CPD credit for this activity must complete and submit an Application for Accreditation at least 30 days in advance of the Assessment date. The application form can be obtained from the Law Society's Resource Centre at:
<http://rc.lsuc.on.ca/pdf/cpd/CPDAppFormAlternate.pdf>

Appendix 4

Professional Development and Competence Department
 Resource and Program Report

Excerpt – Licensing Process and Articling Program

FOR INFORMATION ONLY

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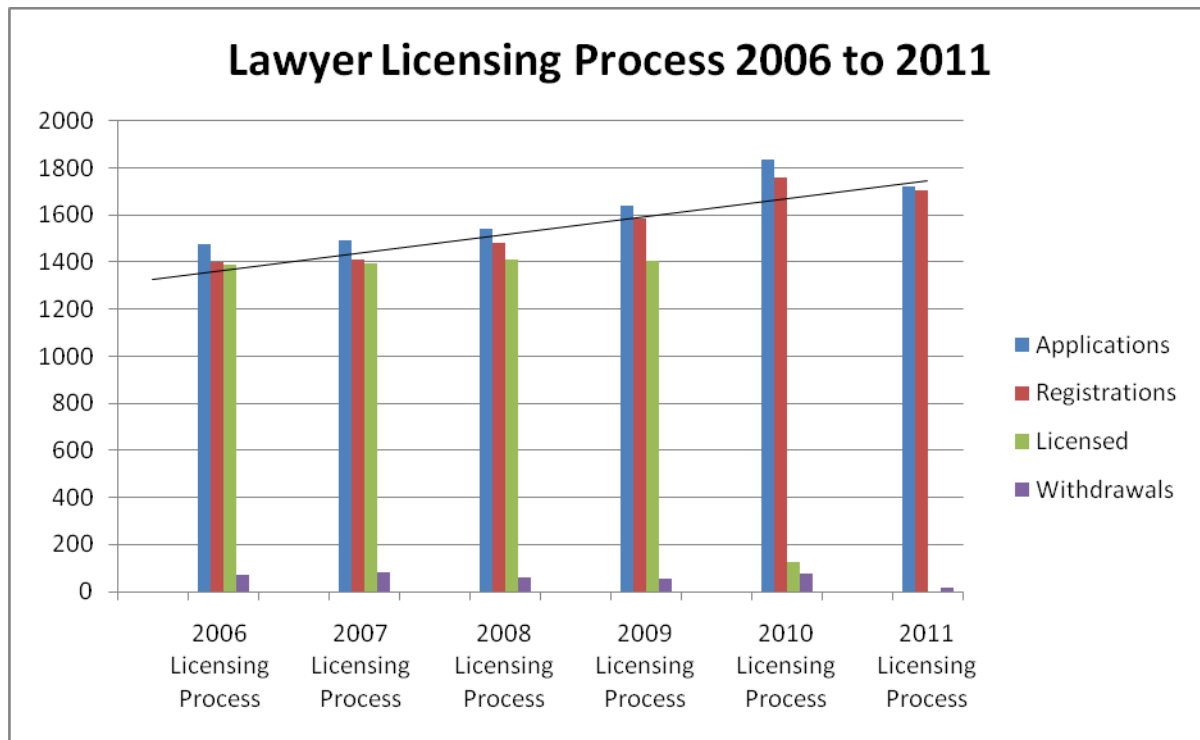
as at May 2011

The following excerpt is from the PD&C Department's bi-annual report provided to the Committee and Convocation in May 2011 and reported publicly.

LICENSING AND ACCREDITATION: LAWYER LICENSING

As of March 31, 2011, the number of applications processed for the 2011 Lawyer Licensing Process was 1721 and have resulted in 1704 registrations to date. It is anticipated that the applications will continue to increase until the deadline of August 31, 2011.

The following chart indicates the number of candidate applications, registrations, withdrawals and L1 licences issued in each of six Licensing Processes (2006-2011) since the inception of the Licensing Process in May 2006. The Process is governed by the three-year rule which requires a registered lawyer candidate to be called to the bar within three years from the time of their entry into a licensing year.



Tracking Licensing Cohorts: Three-Year Rule

	New Applications	New Registrants (fees paid)	Licensed (by end of 3 years or to date)	Withdrawn* (after formal registration)
2006 Licensing Process (May 2006 to April 2009)	1473	1398	1388	72
2007 Licensing Process (May 2007 to April 2010)	1492	1412	1394	80
2008 Licensing Process (May 2008 to April 2011)	1540	1481	1413	59
2009 Licensing Process (May 2009 to April 2012)	1640	1587	1405	53
2010 Licensing Process (May 2010 to April 2013)	1837	1758	127	79
2011 Licensing Process (May 2011 to April 2014)	1721	1704	0	17

***Withdrawals Include:**

- (a) Voluntary withdrawal - inactive
- (b) Requirements not met - deactivated
- (c) 3-year rule exhausted - Examinations or Articles incomplete
- (d) Registration revoked - Hearing Panel decision on Good Character
- (e) Deceased

ARTICLING PROGRAM

National/International Articles

Candidates may complete up to ten months of articles outside of Ontario (national) or outside of Canada (international). The total number of candidates who completed articles outside of Ontario is as follows:

Licensing Year	National Articles	International Articles
2008	18	9
2009	15	23
2010	18	22

Exemption from Articles and the Professional Conduct and Practice Course

In 2009, candidates became eligible to apply for and be granted a full exemption of articles if they have practice experience in a common law jurisdiction that exceeds 10 months. In 2009, 52 candidates were granted exemptions from the articling program and an additional 93 candidates were granted an exemption in 2010. To date, 145 candidates have received an exemption.

Candidates who are exempted from articles must successfully complete a mandatory three-day course. The Professional Conduct and Practice Course provides instruction on professional responsibility and practice management topics in an Ontario context using lectures, panel presentations and roundtable discussions. One-hundred thirty-seven (137) of the exempted candidates have completed the mandatory course to date.

There have been four sessions of the Professional Conduct and Practice course since its inception in May 2009:

	May	December	Total
2009	22 attendees	19 attendees	41 attendees
2010	51 attendees	45 attendees	96 attendees

Candidates exempted from articles must also successfully complete the two Licensing Examinations. As a result of this significant reform, candidates exempted from articles could be eligible for a call to the bar within six months depending on the timing of their receipt of the Certificate of Qualification from the National Committee on Accreditation.

Articling and the Unplaced Lawyer Candidate Rate

The graph below indicates the Articling Program unplaced rates as at the end of March in each Licensing Process cohort. Candidates will continue to search for placements and the unplaced rate will continue to decrease marginally until the end of the current licensing cycle. Once a licensing year is completed, unplaced candidates begin to roll into the following licensing period

and are competing with all of the unplaced candidates from the next cohort, exacerbating the issue of lack of placements. *The Law Society does not continue to track unplaced candidates after the entry year into the licensing process. Therefore the statistics provided do not reflect those candidates who may still be searching for a placement from previous licensing years.*

March 2008, unplaced rate for the 2007/2008 licensing group

➤ 81 of 1391 = 5.8%

March 2009, unplaced rate for the 2008/2009 licensing group

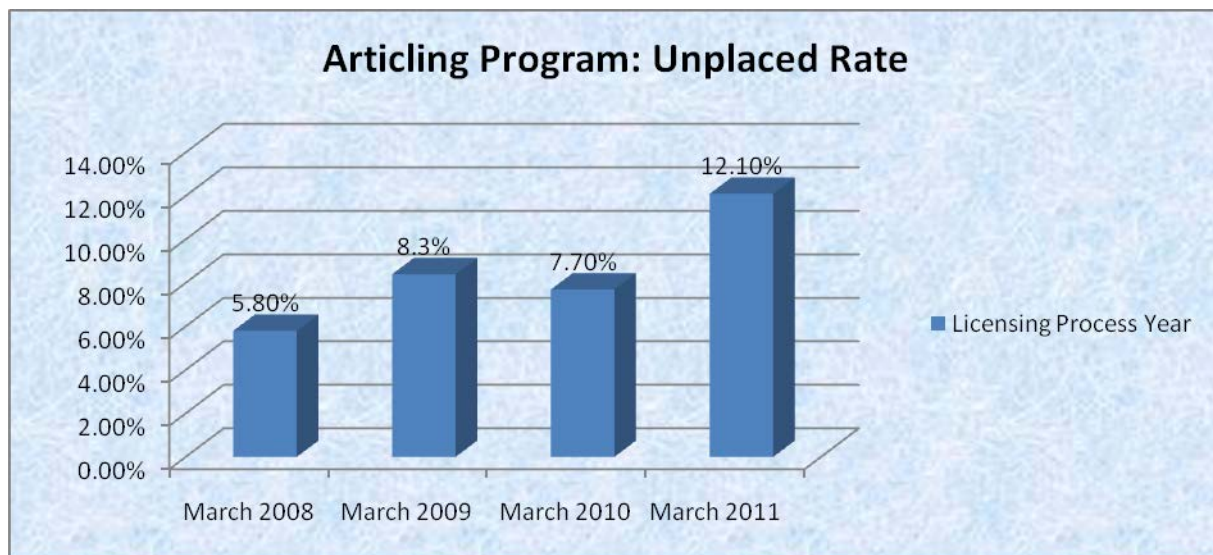
➤ 125 of 1493 = 8.3%

March 2010, placement rate for the 2009/2010 licensing group

➤ 115 of 1496 = 7.7%

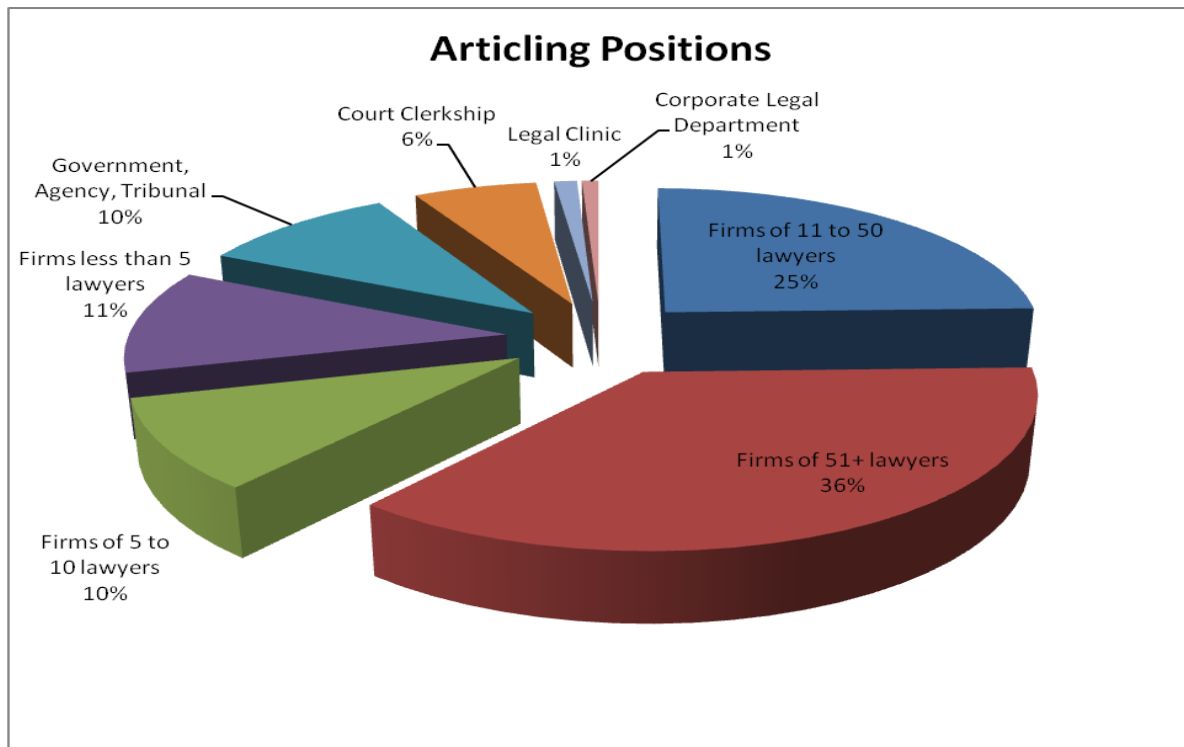
March 2011, unplaced rate for the 2010/2011 licensing group

➤ 214 of 1767 = 12.1%

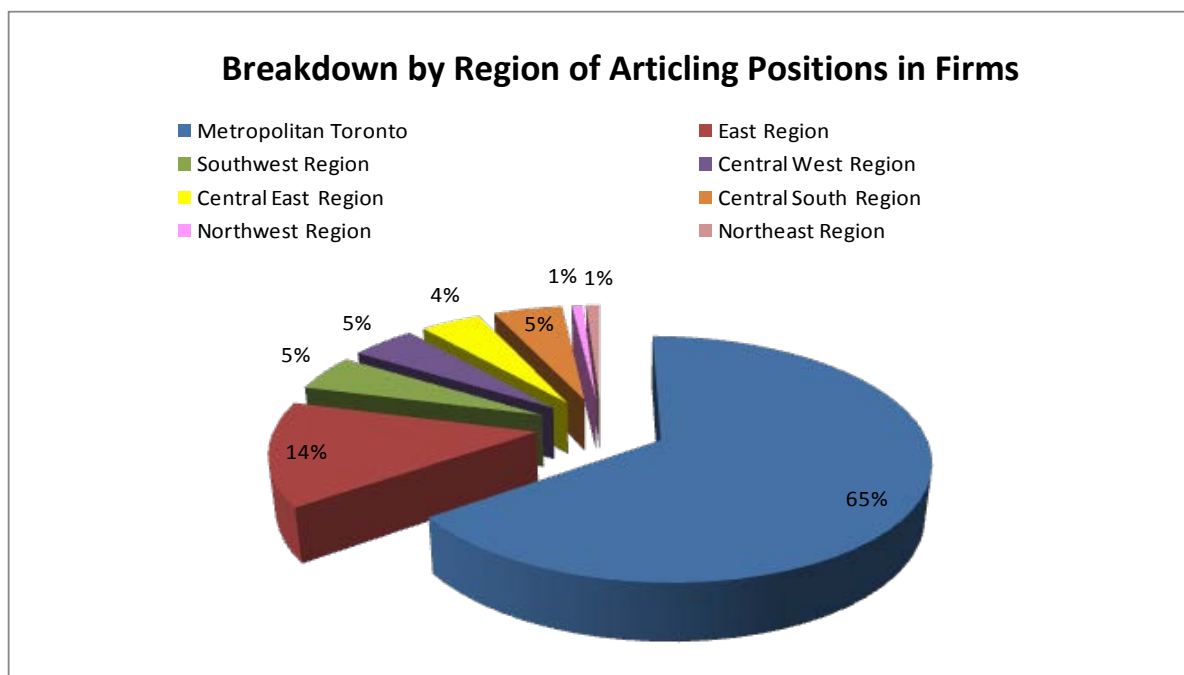


Articling Placement Locations

Larger firms still employ the majority of articling candidates. Those firms have infrastructure and support systems in place that allow them to support articling candidates on a regular basis. The number of articling placements with the largest firms remains stable with no growth. As presented in the chart below, 61% of all placements are in private practice firms with 11 or more lawyers and 21% of placements are currently found in firms of 10 or fewer lawyers.



An examination of current articling positions by region within the province is depicted in the chart below. The vast majority of placements, 79%, are found in the Toronto and Ottawa areas, with 65% in the Metropolitan Toronto Area. The next largest articling employment centre is the East Region with Ottawa city centre supporting the majority of those positions. Other city centres such as Hamilton, London, Windsor and the 905 area code comprise the next most active locations for placements.



Articling Survey

The Task Force on Licensing and Accreditation recommended that an Articling Survey be conducted in 2009-10 to collect information about articling positions in Ontario and to effectively assess the scope of the articling market across the Province. The results from the survey would enable the profession to examine the possibility of increasing placements in certain regions. The Articling Survey would also provide an opportunity to educate more lawyers about the Law Society's articling supports and promote the possibility of joint articles when hiring an articling candidate.

7749 out of 8209 firms in the province (as at May 2009) participated in the telephone survey. The location and total number of articling placements across the province are indicated below.

Regions	Total Firms in Region	Total Firms Contacted and Survey Completed	Firms Contacted with no Articling Placements	Firms Contacted with Articling Placements	Total Articling Candidates in Region (% of total placements)
(1) Metropolitan Toronto	3279	3140	2793	347	830 (64%)
(2) Northwest Region	104	93	86	7	11 (1%)
(3) Northeast Region	226	207	197	10	13 (1%)
(4) East Region	1005	926	816	110	180 (14%)
(5) Central East Region	1151	1089	1039	50	57 (5%)
(6) Central West Region	960	908	856	52	61 (5%)
(7) Central South Region	773	715	670	45	65 (5%)
(8) Southwest Region	711	671	631	40	63 (5%)
TOTAL	8209	7749	7088	661	1280

During the survey, firms indicating that they did not have an articling placement were asked if they would consider joint articles if there was a firm in their region willing to share an articling candidate. Firms that indicated an interest in joint articles, 2284 firms, were provided with further information.

In a follow-up phase of the survey, 404 firms in a variety of regions and cities that were considered to have higher potential for articling growth were assessed. Of those firms, the survey showed that 277 had specifically indicated an interest in considering entering into a joint articling arrangement with another firm in their region. All 277 firms were once again contacted by telephone to enlist their support.

This phase of the project resulted in only 11 (4%) of the 277 firms expressing a firm commitment to joint articles. Of the 11, the PD&C Department has only been able to match four firms, equating to two placements. These two positions have yet to actually be created by these firms.

Joint Articling Survey Results – Follow-up

Regions and Number of Cities in follow up phase for joint articling commitment	Number of Firms that expressed interest in joint articles	Firms no longer interested	Firms did not return calls	Firms considering joint articles but no commitment	Firms that expressed a commitment to joint articles
(1) Northwest Region – 1	17	12	2	3	0
(2) Northeast Region – 2	17	8	7	0	2
(3) East Region – 4	39	22	11	6	0
(4) Central East Region – 6	122	63	26	28	5
(5) Central West Region – 1	17	7	6	4	0
(6) Central South Region – 4	56	28	16	8	4
(7) Southwest Region – 1	9	2	5	2	0
Seven Regions – 19 Cities	277	142(51%)	73(26%)	51(18%)	11(4%)

Articling Registry

Since the online Articling Registry was developed in June 2009, it has become a viable recruitment and job search tool for law firms, legal organizations, law students and licensing candidates. Using the registry, firms can post available articling positions and search through articling candidates' profiles; candidates can use the registry as a tool for reviewing articling opportunities in their job search. The registry also helps smaller firms outside of major urban centres to locate law school students or licensing candidates who are interested in available articling positions.

Year	Total Postings on Articling Registry
2009	77
2010	151
2011	41
	(January 1 to March 31)
Total	269

Post Articling Employment

At the time of call, candidates are asked to complete a voluntary survey of their employment status. The table below demonstrates the results of the voluntary employment surveys conducted from February 1995 to June 2010.

The June 2010 survey had an 84% response rate. Results indicated that the hire-back rate of candidates returning to the firm with which they articulated was 42.8%, a 1.5% decrease from the previous year. In addition, 55.5% of the June 2010 call candidates indicated that they had secured some type of employment. A decrease of 2.1% as compared to the previous year's survey. In the 2009 and 2010 licensing years, there has been a 10.2% decrease in the number of candidates indicating that they had secured employment at the time of call.

Date of Call	Response to survey - % of class	% of respondents hired back by articling firm	% of respondents employed elsewhere	% of respondents employed at time of Call
June 2010	84	42.8	12.7	55.5
June 2009	84	44.3	13.3	57.6
June 2008	80	49.4	16.3	65.7
June 2007	75.0	49.0	16.6	65.6
July 2006	89.3	49.1	18.5	65.1
July 2005	89.3	52.3	14.0	66.3
July 2004	61.5	49.7	16.7	66.4
July 2003	60.3	49.6	12.9	62.5
Sep. 2002	26.1	39.4	25.1	64.5
Feb. 2002	48.5	52.5	25.4	77.9
Feb. 2001	63.3	51.3	26.9	78.2
Feb. 2000	59.9	46.7	23.1	69.7
Feb. 1999	55.5	44.5	19.4	63.9
Feb. 1998	56.5	38.7	28.4	67.2
Feb. 1997	60.1	37.5	26.3	63.7
Feb. 1996	77.0	35.3	30.7	66.0
Feb. 1995	54.6	38.4	28.8	67.2

Appendix 7

EXTRACT RESPECTING ARTICLING

Report to Convocation
September 25, 2008

LICENSING & ACCREDITATION TASK FORCE

Task Force Members

Vern Krishna (Chair)
Raj Anand
Constance Backhouse
Larry Banack
Thomas Conway
Susan Hare
Carol Hartman
Janet Minor
Laurie Pawlitza
Bonnie Tough

Purpose of Report: Decision

Policy Secretariat
(416-947-5209)

EXTRACT EXECUTIVE SUMMARY

...

In January 2008 the Task Force presented a consultation report to Convocation, seeking its approval to disseminate that report to the profession, law schools and legal organizations. Convocation determined that written submissions on the skills and professional responsibility and articling programs should be accepted until May 31, 2008. The Task Force has reviewed the submissions and is reporting to Convocation on the results of the consultation process and its additional considerations and recommendations respecting the articling program and skills and professional responsibility training.

Articling

The consultation report identified problems in the articling program, including a potentially significant increase in placement shortages. The Task Force sought input on four options:

- a. Continue the program, but make it clear that the Law Society makes no guarantees that candidates will find employment.
- b. Accept that if there is to be an apprenticeship requirement the Law Society should take responsibility for all candidates who qualify, and develop an alternative stream for those unable to find a placement.
- c. Abolish the articling requirement.
- d. Seek additional solutions from those being consulted.

Respondents overwhelmingly rejected the abolition of articling. They emphasized that a competent profession requires practical training before call to the bar. Articling should not be characterized as a barrier, but rather as a core component of the licensing process. To address challenges facing the program the Law Society should make further efforts to increase the number of jobs available, appeal to the profession to assist, and streamline the program.

While the Task Force continues to have concerns about the potential increase in candidates seeking articling positions in the future, it is possible that such increases will be fewer than anticipated, at least in the short term. The Task Force is satisfied that the value of the articling requirement as a competence measure makes it worthwhile to pursue solutions to its problems. However, while the enthusiasm with which the profession supported articling in this consultation process is heartening, it will be of limited value if not accompanied by a commitment among those who have not traditionally hired students to now do so. The willingness of more lawyers to play a role in training the next generation is essential to a re-vitalized articling program.

The Law Society must also undertake initiatives designed to enhance the number of articling placements, reduce the program's administrative complexity, and monitor the placement issue. The Task Force recommends that the Law Society retain the 10 month articling requirement and undertake the following initiatives designed to increase articling placements:

- a. Engage legal organizations in efforts to support and enhance the articling process.
- b. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
- c. Develop an online Articling Registry to enhance information on articling opportunities.
- d. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
- e. Create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.
- f. Implement a streamlined articling administrative process to reduce the burden on articling principals.
- g. Permit candidates in the licensing process to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.

Respondents critiqued the Law Society for insufficient recognition of internationally trained candidates' practice experience as lawyers in other jurisdictions. The Task Force examined the current rules. They set arbitrary requirements. In considering whether the legal experience of lawyers from other jurisdictions should result in an articling exemption or abridgment the relevant factors should be the length of practice experience, the legal system in which the practice experience is gained and the extent to which that experience addresses the Law Society's articling competencies. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates should, however, be required to attend an intensive three-day program on professional conduct as part of the licensing process. All other internationally trained lawyers should be required to complete the 10 month articling requirement, subject to their ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.

The Law Society should also work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.

It is essential that there be regular monitoring of the articling program, through the Professional Development & Competence Committee, to review the success of the initiatives, the number of unplaced candidates and additional areas for improvement. It is important to monitor the challenges that candidates from Aboriginal, Francophone, racialized, disabled and other communities face. The Law Society should also gather additional information from other jurisdictions that have adopted practical legal training courses as an alternative to articling, should the number of unplaced candidates continue to rise.

MOTION

2. That Convocation approve the following respecting the articling program:
 - a. The Law Society will retain the 10 month articling requirement.
 - b. The Law Society will undertake initiatives designed to increase articling placements as follows:
 - i. Engage legal organizations in efforts to support and enhance the articling process.
 - ii. Conduct a survey, with the assistance of legal organizations, on articling opportunities.
 - iii. Develop an online Articling Registry to enhance information on articling opportunities.
 - iv. Pursue discussions with government, the Law Foundation of Ontario and other third parties to increase funding for articling positions.
 - v. Create one additional staff position dedicated to outreach, promotion and coordination of articling initiatives and additional job placements.
 - vi. Implement a streamlined articling administrative process to reduce the burden on articling principals.
 - c. The Law Society will provide for exemptions or abridgments of the articling requirement for internationally trained lawyers who are candidates in the licensing process as follows:
 - i. Internationally trained candidates called to the bar in a common law jurisdiction, with at least 10 months of practice experience that addresses the Law Society's articling competencies, may be exempted from the articling requirement. Such candidates would be required to complete an intensive three-day course on professional conduct as a mandatory component of the licensing process.
 - ii. All other internationally trained lawyers are required to complete the 10 month articling requirement, subject to the ability to seek an abridgment based on length of legal experience and the extent to which that experience addresses the Law Society's articling competencies.

- d. The Law Society will work with external partners to develop a voluntary bridging program for internationally trained candidates in the licensing process to support their integration into the Ontario legal profession.
 - e. Candidates in the licensing process will be entitled to fulfill their entire 10 month articling requirement in national or international articles that the Law Society approves.
3. [not included]
4. That Convocation approve the development of a more extensive Law Society communication plan as described in paragraphs 133-144 to,
- a. advise students, law schools and the profession about the articling program, including the role of outreach staff, and the Law Society's role in assisting them with the establishment of articling placements;
 - b. re-affirm candidates' responsibility to secure their own articling placement; and
 - c. communicate changes to the licensing process.

Appendix 9

LAWYER LICENSING EXAMINATION DEVELOPMENT PROCESS
REPORT TO THE ARTICLING TASK FORCE
FOR INFORMATION

PREPARED BY:
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LAWYER LICENSING EXAMINATION DEVELOPMENT PROCESS
AN OVERVIEW

I. INTRODUCTION

- Convocation approved a competency-based licensing regime for lawyers on December 5, 2003. Under this regime, lawyer candidates are required to meet pre-determined standards of competence in substantive and procedural law and professional responsibility and ethics.

- These standards are articulated as “competencies.” Competencies form the basis of the questions on the Barrister and Solicitor licensing examinations. A competency is defined as a “knowledge, skill, ability, attitude or judgment required for entry-level practice”.
- This overview will address two main processes that underlie the current lawyer licensing regime:
 1. The development and validation of the Barrister and Solicitor examination competencies, and
 2. Creation of the standardized licensing examinations based on the competencies.

II. DEVELOPMENT AND VALIDATION OF THE COMPETENCIES

- There are currently 148 solicitor and 228 barrister examination competencies. They span seven areas of substantive law: criminal law, wills and estates, civil litigation, family law, business law, real estate law, and public law, as well as professional responsibility and ethics.
- The barrister and solicitor competency profiles can be found on the Law Society’s website and are available to members, potential candidates, and the public at large.
- The development of the Barrister and Solicitor examination competencies involved an extensive process of consultation with the profession in order to identify the concepts, principles and skills that would form the basis of entry into the legal profession. The process took place over several months in 2004 and 2005 and involved hundreds of practitioners.
- There were many layers of expertise and review involved in the initial creation of the competencies:
 - ☐ Initially, teams of six to eight exemplary practitioners in the barrister and solicitor areas each held a week of meetings to create first draft of the competencies. Barristers and solicitors participated in the week long competency profile development team meetings
 - ☐ Next, focus groups provided an opportunity for practitioners from across Ontario to review the draft competencies and suggest revisions. Barristers and solicitors participated in these one day competency profile validation meetings in Toronto, Ottawa and London – travelling from other towns and cities to join the groups.
 - ☐ Finally, an independent group of barristers and solicitors met to review the focus group revisions to the draft competencies and the comments of the original competency working group, and to create a final version. Barristers and solicitors participated in the one day final competency profile review meetings.
- The Law Society then sent the final version of the competencies to 4000 randomly chosen practising lawyers representing a variety of practice areas, firm sizes, geographic locations, and perspectives. An accompanying survey asked participants to rate the competencies according to importance to entry-level practice. The extensive surveys queried on all of the competencies to be potentially included in the final competency matrix for barrister and solicitor assessment.

- The Barrister Blueprint Working Group and Solicitor Blueprint Working Group were formed for the purpose of reviewing the survey results, the input from the competency working groups and the focus groups and for creating examination Blueprints for the barrister and solicitor exams. The examination Blueprints set out the parameters for how the competencies will be assessed in the licensing examinations. They specify the types of questions, number of questions, and scoring methodology that will be used and form the backbone of the examination creation process. Each question is individually rated with respect to “frequency, important/relevance, and criticality/risk”. Those competencies of greater relevance and impact, will be tested more frequently on the examinations.
- The Blueprint Working Groups each met for six days to arrive at a final, unanimously agreed upon version of the Blueprints. The Blueprints were approved by the PD&C Committee shortly thereafter.

III. CREATION OF THE LICENSING EXAMINATIONS

- Lawyer candidates must successfully complete two licensing examinations—the Barrister Licensing Examination and the Solicitor Licensing Examination. The exams are made up of 240 multiple choice questions, or “items” and are administered three times a year.
- Examination items are created in a highly controlled, structured environment. Items on the licensing examinations must be aligned with the pre-defined competencies and comply with the parameters set out in the examination Blueprints in order to be valid.
- Item writing sessions are made up of practitioners who have been practising for at least seven years and have demonstrated expertise in the subject areas addressed in the competencies. Groups of four to six item writers meet for three-day sessions to create items in a specific area of law. Item writers receive an extensive orientation on item writing methodology in accordance with the examination Blueprint. In one three-day session, the groups usually generate between 40 and 50 new items. Each question asks “what is the best answer in the circumstance”, therefore the distractors are as difficult if not more difficult to define than the best answer in the selections for each question.
- After the items are written, they are sent out for independent appraisal by practitioners across the province. Appraisers are asked to respond to evaluate the items according to their clarity, accuracy and relevance to entry-level practice.
- The examination items are then presented to the Barrister Examination Advisory Group and Solicitor Examination Advisory Group for review. Each Advisory Group is made up of eight to ten exemplary members of the profession with at least seven years of practice experience. Members are invited to participate by the Director of PD&C and must commit to attending ten to twelve meetings a year.
- The Advisory Groups perform several key functions in order to validate the licensing examinations and ensure they adhere to the Blueprints. Their primary task is to review and adjust the examination items in light of the feedback received from the item appraisers and the underlying competency framework. In addition, the Advisory Groups participate in a process to set the passing score for each exam and provide expertise and input on other examination related matters.

- The passing score for each examination is determined using the “Angoff method.” This process requires each member of the Advisory Group to assess the content of each examination item and predict how many minimally qualified lawyer candidates would arrive at the correct answer. The average of the predictions of each member of the Advisory Group becomes the predicted difficulty level of the item, which, when totalled for all items on the exam, becomes the passing score for that exam. This empirical method of determining the passing scores for the licensing examinations ensures that they are defensible and not based on arbitrary standards.
- After each exam is administered, the Advisory Group meets to review the results of the items that did not perform according to the original predicted difficulty level. Advisory Group members are given the opportunity to adjust their ratings to ensure that each item on the examination accurately measures entry-level competence in accordance with the examination Blueprints.
- The finalized examinations are translated into French by an external translation service that specializes in assessment and regulatory work. All translated items are then reviewed by a French Translation Review Committee who ensures that the language and terminology used is accurate.

IV. OTHER NOTABLE FEATURES OF THE LICENSING PROCESS

- Examinations are designed to be entirely self-study and are supported by the Barrister Examination and Solicitor Examination materials. The Examination materials cover all of the concepts and principles addressed by the competencies and required for entry-level practice. They are updated annually by practitioners and available in French or English to candidates registered for the licensing exams.
- Items related to the professional responsibility and ethics competencies are created via in-house item writing sessions made up of Law Society counsel who work in the area of practice management. This unique expertise puts them in the best position to write these items. Twenty (20) per cent of the questions on each examination are focused on professional responsibility, ethics and practice management competencies.
- On any given exam, 200 items are operational. The other 40 items are experimental, which means they do not “count”. This is because they are new items and must go through additional testing cycles in order to be valid, operational items that have proven their consistency.
- Examination items and performance data is stored in a highly secure, computerized system based on the performance evaluation technology (PET) platform that is used by other licensing and regulatory bodies for their educational and testing program. As an added measure of security, all item writers, appraisers, translators, Advisory Group members and other participants are required to sign a confidentiality agreement in order to engage in any aspect of the examination development process.

V. COMPETENCY REVIEW PROJECT

- In 2011, the Law Society initiated a periodic review of the competencies to ensure that they accurately reflect the standards that must be demonstrated by entry-level lawyers. This exercise has involved further consultation with the profession and several stages of revision and validation. The new competencies are expected to be finalized by early December 2011.
- Once again Barrister and Solicitor Competency Review Groups were organized including lawyers with expertise in all areas of examinable practice. Their work was assessed by focus groups. These groups met on two separate occasions. Once for two full days, then again for one further full day of development and analysis. The focus groups met in between, to provide input and assessment, and each focus group met for one full day. Participants were from Toronto, Ottawa, Durham, Sault Ste. Marie, Windsor, Oakville, Kingston, Thunder Bay, Barrie, Brampton, Kitchener, Timmins and Fort Frances. Representatives include Francophone and Aboriginal members and they came from sole, small, medium and large law firms as well as in-house counsel.
- A survey was then sent to 4000 lawyers for further input on the competencies.
- That input was integrated into the competency profiles, assessed and validated through a further meeting with the barrister and solicitor Competency Review Groups.
- The new competency profile is now complete. The new items for the examination bank are already in process and will continue to be developed in the coming months. Those items will begin to be included in the 2012 examinations.

Attached to the original Report in Convocation file, copies of:

- (1) Copy of Law Society Statistics on articling positions.
(Appendix 1, page 44)
- (2) Copy of Articling assignment Checklists.
(Appendix 3, pages 49 – 62)
- (3) Copy of the Placement Report, 2010 Licensing Process, Office of the Registrar, Law Society of Upper Canada August 2011.
(Appendix 5, pages 75 – 84)
- (4) Copy of a chart re Unplaced Candidates' Law School Grade Values – Licensing Year 2010 – 2011.
(Appendix 6, page 85)
- (5) Copy of training contract standards and a Practical Legal Training Court (PLTC) in Victoria, Australia.
(Appendix 8, pages 91 -116)
- (6) Copy of a paper entitled Educating Lawyers, Preparation for the Profession of Law.
(Appendix 10, pages 123 – 137)

Re: Consultation Report

It was moved by Ms. Murchie, seconded by Mr. Wardle, that Convocation approve the dissemination of the Articling Task Force's Consultation Report at Tab A of the Report to the profession, law societies, the Federation of Law Societies of Canada, law schools, law students, legal organizations and other interested parties, for the purposes of receiving written comments.

That written comments be accepted until March 15, 2012 after which the Task Force will prepare a final report for Convocation's consideration.

The following amendments were accepted:

- That "LAWPRO" be added to the main motion after "Federation of Law Societies of Canada" and that LawPRO added to the list of recipients of letters to be sent to interested parties on page 3 of the Report.
- That under the heading "Options for Consultation" on page 8 and page 29 of the Consultation Report, the following words be added as follows:
 - is fair "and ensures equality of access to all candidates"; and
- That the following questions be added to the Consultation Report on page 11 and page 42:
 9. What are your views on the issue of over-representation of equity-seeking groups in those not able to obtain articling positions?
 10. If you have concerns, do any of the proposed options satisfactorily address those concerns?

The main motion as amended was approved.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR
L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Symes presented the Report.

Report to Convocation
December 9, 2011

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members

Janet Minor, Chair
 Raj Anand, Vice-Chair
 Susan Hare, Vice Chair
 Constance Backhouse
 Paul Copeland
 Cathy Corsetti
 Mary Louise Dickson
 Adriana Doyle
 Seymour Epstein
 Julian Falconer
 Howard Goldblatt
 Janet Leiper
 Dow Marmur
 Wendy Matheson
 Judith Potter
 Susan Richer
 Heather Ross
 Paul Schabas
 Baljit Sikand
 Beth Symes

Purpose of Report: Decision and Information

Prepared by the Equity Initiatives Department
 (Josée Bouchard – 416-947-3984)

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For Information.....TAB B

Comments on the Consultation Paper *Measuring Diversity in Law Firms – A Critical Tool for Achieving High Performance*

Public Education Equality and Rule of Law Series Calendar 2011- 2012

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (Equity Committee) met on November 9, 2011. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Cathy Corsetti, Adriana Doyle, Julian Falconer, Howard Goldblatt, Susan Hare, Judith Potter and Susan Richer participated. Julie

Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Sandra Yuko Nishikawa, Vice-Chair of the Equity Advisory Group/Groupe consultatif en matière d'équité, participated. Staff members Josée Bouchard, Juda Strawczynski and Jim Varro attended. The Equity Committee also met via conference call on November 29, 2011 to consider and approve the amended Return to Practice Working Group Report. Janet Minor, Chair, Mary Louise Dickson, Adriana Doyle, Seymour Epstein, Dow Marmur and Beth Symes participated. Connie Reeve, Co-Chair of the Return to Practice Working Group, and staff member Josée Bouchard, also participated.

FOR DECISION

RETURN TO PRACTICE WORKING GROUP REPORT

MOTION

2. That Convocation approve the development of a program, to be assessed following 5 years of operation, by which it contracts the use of one or more professional career counsellors and provide access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. Such a program may be reviewed in the context of the development of strategies to enhance mentoring opportunities for lawyers.
3. In the spring of 2009, the Return to Practice Working Group (Working Group) was created as part of the Retention of Women in Private Practice Project. The Working Group is co-chaired by benchers Beth Symes and lawyer Connie Reeve. Working Group members are benchers Janet Minor, Chair of the Equity Committee, and benchers Judith Potter, a member of the Equity Committee.
4. The mandate and objectives of the Working Group are to identify strategies and develop resources to facilitate the return of women lawyers into practice. The identified strategies are meant to be applicable to women lawyers who wish to re-enter the practice of law in non-private and private practice work environments.
5. An original report prepared by the Working Group was considered by the Equity Committee and the Priority Planning Committee in the spring 2011, and presented to Convocation by the Equity Committee for information in May 2011 (the "original report"). The following two recommendations did not require approval, as matters of policy were not involved and no additional resources were required for 2011. The Law Society is implementing the following recommendations:
 - a. That the Law Society make available online informational resources for lawyers and paralegals focused on the departure from and return to the practice of law.
 - b. That the Law Society explore ways to provide or augment educational initiatives currently available for women who are transitioning back into practice, by partnering with external education programs to promote and assist in the delivery of their programs.

6. The original report also included two other recommendations. One of the recommendations was to provide financial assistance to women lawyers, in the form of a repayable loan, who want to attend an external return to work executive education program. In Ontario, there are three programs, the Women in Transition Program, the Ivey ReConnect Program and the Rotman Back to Work Program. The Working Group has gathered further information about these programs since its original report and it has decided to withdraw the recommendation to create a loans programs. Because such external programs are already heavily subsidized and have some scholarships and bursaries, the Working Group has decided that the cost/benefit does not warrant the creation of a loans program. The Equity Committee agrees, and will continue to monitor the access of women lawyers to these programs.
7. The other recommendation was a program for career counselling and/or coaching services. The Equity and Aboriginal Issues Committee recommends that the Law Society develop a program, to be assessed following 5 years of operation, by which it contracts the use of one or more professional career counsellors and provides access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. Such a program may be reviewed in the context of the development of strategies to enhance mentoring opportunities for lawyers.
8. The Equity Committee amended the original Working Group report to reflect the new position described above. The amended report is presented at Appendix 1. The Equity Committee met on November 29, 2011 to consider the amended report and approved it.

Appendix 1

Return to Practice Working Group Report

Working Group Members
Beth Symes – Co-chair
Connie Reeve – Co-chair
Janet Minor
Judith Potter

Purpose of Report: Decision

Prepared by the Equity Initiatives Department
(Josée Bouchard and Mark Andrew Wells – 416-947-3984)

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REPORT OF THE RETURN TO PRACTICE WORKING GROUP

I. MOTION

1. That Convocation approve the following recommendation:
 - a. That the Law Society develop a program, to be assessed following 5 years of operation, by which it contracts the use of one or more professional career counsellors and provide access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. Such a program may be reviewed in the context of the development of strategies to enhance mentoring opportunities for lawyers.

II. INTRODUCTION

2. In 2008, 155 women left the practice of law. Many of these women took extended leaves, based on the assumption that returning to practice can be done easily and effortlessly.¹ These numbers are typical for women lawyers exiting practice. However, the research conducted by the Return to Practice Working Group (Working Group) demonstrates the challenges that many of these women will face when attempting to re-establish their professional legal careers.
3. Simply said, women who have left the practice of law for an extended period of time face significant challenges when returning or attempting to return to work. These challenges include a lack of information about the options when leaving practice and the requirements to return, loss of self-confidence, a sense of isolation, loss of legal networks, having to return to a different practice area, learning a new area of law, adjusting to new technology and needing advice and mentoring about career planning. Moreover, there are additional external challenges that these women must confront. A firm may not be receptive to women seeking to return to practice for reasons related to age, perceived lack of flexibility or commitment and a preference for recently call and therefore more malleable lawyers.
4. Notwithstanding, some women are able to overcome the challenges and return to practice after an extended absence. Returning to practice can be a necessity following the death of a spouse or the breakdown of a relationship. This report outlines the challenges faced by women who leave the practice of law for an extended period of time and makes a number of recommendations.

¹ Statistics were compiled by the Membership Services Department of the Law Society. The statistics provide a breakdown of lawyers leaving and returning to the practice of law from 1990 to 2008 by age group and year of call.

II. BACKGROUND

5. The *Retention of Women in Private Practice Report* noted that women lawyers leave private practice in larger numbers than their male counterparts and face gender based challenges when they return to private practice, particularly when the absence has been for a significant period.²
6. Studies have also shown that there are gender differences in the types of activities undertaken during job interruptions. Women are more likely than men to interrupt their legal position and more likely to report child care as the primary activity during the interruption. Men are more likely to travel or to undertake educational and professional development activities that are seen to be related to their legal career development and advancement.³
7. In May 2008, Convocation adopted the *Retention Report* that addressed in part the issue of women's return to private practice. For example, the Justicia Project includes the implementation of programs to assist women lawyers when they return to their firm after a parental leave. However, the recommendations did not focus on the issue of women reintegrating into the legal workforce in a different practice area or place of employment than the one left following an extended period of absence.
8. In the spring of 2009, the Return to Practice Working Group (Working Group) was created as part of the Retention of Women in Private Practice Project. The Working Group is co-chaired by bencher Beth Symes and lawyer Connie Reeve. Working Group members also include the Chair of the Equity and Aboriginal Issues Committee (Equity Committee), bencher Janet Minor and bencher Judith Potter, a member of the Equity Committee.
9. The mandate and objectives of the Working Group are to identify strategies and develop resources to facilitate the return of women lawyers into practice. The identified strategies are meant to be applicable to women lawyers who wish to re-enter the practice of law in non-private and private practice work environments.
10. This report provides an overview of the work of the Working Group, including the following:
 - a. Law Society of Upper Canada Data;
 - b. Methodology;
 - c. Focus Group findings;
 - d. Observations of the Working Group – Other Issues and Consideration;
 - e. Outline of Proposed Recommendations in May 11, 2011 report;
 - f. For decision – Career Counselling Resources; and
 - g. For information – Online Information Resources and Educational Initiatives.

² Law Society of Upper Canada, *Final Report – Retention of Women in Private Practice Working Group* (Toronto: Law Society of Upper Canada, May 2008) [*Retention Report*].

³ *Ibid.*

IV. LAW SOCIETY OF UPPER CANADA DATA

11. Information gathered from the Law Society's database on lawyers who have left and returned to the practice of law in Ontario for the period from 1990 to 2008 indicates that the total percentage of lawyers, both male and female who left the practice of law ranged from 0.3% to 2.5%.
12. A breakdown of the number of years away from the practice of law before returning highlights that 46% of women are away from the practice of law for between 2 and 8 years, whereas 37% of men are away for that period. In addition, 53% of men who leave the practice of law are away for a period of less than two years, compared to 38% of women who are away for two years or less.
13. With respect to the lawyers who did not return to practice, 41% of women lawyers who surrendered their license did not return, where only 24% of male lawyers in similar positions did not return. Moreover, where 29% of men who did not return to the practice of law retired, only 5% of women lawyers retired. In other words, women lawyers who surrender their license are also less likely to return to the profession of law and/or practice than their male counterparts, in addition to being less likely to retire.
14. This data suggests that while the proportion of men and women leaving and returning to practice in the various post-call cohorts are similar, women tend to be away for longer periods. The exodus of men lawyers is largely driven by retirement. While women lawyers are less likely to return to practice, they are also not retiring in the same rates as their male counterparts.
15. It should be noted that the statistics gathered from the Law Society database do not capture lawyers who attempted to return to the practice of law, but were unsuccessful. It is suggested that given that women lawyers are away from the practice of law for longer periods, less likely to have returned to practice after surrendering their license and less likely to have retired than men, the challenges of returning to practice may have a more profound impact on women lawyers than their male counterparts. This report outlines those challenges and recommends initiatives to assist women in navigating those challenges.

V. METHODOLOGY

16. The Working Group based its work on the premise that women and men leave the practice of law for different reasons and the issues related to returning to practice differ along gender lines.⁴ This premise helped to identify a discreet group of women within the legal profession who also face common challenges in seeking to reintegrate into the profession after an extended absence.

⁴ In *Turning Points and Transitions: Women's Careers in the Legal Profession* (2004), Fiona Kay analyzed the results of a third longitudinal study of 1500 male and female lawyers who were called to the bar in Ontario between 1975 and 1990. The results indicate that for women, a desire to balance career and family/personal life was the most common reason for leaving the practice of law. Results further indicated that men and women fall along fairly traditional gender lines with women spending almost three times as many hours per week on child care than men, despite working the same number of hours.

17. The Working Group defined an “extended absence” or “extended leave” from the practice of law as 5 years or more. It collected anecdotal evidence and compiled information to discern the experiences of these women through a series of focus groups and individual interviews with lawyers throughout the province. The Working Group also met with senior women at large law firms in Ottawa, other senior women in the profession and outplacement and career counsellors from the Toronto area. In addition, the Working Group spoke with outplacement and career counsellors in Ottawa and London and spoke with representatives from Women in Transition⁵ and ReConnect⁶ programs.
18. The Working Group selected focus groups as the methodology to conduct its research because they allowed for an open discussion of challenges that women may encounter when returning to practice. Participants were able to relate their experiences with other participants and make observations and comparisons in a group context.
19. The names of lawyers who left or were thought to have left the practice of law for an extended period of time, were provided to the Working Group through colleagues, contacts, various associations, individual benchers, judges, County and District Law Presidents Association (CDLPA) presidents, members of the Equity Advisory Group (EAG) and Women’s Equality Advisory Group (WEAG) and lawyers from all the cities where focus groups were held.
20. Participating lawyers were invited to attend a focus group session. The locations of the focus groups were selected to ensure fair representation of all regions of the province and, as much as possible, diverse communities.
21. The Working Group held 8 focus groups in all; three in Ottawa, two in Toronto and one focus group in London, Sudbury and Thunder Bay. The Working Group elicited information through the Focus Groups on initiatives that the Law Society might consider implementing to assist women who would like to return to practice. In all, 55 people participated in the focus groups (See Appendix A for information about the focus groups).

⁵ The Women in Transition Executive Education Program co-sponsored by the University of Toronto and the Law Society is designed to help women who are returning to practice understand the changes in the legal market place and provide practice tools and tips for career and job searches. The two-day program is geared towards practicing lawyers considering a transition to non-traditional legal work, women who have left the practice of law and wish to return to legal practice or a non-traditional law-related job and women interested in part-time work starting their own practice of exploring shared work arrangements. The most recent session was held in October 2010.

⁶ Founded by Canadian Imperial Bank of Commerce, ReConnect is designed to assist professional women who have been out of the workforce for extended periods (two to six years) prepare to return to their professional careers. The program is offered once a year in the form of two modules that span seven days (five days in London, two days in Toronto). The cost of the program to participants is \$3500 (including meals and accommodation). CIBC and Ivey underwrite the additional cost of \$9000 per participant. This program is not exclusive to lawyers.

22. The Working Group developed the focus group questions and topics for discussion with the assistance of the Equity Initiatives Department (Equity Department). They were designed to reflect the objectives and mandate of the Working Group. Where possible, the questions were distributed to the participants prior to the meeting (See Appendix B for a list of the questions). At least one member of the Working Group and a Law Society staff member from the Equity Department attended the Focus Groups.
23. In circumstances where a lawyer's experience was within the mandate of the Working Group, but was unavailable to participate in a focus group, the Working Group or a Law Society staff member conducted individual interviews. There were approximately 15 individual interviews conducted.
24. In July 2010 the Working Group met with outplacement and career counsellors in the Toronto area to discuss their experiences and observations with lawyers who have left the practice of law for an extended period and then sought to return and the benefits of their programs. The Working Group identified these career counsellors because of their extensive experience working with lawyers who required outplacement and counselling services in all facets of the legal profession. The services offered by the career counsellors include career coaching, transition counselling and consulting services to law firms and individual lawyers.
25. The Working Group also had discussions with outplacement and career counsellors in Ottawa and London. These counsellors aided the Working Group in determining the time and cost that would be required to assist women return to practice after an extended absence.

VI. FOCUS GROUP FINDINGS

26. The Focus Groups led to general observations that many women who leave the practice of law for an extended period of time, do so for child care reasons and/or are able to do so because they have a spouse whose income is sufficient to support the needs of the family. Other reasons for leaving practice include care-giving responsibilities for a special needs child, an ill parent or spouse.
27. The Working Group observed that for some women the primary reason for returning to practice was the death of a spouse or the breakdown or dissolution of a relationship. Another reason for returning to practice was the lessening of family responsibilities when their children had reached school age and desired intellectual stimulation and engagement outside of the home. In deciding to re-enter the legal profession most women indicated that they sought professional opportunities that would complement their family life as opposed to readjusting their life to accommodate the professional opportunity.
28. The following challenges were identified:
 - a. there is a lack of information about the options of leaving practice and the requirements to return;
 - b. women on extended leaves lose their self-confidence;
 - c. extended leaves lead to a sense of isolation and loss of legal networks;

- d. women are often forced or want to return to a different practice area or environment, including starting one's own practice;
- e. women often need to update their knowledge of substantive law and/or learn a new area of law;
- f. the institutional culture of law firms and the client-focused model of private practice can lead to challenges when reintegrating;
- g. mastering and adjusting to new technology, including computer based legal research is often a challenge; and
- h. need for advice and mentoring to develop a career plan is often necessary.

Lack of Information about Options when Leaving and Requirements when Returning

- 29. Some focus group participants noted that the initial challenge of the re-entry to practice of law was the lack of information or misinformation about the Law Society's requirements for returning to practice. The myths about re-entry ranged from having to re-attend law school and rewriting examinations in the licensing process to re-articling and taking legal refresher courses. The Working Group also observed that some participants had incorrect information about the requirements of returning to practice from the Law Society and from practising and retired lawyers.
- 30. Further, participants noted that the attempts to juggle their legal practice with child care responsibilities was overwhelming and resulted in decisions that may not have been in their best interest. With regards to professional decision making, many focus group participants noted that it was while they were navigating the challenges of returning to practice that they became aware that they could have made different choices if they had been informed of the alternatives to a complete departure from the practice of law. Many did not explore other options in law outside of the full service firm scenario including in-house counsel, tribunals and teaching positions.

Isolation, Loss of Self Confidence and Legal Networks

- 31. The focus group participants overwhelmingly agreed that loss of self-confidence was a serious obstacle to returning to practice after an extended absence. It was observed that there was a direct correlation with the loss of self confidence that was experienced and the amount of time a participant was away from the practice of law. Moreover, the barriers experienced were magnified by the length of time one has spent away from practice.
- 32. A sense of isolation was also a barrier to returning to practice. Most participants felt that their experiences were unique, unaware of the reality that there were other women who were navigating the same challenges. The sense of isolation felt by the participants was exacerbated by the fact that most had lost all contact with the legal networks that they had established when they were practising law.

Changes in Practice Area and Environment

- 33. Many of the focus group participants expressed concerns that upon re-entering the practice of law, their substantive knowledge in an area of law was out of date. Moreover, many participants who had returned to practice, returned to a different practice

environment or different practice area of law than what they had left. These new practice environments included in-house counsel positions, sole practice, and tribunal positions.

34. Another observation was that those participants who had not yet returned to practice were pursuing options that included working on contract or teaching law related subjects. Other participants sought out new and expanding areas of law such as e-discovery and estate litigation.

New Technology

35. Advances in and access to new technology while competing with more technically-savvy lawyers was also identified as a barrier for those seeking to return to practice. For many participants, returning to practice has meant embracing a technological revolution. Some participants had never engaged in computer based research, document management and creation and the new forms of communication with courts, tribunals, opposing counsel and clients such as electronic mail.

Insufficient Institutional Support

36. Many participants noted that the reality of law as a business and the client-focused model of private practice along with insufficient institutional support for leaves makes it a challenge for women to leave the private practice of law for an extended period of time. While most participants left private practice, others tried strategies that would allow them to remain in private practice. For example, moving to non-equity partner status or working part-time.
37. Some participants discussed the policies in the federal, provincial and municipal governments where it is possible for a women lawyer to extend a parental leave beyond a year and to return to her own position or a comparable one, after an extended leave. The Working Group observed that in Ottawa, such policies attracted woman lawyers to the Federal Government when they made a decision to have children.

Advice and Mentoring

38. Many focus group participants expressed frustration with respect to determining the initial steps of getting back to practice. Many needed assistance in determining the best path to re-entering the practice of law and finding employment and were unaware of career coaching and courses that could be of assistance to them in re-entering practice. Participants suggested that having a coach or mentor would have been helpful in making these transitions.

VII. OBSERVATIONS OF THE WORKING GROUP: OTHER ISSUES AND CONSIDERATIONS

Gender Based Issues

39. While the Working Group focused on the challenges that women face when attempting to return to practice, the Working Group made inquiries about the challenges that men experience when attempting to return to the practice of law after an extended absence.

40. The Working Group observed that men have different experiences while they are away from the practice of law, but nevertheless face challenges when they return to practice. It was often difficult for men lawyers to return to their former firm as the clients that they had were being served by other partners and associates of the firm.
41. However, the Working Group observed that men were able to acquire positions at other firms and were given a finite period, usually two years, to build a book of business and establish a practice. While not all men were successful, the perception of men as “rainmakers” afforded them lateral hire opportunities that were not afforded or available to similarly positioned women. As such, women were not given the same two-year opportunity to affirm their value to a firm and were therefore not able to re-establish their legal careers in the same way as their male counterparts.

Women from Racialized Communities

42. The Working Group found it challenging to locate women from equality-seeking communities, in particular women from racialized communities, who met the criteria. However, the Working Group was able to gather experiences from racialized women who attended some of the focus groups or were individually interviewed.
43. The Working Group believes that while more investigation is required to draw any definitive conclusions on racialized women that are returning to practice after an extended absence, it suggests that at the very least these women may be more vulnerable when they return to practice after an extended absence.

Geographic Location

44. The Working Group observed that the challenges of returning to practice after an extended absence from the profession are particularly difficult in larger cities such as Toronto, Ottawa and London. In smaller centres such as Sudbury and Thunder Bay, most focus group participants had no difficulty in returning to work and were approached or recruited by firms, legal clinics or lawyers with offers of employment. This occurred even when focus group participants had not contemplated returning to practice or at the time had no intention of returning to practice.
45. While the Working Group observed that focus group participants in these areas may not have necessarily been offered employment in the areas of law that they had practised, it was apparent that the shortage of and demand for lawyers in smaller centres resulted in firms being prepared to accept lawyers with a hiatuses in their professional experience. This included women who have been away from the practice of law for an extended period of time.

Returning to Practice after a Maternity Leave

46. The Working Group noted that many of the focus group participants experienced challenges related to their pregnancy, but in particular after returning to work following a maternity leave. Some participants suggested that they faced accommodation issues for

their individuals needs when returning to work, while others described the diminishment of professional opportunities that were available before their maternity leave. These experiences are consistent with the reports of the Discrimination and Harassment Counsel.⁷

47. While these women fell outside the mandate of the Working Group as their absence from the practice of law was less than five years and while these issues are being addressed through the policies developed by the Retention of Women in Private Practice Project, the Working Group decided to mention the experiences of these women in its report.

Payment of Law Society Fees

48. Some participants also noted that a part-time fee category would have been helpful upon their return as they were unable to afford the 100% fee paying category when they were only working part-time or a few hours per month. Other participants indicated that they may have attempted to return to practice sooner had a part-time fee paying category been available.

VIII. OUTLINE OF PROPOSED RECOMMENDATIONS IN MAY 2011 REPORT

49. In addition to identifying issues that they encountered, the focus group participants used their personal experiences to suggest many possible solutions to assist women overcoming the challenges associated with returning to practice. In developing its recommendations, the Working Group considered the findings of the focus groups, distilled the suggestions of the participants and identified initiatives that could be implemented by the Law Society (See Appendix C for a list of current Law Society Initiatives that can assist women in returning to practice).
50. The Working Group is of the opinion that the best use of resources is to assist women to stay in the profession, or to provide resources to assist women in making informed decisions before they leave the practice of law. As such, it favours a multi-faceted, proactive/preventative approach to assist women before they leave the practice of law as opposed to a reactive/restorative approach in addressing the challenges that women face when returning to practice. However, the Working Group was also conscious of the assistance that women who have been away from the practice of law for an extended period may require.
51. The Working Group provided recommendations that fell into three distinct categories. The categories are described as follows:

⁷ Discrimination and Harassment Counsel, *Report on the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada: For the Period from January 1, 2010 to June 20, 2010* (Toronto: Law Society of Upper Canada, 2010). The Discrimination and Harassment Counsel Reports provide a summary of the discrimination and harassment complaints received. These include complaints against lawyers and law students from members of the Bar, complaints against lawyers by the public, complaints against lawyers by paralegals and complaints against paralegals. The reports also provide a list of services offered to complainants and summary of all general inquiries

- a. Online Informational Resources – The Working Group noted that returning to practice after an extended period is often analogous to initial entry into the profession. As such, being aware of the Law Society's requirements for resuming one's practice and other useful information would help women make informed professional decisions before leaving the practice of law and when returning to the practice of law. This recommendation does not require Convocation's approval and is now being implemented. Information about the recommendation and its implementation progress is presented for information below.
 - b. Educational Initiatives –The Working Group was of the view that partnering with existing educational programs available for women who are transitioning back into practice would provide valuable opportunities for women who are returning to the practice of law. This recommendation does not require Convocation's approval and is now being implemented. Information about the recommendation and its implementation progress is presented for information below. The original report presented to Convocation in May 2011 also included a recommendation to provide financial assistance to women lawyers, in the form of a repayable loan, who want to attend an external return to work executive education program. In Ontario, there are three programs, the Women in Transition Program, the Ivey ReConnect Program and the Rotman Back to Work Program. The Working Group has gathered further information about these programs since its Report to Convocation in May and it has decided to withdraw the recommendation to create a loans programs. Because such external programs are already heavily subsidized and have some scholarships and bursaries, the Working Group has decided that the cost/benefit does not warrant the creation of a loans program. The Equity Committee will continue to monitor the access of women lawyers to these programs.
 - c. Career Counselling Resources – The Working Group discerned that access to career counselling could provide the necessary knowledge and insight to facilitate leaving and re-entering the profession. Career counselling is one feature of the mentoring paradigm and can be invaluable in helping a lawyer appreciate the realities of leaving practice and returning to practice after an extended absence.
52. Although the recommendations are geared towards women, the Working Group noted that men also take extended periods away from the practice of law and may encounter similar challenges as women when they attempt to return to practice.
- IX. FOR DECISION - RECOMMENDATION - CAREER COUNSELLING RESOURCES
53. That Convocation approve the following recommendation:
- a. That the Law Society develop a program, to be assessed following 5 years of operation, by which it contracts the use of one or more professional career counsellors and provide access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. Such a program may be reviewed in the context of the development of strategies to enhance mentoring opportunities for lawyers.

54. The Working Group observed that many focus group participants left the practice of law for child care, including parental leaves and family responsibility reasons. These participants initially thought that they were going to be away from the practice of law for a shortened period, but ultimately took an extended absence. Many focus group participants suggested that they would have made other choices had they been informed of the difficulties of returning to practice once they made a decision to take an extended absence. This led the Working Group to conclude that, not only did women not appreciate the challenges that would be involved in returning to practice, but some had unrealistic expectations about what returning to practice would entail.
55. To bridge these observations, while taking into account the need for some women to have more focused individualized guidance options available, the Working Group identified career counselling as a format that should be accessible to women who are leaving. In most cases, it was observed that a woman who is leaving and returning to practice would benefit from coaching services on career development.
56. In the case of a lawyer leaving practice, the coaches would provide career advice and address the realities and challenges of leaving one's practice for an extended period of time. This would enable a lawyer to make a more informed decision at the time of departure. When the lawyer would return to practice, further coaching would be provided in the form of generating personalized options and offering suggestions to assist the lawyer re-enter practice. A career counsellor can also assist in developing marketing strategies that are consistent with the needs of the marketplace at the time of re-entry into the profession.
57. From its discussions with the career counsellors, the Working Group learned that a critical component of the career counselling relationship is the guarantee of complete confidentiality. The confidential nature of the relationship results in career counsellors providing blunt and candid information on the challenges of returning to practice, while at the same time helping to manage expectations that may be unreasonable and unrealistic.
58. Moreover, with regards to women who are leaving the practice of law, the Working Group discerned that the greatest need for career counselling was women lawyers who work as sole practitioners or in small firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. The Working Group believed that these women do not have resources available to make informed decisions about an extended departure from the practice of law when compared to their counterparts working in large firms. The Working Group observed that counselling resources are available at a number of large firms and that medium firms can also afford to purchase counselling services. Therefore, the Working Group recommends that the career services be limited to women in firms of five or fewer lawyers.

59. In providing coaching services to these women, as a model, the Working Group considered the work of the Parental Support Program of the Law Society of Manitoba.⁸ In this model, lawyers going on parental leave may access counselling/coaching services to help them prepare for parenthood and career and professional responsibilities. Lawyers are provided with a total of six sessions; two sessions before they take the parental leave, two sessions while they are on the parental leave and two sessions after they return from the parental leave. Given the effectiveness and success of this program in Manitoba, a modification of that model could be used to provide guidance to lawyers who are considering leaving the profession for any period of time.⁹
60. As stated earlier, many focus group participants suggested that they would have made different and more informed choices had they been aware of the challenge of returning to practice after an extended absence. This may have allowed an easier transition back to the practice of law. The Working Group also noted that many focus group participants discussed their sense of isolation when they were away from the practice of law. This sense of isolation stemmed partly from the belief that the issues that they were facing when returning to practice were unique.
61. Most focus group participants commented on how invaluable mentoring was or would have been. Many suggested that it would be helpful to develop/enhance the ways of connecting with women who have successfully returned to the practice of law after an extended absence or who understand the issues and challenges with respect to returning to the practice of law after an extended absence.
62. In this regard, career counselling can also assist lawyers to explore the consequences of a given course of action, help the lawyer make decisions that can facilitate returning to practice in the future and advise that person on how to develop and manage their career effectively. For example, it is not uncommon for some lawyers returning to practice to think that they can resume the same practice that they left. However, the passage of time away from practice may mean that the lawyer will be faced with returning to a very different practice. A career counsellor can help a lawyer accept this reality and appreciate that there are other opportunities available.
63. The Working Group noted that the delivery of the career counselling could take various forms, including contracting the use of a professional career counsellor, expanding career counselling services within the mandate of the Discrimination and Harassment

⁸ The Parental Support Program provides coaching sessions to lawyers and their spouses/partners to help them plan for maternity and parental leave and meet the challenges of becoming new parents. The coaching sessions are provided by the Equity Ombudsperson of the Law Society of Manitoba and consist of six in-person sessions. The sessions focus on issues such as how to discuss leave options and transition issues with the lawyer's firm, the dynamics of having a family and successful re-integration into practice while juggling career and home life. Sessions are free, completely confidential and supported by the additional resources of Blue Cross Manitoba. < <http://www.lawsociety.mb.ca/for-lawyers/equity-ombudsperson/about-the-equity-ombudsperson>>.

⁹ On April 7, 2010, the Working Group held a teleconference with Brenlee Carrington Trepel, Equity Ombudsperson at the Law Society of Manitoba to discuss their Parental Leave Support Program. She provided an overview and benefits of the program and described how successful the program has been.

Counsel or creating a counselling services position at the Law Society. Notwithstanding the implementation of this recommendation, the Working Group agreed that the Law Society should also make available a list of career counsellors to be included in the informational resources.

Contracting the use of Professional Career Counsellors

64. The Working Group proposes that of all the coaching options presented in this report, contracting with experienced career counsellors is the preferred option. The advantage of contracting the use of a professional career counsellor stems from the extensive experience and expertise in career coaching. From its discussion with the career counsellors, the Working Group learned that each counsellor had provided counselling services to hundreds of professionals, including dozens of lawyers. The career counsellors also frequently engaged in continuing professional development initiatives and activities to augment and enhance their skills.
65. Based on its discussions with career counsellors, the Working Group is of the view that one-on-one counselling is preferable. However, offering this type of service across the province would require a high level of resources, both financially and administratively. As a result, the Working Group recommends that this five-year pilot program be provided in three regions, Toronto, Ottawa and London. For other regions, counselling services will be available by telephone or, in exceptional circumstances, in person.
66. Staffing/human resources would be required to manage the program and a budget to retain professional career counsellors. The Working Group also noted that career counsellors offer services at \$150 to \$300 an hour. For budgeting purposes, the Working Group estimates that the services would be offered at a rate of \$225.

Expanding the mandate of the Discrimination and Harassment Counsel (DHC)

67. The Working Group considered whether it should recommend that the mandate of the Discrimination and Harassment Counsel (DHC) be expanded to include career coaching. However, the Working Group noted that the DHC is not a counsellor and was not appointed to have expertise in offering counselling services. Therefore, if the Law Society decides that the DHC's mandate should be expanded to include counselling responsibilities, it would be necessary to provide training to the DHC in career counselling and coaching or to retain a counsel with this expertise. The Working Group decided that this is not the preferred option.

Creating a Counselling Position at the Law Society

68. An alternative to expanding the mandate of the DHC would be to create a counselling position at the Law Society. This option could potentially lower the cost of the program, as the Law Society could create a salaried part-time position, as opposed to contracting a career counsellor at an hourly rate. However, when employee benefits are assessed, the cost implications may be neutral. A disadvantage of this option is that the take up rate is uncertain, especially in the first years of the program, and therefore the staff person may be underutilized.

Providing a List of Career Counsellors

69. Notwithstanding whether the Law Society chooses not to contract the use of a professional career counsellor, expand the mandate of the DHC, or create a counselling position at the Law Society, it could nevertheless, make available a list of regional services on its online information resources.

Resource Implications

70. Services offered by career coaches' range from \$150 to \$300 an hour. If women lawyers who work as sole practitioners or in small firms of five lawyers or less who are taking a leave from the practice of law are eligible for 6 hours of career coaching (2 hours of pre-departure counselling, 2 hours of counselling while on leave and 2 hours of post-return counselling), using an hourly rate of \$225, the cost per lawyer would be \$1,350. It is expected that, if the project is approved by Convocation, it would become effective at the earliest in April 2012. As a result, the projected take up rate for the last three quarters of 2012 would be as follows:
- a. A rounded average of 35 women lawyers have received PLAP benefits each year during three quarters (2009 – 35 women beneficiaries in three quarters; 2010 – 41 women beneficiaries in three quarters; and 2011 - 36 women beneficiaries in three quarters). If 35 women lawyers were to take 4 hours of coaching in 2012 (some will take the full 6 hours while others will take less) at a rate of \$225, the cost would be \$31,500 in 2012. By adding the cost of 0.5 of a full-time equivalent (FTE) position estimated at \$56,250 (FTE is estimated at \$90,000 plus 25% for overhead to amount to \$112,500), the overall cost of the program for 2012 would be \$87,750.¹⁰
71. The annual cost projection for beyond 2012 is also calculated using Law Society statistics on the take up rate of the PLAP. In 2009, for a period beginning in mid-March and ending in December (9 ½ months), 35 women received benefits through PLAP. In 2010 (12 months), 54 women received benefits, while by the end of September, 2011 (9 months), 36 women had received benefits. If we assume that approximately 60 women will be eligible for the program each year (which is an estimate that is slightly higher than the actual annual number of applicants to date), the annual cost of the program would be: \$81,000. By adding the cost of the 0.4 FTE (\$112,500) position, which amounts to \$45,000 to maintain the program beyond 2012, the overall annual cost of the program would be \$126,000.

¹⁰ The Law Society of Manitoba's Parental Support Program is open to all members and its eligibility criteria is much broader than the one proposed by the Working Group. As a result, that program does not provide an accurate basis to estimate the cost of the Working Group's proposed program. From October 2008 to December 2009, 14 lawyers accessed the Law Society of Manitoba's Parental Support Program. There are approximately 1800 lawyers in Manitoba. Therefore, less than 1% accessed the program. It is suggested that if the Law Society's career counselling program was open to all its members, then it is expected that 420 lawyers (42,000 x 1%) would use the career counselling services.

Option	Staffing	Program Expense	Other	Projected Annual Budget
Option 1 - Contracting with one or more professional career counsellors	<u>2012</u>	<u>2012</u>	Administrative expenses and travel and accommodation expenses in exceptional circumstances	<u>2012</u>
	0.5 FTE to set up the program	\$225 x 4 sessions x 35 participants = \$31,500		\$87,750
	\$56,250	<u>Annual beyond 2012</u>		<u>Annual beyond 2012</u>
	<u>Annual beyond 2012</u>	\$225 (flat fee) x 6 hours (capped) = \$1,350		\$126,000
Option 2 - Expanding the mandate of the DHC	0.4 FTE to manage the program	\$1,350 x 60 participants = \$81,000	Training required, administrative expenses and travel and accommodation expenses in exceptional circumstances	
	\$45,000			
	<u>2012/Annual</u>	<u>2012</u>		<u>2012</u>
	0.1 full-time equivalent position to manage the program	\$250 x 4 sessions x 35 participants = \$35,000		\$46,250
Option 2 - Expanding the mandate of the DHC	\$11,250	<u>Annual beyond 2012</u>		<u>Annual beyond 2012</u>
		\$250 (flat fee) x 6 hours (capped) = \$1,500		\$101,250
		\$1,500 x 60 (estimated participants) = \$90,000		
		DHC rate \$250/hour		

Option	Staffing	Program Expense	Other	Projected Annual Budget
Option 3 - Creating a Law Society counselling position	0.75 FTE lawyer position @ \$120,000/yr + 25% overhead = \$150,000 0.75 of \$150,000 = \$112,500		Training required, administrative expenses and travel and accommodation expenses in exceptional circumstances	\$112,500
Option 4 – Online list of career counsellors	Nominal	Nominal		Nominal

72. Given the extensive experience and expertise of career counsellors and their availability for face-to-face counselling, combined with the steps that would be required to expand the mandate of the Discrimination and Harassment Counsel or to create a counselling position at the Law Society, the Working Group recommends contracting the use of professional career counsellors.
73. The Working Group considered whether the recommendation should also apply to paralegals. The Working Group does not have evidence that women paralegals are leaving the practice in droves or that they face the same barriers when they seek to return. Furthermore, the Law Society began issuing paralegal licenses in May of 2008 and the Working Group definition of an extended leave is 5 years. Therefore, the application of this program to paralegals would be best considered when the whole program is assessed following five years of operation. The Equity Committee will monitor the paralegal experience by using the change of status forms and will report back at the end of the five year period.

TOTAL FINANCIAL IMPLICATIONS OF PROPOSED RECOMMENDATION

		2012	Annual costs beyond 2012
Contracting Professional Counsellors Total	Financial	\$31,500	\$81,000
	Staffing	\$56,250	\$45,000
		\$87,750	\$126,000

FOR INFORMATION

X. ONLINE INFORMATION RESOURCES

74. The following recommendation is being implemented: That the Law Society make available online informational resources for lawyers and paralegals focused on the departure from and return to the practice of law.
75. Some focus group participants indicated that they had conflicting information or were misinformed about the requirements necessary for returning to practice and reactivating their member status with the Law Society.
76. As a result, the Law Society's Membership Services developed a "fact sheet" to address some of the concerns identified by the Working Group. The fact sheet was immediately prepared and was subsequently distributed at focus groups sessions. Since the development of the fact sheet and through subsequent focus group meetings, the Working Group identified additional information resources that could be developed and made available online.
77. For example, helpful resources could include a centralized list of programs, substantive law courses, refresher courses and career counsellors available for lawyers who are leaving or returning to the practice of law. This section of the website could also include relevant guides that are available through Professional Development and Competence on topics such as setting up one's practice. There could also be links to courses, such as Master of Law programs or courses offered by the Ontario Bar Association or Advocates' Society.
78. The Law Society already has an extensive website, which includes a Women's Online Resource Centre ("WORC"), professional development resources and resources in the area of equity and diversity. The following activities have been completed to implement the recommendation:
- a. The creation of a *Return to Practice* online resource section (located on the WORC). Resources include the Law Society's Return to Practice Fact Sheet, detailed information about the Law Society requirements for re-entry to practice, and practical resources for developing a business plan, opening a practice, and marketing.
 - b. The WORC has been reviewed to assess the content of existing resources.
 - c. A review of other online resources has been completed to determine additional material to add to WORC.
 - d. A marketing plan has been drafted to promote the Return to Practice online resources and the educational program discussed below.

XI. EDUCATIONAL INITIATIVES

79. The following recommendation is being implemented: That the Law Society explore ways to provide or augment educational initiatives currently available for women who are transitioning back into practice, by partnering with external associations to promote and assist in the delivery of their programs.

80. Many focus group participants suggested that one of the biggest challenges of returning to practice was determining how to proceed. The Working Group observed that some women require more than the Law Society's online informational resources, such as access to specialized programming. These courses, created for women who have left the practice of law for an extended period and are returning to practice, offer invaluable assistance.
81. With respect to exploring educational initiatives, the following options were considered: partnering with existing external programs and associations to assist in the delivery of their programs; designing and delivering a Law Society program and providing financial assistance to women who want to attend an external program.

Partnering with Existing Programs

82. The Working Group determined that working in partnership with external stakeholders to deliver programs to women is the most feasible and practical option. There are a number of existing programs and initiatives in Ontario specifically designed for women who are returning to the workforce. These include the Women in Transition Program, the Ivey ReConnect Program and the Rotman Back to Work Program. There are also programs outside of Ontario, such as the Minerva Foundation Program in British Columbia. (See Appendix D for a description of programs).
83. The Working Group noted that the Women in Transition program offered by the University of Toronto, the ReConnect program offered by the University of Western Ontario and the Rotman Back to Work Program, offered by the University of Toronto, are excellent resources with proven track records of success. In the case of the ReConnect Program, all of the lawyers who enrolled in the program have returned to practice.
84. In considering partnering with existing organizations, the Law Society would not assume a lead in organizing the programming and would have varying degrees of influence, if any, on the program's content, delivery and cost. However, the Law Society would always be in a position to withdraw its support from the external program, if it was deemed appropriate.

Designing and Delivering its Own Program

85. The Working Group also considered the development of a Law Society program. In the opinion of the Working Group, as long as there are effective programs available to women transitioning back into the legal workforce, it is not necessary for the Law Society to become involved in the marketplace. Therefore, it felt that it should not duplicate effective existing programs, but should instead, when possible, partner with an external organization.

Implementation

86. The following activities have been completed to implement the recommendation:
 - a. The Law Society is promoting existing educational programs designed to assist women who are transitioning back into professional careers. The program details are included on the *Return to Practice* page on WORC.

- b. The Law Society contacted and developed strategic partnerships with existing program providers for the following purposes: to help promote these programs to women lawyers who may be contemplating a return to practice: and to integrate return to practice content into these programs.

Appendix A

TABLE OF FOCUS GROUP MEETINGS

Meeting	Date	City/ Region	# People Attended	Notes
Focus Group #1	April 27, 2009	Toronto	13	The meeting was with women, most of whom have been litigators at large or medium firms in Toronto before their departure from practice. Most of the women had left the practice of law for child care or family responsibility reasons.
Focus Group #2	July 7, 2009	Toronto	5	The meeting was with women who had been among the 42 women who had attended the Women in Transition program co-hosted by the University of Toronto and the Law Society on June 17-18, 2009.
Focus Group #3	September 30, 2009	Ottawa	7	The meeting was with women from the Ottawa area.
Focus Group #4	October 1, 2009	Ottawa	6	The meeting was held with senior women in law firms in order to determine ways that law firms can assist women in overcoming the barriers of

Meeting	Date	City/ Region	# People Attended	Notes
				returning to practice.
Focus Group #5	February 5, 2010	Ottawa	11	While there were 11 participants, only two participants were within the criteria of the Return to Practice Working Group.
Focus Group #6	April 1, 2010	London	6	The meeting was with women from the London area.
Focus Group #7	April 30, 2010	Sudbury	3	The meeting was with women from the Sudbury area.
Focus Group #8	May 7, 2010	Thunder Bay	4	The meeting was with women from the Thunder Bay area.

Appendix B

FOCUS GROUP QUESTIONS

1. Please discuss the following:
 - a. What position/work environment and practice area your were in;
 - b. Why you left;
 - c. How long you were gone for;
 - d. The type of position/work environment and practice area you re-entered or wish to re-enter.
2. What are, from your perspective, the most significant barriers for your return to practice?

3. Are the challenges that racialized women or women from equity-seeking groups face different from those of other women?
4. What programs or initiatives would assist you in returning to practice?
5. The Law Society of Upper Canada regulates the legal profession in the interest of the public. The Law Society can provide tools to assist lawyers and law firms, but the Law Society does not have the mandate to impose the adoption of those tools. All lawyers in Ontario are members of the Law Society. The Law Society provides a series of support programs and education programs for its members to enhance their competence in offering legal services to the public. What programs or initiatives could the Law Society implement?

Appendix C

CURRENT INITIATIVES OF THE LAW SOCIETY OF UPPER CANADA

1. Over the years, the Law Society has developed initiatives and supports that facilitate returning to practice. These include changes to the fee payment structure for lawyers, who have been away from the practice of law, fact sheets about the requirements of re-entry, mentoring, networking, practice helpline, practice review and the contract lawyers' registry.
2. Currently in Ontario, former members of the Law Society of Upper Canada whose license to practice law has been revoked, who have surrendered their license or who have been permitted to surrender¹¹ their license may apply to be licensed in accordance with *Law Society Act*,¹² and By-Law 4 Part II. In this case, the former lawyer must file the appropriate application and pay the \$300 administrative fee.
3. In cases where a lawyer was administratively suspended, the lawyer must pay an additional \$150 reinstatement fee and any fees that are in arrears prior to 1993. Applications from inactive lawyers who were permitted to surrender their licence or whose licence was revoked must also appear before the Law Society's Hearing Panel to have their licensing application considered.

¹¹ A lawyer whose license is revoked or who surrender's his or her license must cease the practice of law and is also prohibited from providing legal services as defined by the *Law Society Act*, as only those persons licensed by the Law Society to provide legal services may do so.

¹² R.S.O. 1990, c. L.8, s. 27.

4. The Law Society does not require the completion of courses, the rewriting of exams under the licensing process or re-articling, as is the case in other provinces, for example, Alberta¹³ and British Columbia.¹⁴ The requirements for reactivating one's status with the Law Society are outlined on the Return to Practice Fact Sheet that is located on the website.¹⁵
5. Other supports related to returning to practice include mentoring and networking. The Law Society facilitates networking and mentorship opportunities through its Equity and Diversity Mentorship Program, Articling Mentorship Program, Practice Mentorship Program and its Public Legal Education events. Lawyers that are returning to practice or in the process of returning to practice can participate in some of these programs and be paired with a mentor while Public Legal Education events are free.
6. The Practice Review Program and the Practice Management Helpline can also assist lawyers who have recently returned to practice. The Practice Review program provides both focused practice reviews and practice management reviews to lawyers, while the Practice Management Helpline is a confidential telephone service that provides lawyers with assistance in interpreting the *Rules of Professional Conduct*, Law Society legislation and by-laws as well as ethical and practice management issues that the lawyer might be facing.
7. The Law Society also produces a series of Practice Guides, such as the Bookkeeping Guide and Guide to Opening Your Practice, and offers Continuing Legal Education and Professional Development programming that can act as resources and assist lawyers that are returning to practice.
8. Continuing Legal Education programs include the New Lawyer Practice Series which covers various areas of law, Opening Your Law Practice, Running a Virtual Law Office and Effective Writing for Legal Professionals. The Law Society also co-sponsors the Women in Transition program offered by the Faculty of Law at the University of Toronto.

¹³ For example, former members of the Law Society of Alberta who wish to resume membership must apply for reinstatement of their membership. Once received, the Executive Director may refer the application to the Education and Credentials Committee, if he/she is of the opinion that the applicant's current knowledge of law and practice should be reviewed. The Education and Credentials Committee may approve or reject the reinstatement application or may approve the applications with conditions. Such conditions can include completing a course or courses of study specified by the Committee or passing any examinations prescribed by the Committee. See 115 -118 of Rules of Law Society of Alberta at: http://www.lawsocietyalberta.com/resources/rulesOfTheLawSociety_Y2R_gvP.cfm.

¹⁴ In British Columbia, the conditions of returning to practice relate to the lawyer's recent practice history, specifically, the length of time the lawyer has engaged in the practice of law or "equivalent practice," and the length of time you have been absent from practice. Depending on the practice history of the applicant, the applicant may have to fulfill return to practice requirements. If the applicant was called to the bar at least 7 years ago and has not practiced law within the last 7 years, the applicant must apply to the Credentials Committee and comply with any conditions it imposes. Conditions can include the completion of the Law Society Admission Program, completion of all or part of the Professional Legal Training Course and/or restrictions on practice. The applicant may also be asked to complete the Law Society Admission Program, which is a 12-month training program supervised by the Credentials Committee. It consists of nine months of articling and 10 weeks of full-time attendance at Professional Legal Training Course. Full details on return to practice requirements are available from the Law Society of British Columbia's website at: http://www.lawsociety.bc.ca/licensing_membership/returning_to_practice.html.

¹⁵ <<http://rc.lsuc.on.ca/pdf/membershipServices/returnToPracticeFactSheet.pdf>>

Moreover, the Knowledge Tree is a custom-designed resource for lawyers in Ontario. This is a comprehensive on-line listing of the most common practice management questions that lawyers have asked and the responses that are given.

Appendix D

DESCRIPTION OF EXTERNAL PROGRAMS

Women in Transition Program: Returning to Legal Practice or Considering an Alternative Career in Law

1. The Women in Transition Executive Education Program co-sponsored by the University of Toronto and the Law Society is designed to help women who are returning to practice understand the changes in the legal market place and provide practice tools and tips for career and job searches. It provides insights and practical knowledge into alternative careers in law firms, business, regulatory bodies, the public interest, community organizations, government, academia and the university, as well as a range of part-time and full-time options and share arrangements in more traditional practice areas.
2. The two-day intensive program is geared towards practicing layers considering a transition to non-traditional legal work, women who have left the practice of law and wish to return to legal practice or a non-traditional law-related job and women interested in part-time work, starting their own practice or exploring shared work arrangements. The most recent session was held in October 2010.

Ivey ReConnect Program

3. Founded by Canadian Imperial Bank of Commerce, ReConnect is designed to assist professional women who have been out of the workforce for extended periods (two to six years) prepare to return to their professional careers. The program is offered once a year in the form of two modules that span seven days (five days in London, two days in Toronto). The cost of the program to participants is \$3500 (including materials, meals and accommodation). CIBC and Ivey underwrite the additional cost of \$9000 per participant. This program is not exclusive to lawyers and financial assistance is available for those who qualify.
4. The benefits of ReConnect include assisting participants to, understand the current global business environment and explore how new trends are changing firms' strategies and tactics; renew analysis, planning and strategic skills; refresh business knowledge in financial management, information, technology and marketing; update leadership and communication skills; define an achievable career vision and strategy to execute a successful job search; learn how to leverage professional and personal networks to build career search connections; and build a strong and enduring peer-network with fellow participants.

Back To Work Program

5. The Back to Work Program at the Rotman School of Management at the University of Toronto sponsored by TD Bank Financial Group (TD) is for women who are returning to

business after an extended time away. The program runs in three modules of three program days over a three month period. The first module was in October 2010. During the in-class portion of the Back to Work Program, Rotman faculty members and instructors, as well as TD senior executive guest speakers, help participants refresh their business knowledge on topics like leadership, strategy and business and people performance. Between in-class sessions, participants receive one-to-one coaching and engage in business-related assignments between modules offered by TD and the other supporting organizations.

6. The cost of the program is \$1,950 +HST and includes program materials and meals. As lead program sponsor, TD Bank and the Rotman School of Management underwrite the cost of the program to lower tuition fees for participants. The value of the program per participant, excluding the value of in-kind childcare services, is \$13,500. Applicants may also qualify for one of four full scholarships, funded by TD.

Minerva Foundation for British Columbia Women

7. The Minerva Foundation for British Columbia Women was initiated in 1999 to provide funds for projects that will assist women to realize their potential and to create a safe place for them to live and work in British Columbia. The work of the Minerva Foundation is carried out through a series programs. The Minerva Helping Women Work Program was established in 2004 to aid women returning to work after an extended absence with the assistance of career counsellors, industry mentors and coaches.
8. The program takes up to 20 participants (referred to as protégés) on a specific career-planning journey, delivered by a team of qualified professional career counsellors, to improve their re-employment skills and define their goals. Mentors offer protégés advice, direction, and contacts. They are drawn from the business, academic, government and non-profit community. The mentors help the protégé determine which positions are the most feasible from a personal and industry outlook, and from a labour-market perspective. Each protégé is partnered with a personal career coach who will guide and support the protégé for 8 weeks through the critical job-search process.

INFORMATION

COMMENTS ON THE CONSULTATION PAPER *MEASURING DIVERSITY IN LAW FIRMS – A CRITICAL TOOL FOR ACHIEVING HIGH PERFORMANCE*

9. In November, 2011, the Canadian Bar Association released the consultation paper *Measuring Diversity in Law Firms – A Critical Tool for Achieving High Performance* with a deadline for submissions of January 8, 2012. The Equity Committee is drafting submissions on the consultation paper.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR 2011- 2012

10. The calendar of Public Education Equality and Rule of Law Series is presented at Appendix 2.

Appendix 2

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR
TO JUNE 2012

BLACK HISTORY MONTH

February 7, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

INTERNATIONAL WOMEN'S DAY

March 2, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

LA JOURNEE DE LA FRANCOPHONIE

Wednesday, March 21, 2012

Convocation Hall (6:00 p.m. – 8:00 p.m.)

RULE OF LAW SERIES

March 28 or 29, 2012 (tentative)

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

HOLOCAUST REMEMBRANCE DAY

April 17, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH

May 17, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS – LEGAL SYMPOSIUM ON DISABILITY ISSUES

June 6, 2012

Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL HISTORY MONTH

June 19, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK

June 21, 2012

Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Convocation Hall (6:00 p.m. – 8:00 p.m.)

Re: Return to Practice Working Group Report

It was moved by Ms. Symes, seconded by Ms. Minor, that Convocation approve the development of a pilot program, to be assessed following five years of operation, by which it contracts the use of one or more professional career counsellors and provides access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. Such a program may be reviewed in the context of the development of strategies to enhance mentoring opportunities for lawyers, and that Convocation approve the allocation of \$87,750 from the 2012 Contingency Fund for the program's 2012 budget.

Carried

Mr. Lerner abstained.

For Information

- Comments on the Consultation Paper *Measuring Diversity in Law Firms – A Critical Tool for Achieving High Performance*
- Public Education Equality and Rule of Law Series Calendar to June 2012

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report.

Report to Convocation
December 9, 2011

Access to Justice Committee

Access to Justice Committee

Marion Boyd (Chair)
Michelle Haigh (Vice-Chair)
Raj Anand
Robert Burd
Cathy Corsetti
Mary Louise Dickson
Adriana Doyle
Susan Elliott
Larry Eustace
Robert Evans
Julian Falconer
Howard Goldblatt
Susan Hare
Janet Leiper
Michael Lerner

Virginia MacLean
 Dow Marmur
 William McDowell
 Susan McGrath
 Janet Minor
 Nicholas Pustina
 Jan Richardson
 Susan Richer
 Robert Wadden
 Peter Wardle

Purpose of Report: Decision

Prepared by the Equity Initiatives Department
 (Marisha Roman, Aboriginal Initiatives Counsel – 416-947-3989)

COMMITTEE PROCESS

1. The Access to Justice Committee (the Committee) held a special meeting by telephone on December 5, 2011. Committee members Marion Boyd (Chair), Michelle Haigh (Vice-Chair), Raj Anand, Cathy Corsetti, Mary Louise Dickson, Adriana Doyle, Susan Elliott, Larry Eustace, Robert Evans, Julian Falconer, Howard Goldblatt, Susan Hare, Janet Leiper, Susan McGrath, Janet Minor, Nicholas Pustina and Jan Richardson participated. Staff members Diana Miles, Marisha Roman, Jim Varro and Sheena Weir attended.

FOR DECISION

FAMILY MATTERS – A PROPOSAL FOR A UNIFIED FAMILY LAW PLATFORM

MOTION

2. That Convocation consider and, if appropriate approve, the proposal for the development of a Unified Family Law Platform.

BACKGROUND

3. On August 23, 2011, the Access to Justice Committee reviewed its mandate and developed a strategic objectives plan for the 2011 to 2015 bench term. These objectives included a proposal for the development of an online family law platform.

FAMILY MATTERS - UNIFIED FAMILY LAW PLATFORM

4. The proposed family law platform would create an online resource for the public that would aggregate and organize currently available online information and resources related to family law. The platform would be designed to provide a “first stop” for users who require assistance with family disputes. Its content would focus on using plain language and providing information and links for existing resources to individual users,

including those who may choose to self-represent. More particularly, the overall approach would emphasize constructive resolution as opposed to litigation to speed up and simplify results. The platform's goal is to guide users through the legal, financial and related considerations commonly involved in resolving a family law issue.

5. The proposed unified online platform would be an overlay to the existing resources available online from key websites such as the Ministry of the Attorney General, the Ontario Courts, Legal Aid Ontario, Community Legal Education Ontario, Department of Justice and others. This project is not meant to create a new website, but rather to provide a platform that interconnects websites.
6. This project is initiated as a response to the fact that, while there exists an abundance of quality resources and tools available online to assist individuals as they address their family law needs, these resources are spread out across numerous websites. The lack of coordination and centralization of resources increases the complexity of the family law process for many people.
7. As the regulator of the legal professions in Ontario, the Law Society is in a position to play an important role in promoting accessible public information. The project is intended to be a collaborative effort between the Law Society and external organizations that are existing family law content providers, with the Law Society assuming the lead in the development of the platform.
8. Development of the site would leverage existing resources and information sources. All sources would be reviewed and modified to ensure that sourced content is easy to understand and more than just legal information. Modifications would focus on simplified and consistent use of language and terminology. There would be two content layers within the platform. First, a newly created content layer would annotate existing information with explanatory definitions written in plain language. The site would provide quick, practical and cost-free family law guidance. Second, specific links to existing resources and information sources would direct the user to the most relevant information available to address his/her needs, eliminating the need to search multiple sites independently.
9. The platform will be built in stages. Each stage will represent a discrete family law issue. The first stage will see the online platform built and will focus on information about child custody and support.
10. Assuming acceptance of the project proposal and its recommended budget allocation by Convocation, the development of the proposal will proceed on two levels. First, a plan to engage participants from other organizations will be developed. Second, once a project framework has been established, development of the platform would be facilitated by the Law Society in conjunction with external participants.
11. At its meeting on December 5, 2011, the members of the Committee agreed to support the proposal to initiate development of the online family law platform in 2012. The Committee referred the family law platform proposal to the Finance Committee to consider and, if appropriate, also recommend the request for allocation of \$170,000 toward the development of the proposal in 2012 to Convocation. The Finance Committee is scheduled to consider the request at its meeting on December 8, 2011.

12. The members of the Access to Justice Committee request that Convocation consider the proposal to initiate development of the unified family law platform and, if appropriate, approve the request for the 2012 year.

Re: Family Matters – A Proposal for a Unified Family Law Platform

It was moved by Ms. Boyd, seconded by Ms. Doyle, that Convocation consider and, if appropriate approve, the proposal for the development of a pilot Unified Family Law Platform, and approve the allocation of \$170,000 from the 2012 Contingency Fund for the Platform.

Carried

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REPORT FOR INFORMATION
FINANCE COMMITTEE REPORT

- Budget Request for Family Matters – A Proposal for a Unified Family Law Platform (Access to Justice Committee)
- Budget Request for Return to Practice Career Counselling and/or Coaching Services (Equity and Aboriginal Issues Committee)

Report to Convocation
December 9, 2011

Finance Committee

Committee Members
Carol Hartman (Chair)
Alan Silverstein (Vice-Chair)
John Callaghan
Mary Louise Dickson
Paul Dray
Larry Eustace
Susan Hare
Vern Krishna
Janet Leiper
Michael Lerner
Dan Murphy
Ross Murray
Judith Potter
Gerald Swaye
Robert Wadden
Peter Wardle

Purpose of Report: Decision

Prepared by the Finance Department
Fred Grady, Manager, Finance, 416-947-3439

TABLE OF CONTENTS

For Decision:

1. Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires Autochtones - Return to Practice Working Group Report
2. Access to Justice Committee - Family Matters – A Proposal for a Unified Family Law Platform

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on December 8, 2011. Committee members in attendance were Carol Harman (Chair), Alan Silverstein (Vice-Chair), Paul Dray, Larry Eustace, Janet Leiper (teleconference), Michael Lerner (teleconference), Ross Murray, Judith Potter, Gerald Swaye (teleconference) and Peter Wardle.
2. Also in attendance were Marion Boyd and Beth Symes.
3. Staff in attendance: Malcolm Heins, Josee Bouchard, Sheena Weir, Fred Grady, Brenda Albuquerque-Boutilier and Marisha Roman.

FOR DECISION

RETURN TO PRACTICE WORKING GROUP REPORT

Motion

1. That Convocation consider the proposal for the development of a pilot career counselling services program as described in the Equity and Aboriginal Issues Committee Return to Practice Working Group Report to December 9, 2011 Convocation and, if approved, authorize the allocation of \$87,750 from the 2012 contingency budget for the program's 2012 budget.

Motion

2. That Convocation consider the proposal from the Access to Justice Committee in its report to December 9, 2011 Convocation for the development of a pilot Unified Family Law Platform and, if approved, authorize the allocation of \$170,000 from the 2012 contingency budget for the platform.
3. The Law Society's 2012 annual budget was approved at Convocation on November 24, 2011. The budget includes a contingency of \$1.0 million for priorities arising from the Bencher planning session in September.

4. Two reports were presented to the Finance Committee requesting funding for the 2012 year from contingency. These two reports are the Equity and Aboriginal Issues Committee Return to Practice Working Group Report seeking \$87,750 for 2012 and \$126,000 per annum for the next four years and the Access to Justice Committee seeking \$170,000 for the development of a pilot United Family Law Platform.
5. If both projects are approved by Convocation the contingency balance will be reduced to \$742,250.

CONVOCATION ROSE AT 1:20 P.M.

Confirmed in Convocation this 26th day of January, 2012

Treasurer