

OVERVIEW

The following is the position of the Thunder Bay Law Association with respect to the Options for Lawyer Licensing Consultation Paper (the “Paper”) prepared by the Law Society of Ontario for review and comment by the profession.

It is the position of the Thunder Bay Law Association (“TBLA”) that the Law Society of Ontario (the “LSO”) continue the current paths to licensing with some enhancements. Comments with respect to the enhancements proposed in Option #2 of the Paper are discussed below.

Overall, the TBLA remains in support of experiential training (particularly the Articling Program) as a vital part of becoming a lawyer. Without experiential training, the LSO will be unable to meet its mandate of regulating the profession in the public interest and ensuring that lawyers meet standards of learning, professional competence and professional conduct. The TBLA remains interested in making sure that the licensing process in Ontario is effective in producing lawyers that are competent and meet the needs of the public they serve. From our perspective, the current Articling Program remains the best and most effective experiential training available to students to transition them appropriately into lawyers. Any alternative that does away entirely with, or limits, the hands on experience students gain from working side-by-side with other practitioners would be ill-advised.

COMMENTS REGARDING THE OPTIONS SET OUT IN THE PAPER

Option 1: Current Model

The LSO mandate states that it must regulate the profession in the public interest and ensure that lawyers meet standards of learning, professional competence and professional conduct. Experiential training is required to meet this mandate as certain necessary skills, knowledge and experience is not (and cannot be) taught in the classroom. Any Lawyer Licensing Process that does not require experiential training will result in the LSO’s failure to meet this mandate.

Most other professions require a period of experiential or practical training as it is viewed as the most effective way to train individuals with those skills and knowledge that you cannot gain in a classroom.

With respect to the LSO’s concerns with the current model, the TBLA responds as follows:

- The LSO has no control over the number of law students graduating from law school within Ontario or abroad. Therefore, the LSO should not be concerned with whether or not those students can secure Articling positions or placements (as the case may be). Unless this obvious disconnect changes, there must be a shift away from the LSO’s focus that all graduates should have the opportunity to complete the Lawyer Licensing Process. The reality is, that in a competitive marketplace, some graduates

(most likely the less desirable/ less competent) will not be able to find an Articling or placement position. The responsibility falls on the student when choosing their career path to sufficiently research their career options and determine their realistic chances of success and learn what hurdles they will face. It is not the LSO's responsibility to revisit (or worse, revise) the Lawyer Licensing Process every few years to ensure that all graduates have the opportunity to be licensed.

- Smaller regions with smaller firms offer a meaningful and high caliber experience for student's during their transitional training period. The concerns regarding the type of training being received is not an issue in this region. TBLA members are proud to have always (and will always) offer students close mentorships with lawyers, in-court experience, direct client interactions and teachable moments with respect to professional responsibilities and a better understanding a lawyer's role in the community. These are invaluable and cannot be taught in law school.
- An essential element of the transition from student to lawyer is the social and ethical education gained from the practitioner. Although this element may be difficult to measure, this element can only be gained from the real life workings of a law practice environment.
- For smaller firms articling/ placement students are incredibly valuable members of the firm. Articling/ placement allows firms to preview potential hires, access value added and cost effective work product for clients and gives lawyers a chance to mentor students and give back to the profession.

With that being said, the TBLA agrees that certain enhancements can be made to the current model to address some of the concerns raised about the current model of experiential training and to also provide a more meaningful training experience for students.

Option 2: Current Model with Enhancements

The TBLA agrees that all experiential training positions should be paid positions and that students should not be required to work for nothing and/or for little to no pay.

The TBLA agrees with implementing a requirement that students must pass their licensing examinations prior to commencing experiential training. Passing these examinations would help manage the supply/demand disconnect for Articling positions. It would ensure that candidates are academically capable of practicing law and would better protect firms; their time, energy and investment into students. However, it is noted that the timing of the examinations has to be considered.

With respect to the requirement for a skills based examination, the TBLA agrees that the current examinations do not provide enough focus on practical application. The

TBLA supports testing that focuses on the application of the skills needed to practice law. This would also serve as a means of measuring what students are learning in the various experiential training paths (Articling or placement (LPP and IPC)). The LSO may want to implement this prior to making any other changes to the current model as this examination can be an effective means of evaluating the effectiveness of the current three options (Articling, LPP and IPC). The LSO can then decide which experiential training option is providing the best skills based knowledge to the students.

The TBLA has concerns with implementing additional regulatory oversight of the experiential training as it is unclear what this will entail. This may deter lawyers from continuing to act as Articling principals. In turn, the number of available positions would be reduced which would only compound the problem the LSO is hoping to address.

Some additional enhancements that could be considered in the current model are as follows:

- Put a cap on the maximum number of hours an Articling student can work in a given week. This would alleviate the temptation of larger firms to hire students who will commit to working well excess of 40 hours. A cap on working hours would reduce their billing capabilities which, in turn, would reduce the need for extremely high Articling salaries currently being offered by large firms. As a result, smaller firms would be able to compete in terms of salaries for potential Articling candidates and there would be more incentive to offer Articling positions across the Province.
- Put a cap on the amount an Articling student can be paid. There is pressure to pay competitive salaries to attract good candidates. This has the effect of reducing the number of positions that may be available at a given firm or within a given region. If the amount to be paid per student was regulated, this may result in firms creating more Articling positions for the same cost.
- Revisit the requirements for becoming an Articling principal. Currently, some restrictions make it difficult for smaller firms to comply with the requirements of becoming or remaining as an Articling principal. For example, if a lawyer has an existing complaint with LSO (whether meritorious or not) that person is precluded from being an Articling principal. Given the amount of complaints made (particularly in certain practice areas), and the time it takes to remove even the most frivolous of complaints, a lot of potentially good practitioners are precluded from consideration as an Articling principal. The focus should be on any disciplinary measures imposed on the Articling Principal, not complaints.
- Provide financial or other incentives to Articling students and principals in remote locations, such as:
 - Subsidies for relocation or examination attendance for students;
 - More recognition for Articling principals by means of CPD credits;

- Additional supports to Articling principals practicing in sole and small firms; and
- Reduced Articling fees for students in remote judicial districts to encourage students to seek Articling positions outside the Toronto Region.

Overall, it is the position of the TBLA that more attention and focus should be given to enhancing the current model as opposed to getting rid of it in its entirety. The current model has worked for many years in terms of its ability to train lawyers who are ready to practice law in a competent manner. TBLA remains fully in support of the Articling program. TBLA is of the opinion that more information should be gathered to determine how the available alternative options (IPC and LLP) are working. Then, LSO can figure out a way to enhance those paths to address concerns without creating any further alternatives that move away from the Articling program.

Option 3: Examination-Based Licensing

The TBLA is concerned that this option will lead to a significant increase of junior lawyers who have little to no practical experience. Having a segment of our profession as untrained lawyers is far more concerning than having graduates who cannot find Articling/ placement positions. The increased risks to the public should be apparent and will lead to higher E&O insurance premiums and increased disciplinary proceeding which will be a cost burden for the LSO and its members.

Currently firms and their clients benefit from having students handle tasks and/or files at an affordable rate which would otherwise be cost prohibitive (i.e. representation in Small Claims Court, Provincial Offences Court, etc.). This option will remove this benefit entirely.

Students will still face a shortage of opportunities in a competitive marketplace once they are licenced if this option is implemented. This option simply postpones the inevitable since there are no controls over the number of students graduating from law schools or returning from abroad.

The Integrated Practice Curriculum (the “IPC”) at the Bora Laskin Law School can be used as a tool to assess whether the current period of experiential training through Articling (10 months) should be abolished or reduced. The IPC program includes a 15 week unpaid placement during the third year of law school. Upon completion of this placement there is no need for the students to complete further experiential training prior to being called to the Bar. They simply have to write their examinations. The IPC was introduced as an alternative to the Articling program. While the TBLA remains in support of the Bora Laskin Law School and the IPC program, the following comments can be made:

- The TBLA is aware of firms in Ontario that are not recognizing the IPC program and have made it clear to students that they must still complete the Articling program prior to being hired as an associate.

- Likewise, the TBLA is aware of graduates from the Bora Laskin Law School that have been deciding, on their own, to accept Articling positions upon graduation as they do not view themselves as ready to practice law.
- Furthermore, for those students that complete the IPC program and are then hired on as associates, there may be a tendency by the firm to still treat them as students who require more oversight than an associate who completed Articles.
- Lastly, many of the students at the Bora Laskin Law School obtain summer positions prior to completing their placement in their third year of law school. This provides the students with at least eight (8) months of experiential training (assuming they work at least 1 summer position) before they graduate from law school. The TBLA notes that these students are therefore, receiving a period of experiential training similar in length to that of Articling. As such, they ultimately end up with the same or similar experiential training as the students who complete the Articling program.

The reality is that four (4) months or less of experiential training is not enough. The LSO should avoid further steps that take the profession in this direction.

Option 4: LLP for all Candidates

The TBLA does not view this as a viable option and remains of the opinion that experiential training is vital to producing competent lawyers (see comments with respect to Option 3).

While the LPP attempts to provide students with transitional training, it is still an artificial experience and does not include all of the variables that a student would experience working within a law practice environment. You cannot learn in a classroom what you will learn working side-by-side with another practitioner.

The cost of this option is prohibitive for many students. By implementing this option, most graduates would be forced to give up a paid position (i.e. Articling) to attend more schooling and incur more debt just to complete their licensing process. The costs are extravagant and are in addition to their hefty law school debt. Moreover, for students outside of the GTA, such a requirement would cause further financial hardships associated with living away from home for an extended period of time after graduation.

For all of these reasons, this option would be ill-advised.

CONCLUSION

The TBLA is aware that the LSO has been conducting focus groups throughout the Province with respect to the licensing options presented. The TBLA notes that no focus group was done in Northwestern Ontario and questions how the LSO can make an informed decision with respect to the proposed changes without hearing from a proper

representation of lawyers in the Province. The TBLA is of the opinion that the Norwest Region should have been included in this process.

The LSO should focus its efforts on ensuring a comprehensive Lawyer Licensing Process that requires a direct experience with a practitioner as being a critical component to licensing competently trained lawyers. This should not be less than the current ten (10) month articling period. While we agree that enhancements can be made to improve the current model, drastic changes will be detrimental to all parties involved and should not be implemented. The LSO should be very concerned with being able to assure the public that all licensed lawyers in this province are hitting the pavement with more than just classroom experience under their belt.