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BANACK BENCHER NEWS

ARTICLING REVIEW - GAME ON

The Articling Task Force issued its final report entitled "A ROAD MAP FOR THE REFORM OF LAWYER LICENSING IN ONTARIO".

The report was received by Convocation on October 25, 2012. Because of the importance of the issues the proceedings were webcast and simultaneous twitter feeds were facilitated. During the discussions (which lasted 4.5 hours) there were nearly 1100 posts and 500 tweets with 166 unique comments.

To review the entire report, the archive of comments and the excellent submissions made through the archived webcast of the proceedings of Convocation visit:

http://live.lawsocietygazette.ca/Event/Liveblog_Articling_debate_and_webcast?Page=0

The issue is now scheduled for determination by Convocation on November 22, 2012.

Whatever the outcome, the Law Society deserves recognition for managing the consultation process, the debate and decision making process in a very open and transparent manner. Every Bencher is considering the importance of this issue and is weighing all of the available information to reach the best possible decision recognizing that change is imperative for the many reasons set out in the Task Force report.

The Task Force has recommended a pilot project that will provide an

alternative to articling through a new Law Practice Program (LPP).

The recommendation contemplates a 5 year transitional plan which provides:

- The pilot project is to begin in the 2014-2015 licensing year;
- The current ten month articling program will continue;
- The LPP expected to be about 8 months long, will be an alternative path for those unable or uninterested in engaging in the traditional articling program;
- A "final assessment" is to be introduced to test that candidates who either articulated or took the LPP have the required practice competencies before being licensed;
- The two paths to licensing will be monitored, assessed, compared and a final report for Convocation's consideration is due by the end of the fifth year.

MINORITY REPORT

Four Benchers released a minority report. Their dissent should be carefully reviewed and remembered by the Profession. The minority view called for the end of articling and dismissed the two tier licensing process on the basis that it is unfair and unworkable.

UNFAIR FOR THE FOLLOWING REASONS:

- A disproportionate number of person who are unable to obtain articling positions appear to be from equality-seeking groups.
- The Two tier system will create two classes of lawyers with the preferred group being those who articulated.
- Candidates in the lengthy LPP must be able to support themselves and thereafter work for free at a co-op type placement which may require temporary relocation and possibly be of limited or no value.
- The cost of the new two tiered licensing process will increase substantially, but will be payable on an equal basis by the LPP candidates who will not be receiving articling income. As well, some law firms pay those costs for their articling students.

UNWORKABLE FOR THE FOLLOWING REASONS:

- The pilot project simply puts off needed change;
- The Law Society has numerous prior reports and examples of past bar admission programs and evaluations that could be adapted and provided online.
- The ten month articling program and eight month LPP could be

replaced with a comprehensive transitional pre-licensing program of two to three months with objective, measurable standards that assess substantive legal knowledge and business, professional and ethical issues.

- Newly licensed lawyers who practice on their own will be better assisted in their first years through mentoring and other regulatory oversight to ensure public protection than can ever be provided in the prolonged, uneven and uncertain articling or LPP.
- Convocation was not provided with a realistic estimate of the significant costs to be incurred to administer two streams of licensing candidates instead of one.

The minority report agrees with a Law Society Committee that considered the issues 40 years ago and concluded that articling be abolished at that time. Although the Articling Task Force majority recognizes that changes are required it is not ready to accept the reality recognized long ago that articling be abolished.

THE OBVIOUS

The LPP creates a cumbersome and costly licensing requirement that will do little to enhance the competence of newly licensed lawyers and will itself amount to another bar to entry to the profession.

Everyone knows that articling has inherent limitations based on individual articling experiences. Most articles train practitioners to work in sophisticated areas of practice supported by large firms in urban centres. Articling experiences simply do not generally equip young lawyers with the skills needed to successfully and ethically maintain small firm legal practices.

The profession which has been a strong proponent for articling as evidenced by the numerous submissions made during the consultation process has simply failed to provide sufficient articling positions to meet the demand.

There is no verifiable basis upon which to assert that articling achieves for the majority of the licensees, an experience satisfying the Law Society's regulatory responsibilities.

The assessment report to Convocation is not due until the end of the 2019 licensing year. We can expect that significant time will be needed to consider whether the pilot project has been a success, should be continued, modified or if the entire road map for reform, should be scrapped and reconsidered. That process may take Convocation into the year 2020 if not beyond. **The grim reality is that there will be no**

final decision for the next 7 or 8 years.

In that period we will have processed about 2000 lawyers through a two tier licensing program. The profession and the public will conclude whether the tiers are equivalent or the lawyers are somehow to be distinguished because of their training experience. There also remains unanswered, serious questions raised by our Ontario Law Schools who have significant experience in the teaching of law and whether the Australian LPP experience is one we should model.

Perhaps the most astounding and egregious aspect of the Task Force report is its reliance upon a yet to be issued request for proposals. The Law Society will be seeking "interested parties" who for profit will provide the alternative pathway to licensing - the LPP. Convocation will be asked to approve the report without knowing the capacity of outside providers or the cost. There has not been any significant consideration given to outsourcing the second tier of the licensing process which somehow is to be equivalent to that of articling.

Bencher Julian Falconer has given notice of his intention to bring a motion reinstating a financial contribution by every lawyer as part of our annual dues to defray the significant increased costs to licensee applicants. Such a contribution had regularly been made by the profession up to 2011.

Perhaps an enlightened compromise can be reached to reflect the strengths of both the majority and minority reports as well as the many concerns coming from the profession.

THERE REMAINS AN OPPORTUNITY TO EMBRACE CHANGE - SPEAK UP

This is undoubtedly the most important Law Society decision in years because it will impact on the recruitment and training of all future lawyers. IF we get this truly wrong we may invite questions about the profession's ability to self regulate.

NEXT STEPS

- Read the Task Force Report;
- Speak with other lawyers;
- Tell the Task Force and any Bencher your views;
- Provide your input in writing by November 12, 2012. See details at: <http://www.lawsocietygazette.ca/news/articling-debate->

[resumes-november-22/](#)

- Watch the debate on November 22, 2012 starting at 9:00 a.m.

PLEASE NOTE MY NEW COORDINATES

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