The Future of Articling

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Submitted to: **The Law Society of Upper Canada, Articling Taskforce**

Submitted by: **The Ontario Bar Association**

ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

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The Ontario Bar Association (the "OBA") appreciates the opportunity to provide input on an issue so fundamental to the future of the profession. We look forward to future consultation with the Law Society of Upper Canada (the "Law Society") and other stakeholders as solutions to the current entry-to-practice issues are developed.

The OBA

(a) Background

As the largest voluntary legal organization in the province, the OBA represents approximately 18,000 lawyers, judges, law professors and students in Ontario. OBA members are on the frontlines of our justice system in no fewer than 37 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several policy initiatives each year - both in the interest of the profession and in the interest of the public.

(b) The Articling Consultation Working Group

This submission was formulated by an OBA working group (the "Working Group") chaired by the OBA's second vice-president and comprised of members of the OBA Board of Directors and a very broad cross-section of the bar. There was representation from:

(i) all eight judicial districts,
(ii) The OBA Equality Committee and Feminist Legal Analysis Section;
(iii) The OBA Young Lawyers Division (Central, East and Western Regions);
(iv) The OBA Student Division;
(v) Practitioners working in every environment from in-house settings, to clinics, to firms of fewer than five practitioners to large national firms; and
(vi) Several practice areas including criminal, real estate, civil litigation and corporate commercial law.

The submission has had the benefit of review by all 37 of our practice sections.

Introduction

(a) Overall Position on Transitional Training

The OBA supports the need for some form of transitional program as an entry-to-practice criterion and generally believes that Articling performs this function well. A 2008 OBA survey of those with ten or fewer years at the bar (the "2008 Survey") found that 73% considered articling to be an essential part of their training. The views of the current OBA Working Group and discussions they have undertaken with practitioners in their geographic and practice areas indicate that this continues to be the predominant opinion of practitioners, particularly in regions outside of the GTA and other large urban centres.

Given that the articling process is generally a good model for protecting the public by imparting entry-level competencies, it is important to ascertain with some certainty that the current process truly requires fundamental changes. Before making a final determination that a new model of transitional training is necessary and before choosing any model, the Law Society should be certain it has thoroughly analyzed current concerns about the process. While the Consultation Report (the "Report") of the Law Society's Articling Taskforce (the "Taskforce") contains an impressive review of the situation, it is possible that this review needs to be supplemented with some analysis of whether the problems that exist today are permanent or transient. This is discussed in more detail below. The OBA has outlined its position on new elements for a transitional training model assuming that the recommended further analysis confirms the need for reform.

(b) Focus on Resolving the Gap Problem

In the last two years, discussions about the articling process have revolved around the gap between the number of people seeking articling positions and the number who secure them (the "Gap"). In the 2008 Survey 67% did feel that some part of articling should be improved. Most comments in this regard focused on the quality of the articling experience, only about 10% of those who offered qualitative comments cited the need to do more for those who had not found spots.

While it is clear that the Gap is not the only transitional-training-program issue that should be addressed, trends that have emerged over the last four years require the profession to once again review the Gap issue. These trends include:

(i) The percentage of candidates unable to find articling positions has more than doubled over the last four years, from 5.8% to 12.1%; and

(ii) Increased scrutiny of all professional entry-to-practice criteria by the Competition Bureau and Ontario's Fairness Commissioner makes it incumbent on self-regulating professions to carefully analyze their criteria and eliminate any elements that do not play a legitimate role in protecting the public.

As the matter now stands, over 10% percent of otherwise potentially qualified candidates are excluded from entry to the profession by employment-market conditions and other factors that are outside the control of the regulatory body and do not necessarily equate with any consistent measure of merit. So, while time spent in a practical training environment such as articling is a legitimate way to improve the quality of the profession and thus protect the public, the failure to provide access to this training jeopardizes the future of practical legal training as an entry-to-practice criterion. Without a solution, we run the risk of allowing the valuable and cherished practical legal training baby to be let out with Gap bathwater. No other issue surrounding a practical training requirement jeopardizes its existence to the same extent. The Law Society and the legal profession have, quite appropriately, been at the forefront of fair mobility and entry to practice standards. Failure to resolve the Gap issue and its attendant arbitrary exclusion from licensing may threaten that status.

We have, therefore, focused this submission largely on the Gap problem, at the same time attempting to ensure solutions to that particular problem also address, or, at least, avoid exacerbating, other issues that have been identified in relation to the current articling process.

(c) Issues to be Addressed in the Submission

In order to provide the perspective of the bar and assist the Taskforce with the development of solutions that have the necessary buy-in from members of the bar, we have addressed the following issues:

I - The fundamental details of the Gap problem that must be addressed;

II- The fundamental elements of a transitional training program in terms of its justification as an entry to practice criterion. This is a discussion of both the goals of the process and how those goals are currently achieved;

III- Other factors that must be considered in order for a practical training program to attract the necessary buy-in from participants - trainers and trainees; and

IV - The model or models that are best able to address the Gap problem while still ensuring that all of the necessary training and stakeholder buy-in elements are considered.

I - Defining the Problem

In order to evaluate solutions, it is necessary to define the problem in more detail. From the perspective of the bar, the following are important features of the broader Gap problem:

(a) Based on the statistics in the Report of the Taskforce, observations by practitioners and presentations from affected law-school graduates at the OBA Council meetings, it is evident that the failure to secure an articling position is not necessarily a reliable measure of a candidate's merit. This fact not only adds to the injustice for affected persons but also weakens the legitimacy of articling as an entry-to-practice criterion. Any transition program has to ensure that there are no arbitrary or non-merit-based hurdles that foreclose a candidate's ability to fulfill the licensing requirement;

(b) Some OBA members, particularly those from outside the large urban centres, have indicated that the Gap is not entirely caused by a shortage of available positions. There are undeniably firms that have available articling positions that are not filled. In addition to being outside large centres, the positions at these firms may not match salary expectations, which are elevated by increasing student debt levels and the anomalous wages that are paid at the top of the salary range. For their part, students have indicated that there is sometimes reluctance on the part of local firms to hire students who do not already have roots in the community. These two factors indicate that, in addition to an over-all shortage, there is an inability to match students with jobs, particularly in non-urban regions. We understand that there have been significant efforts undertaken by the Law Society to try to match firms with available students, and we do not suggest that filling these positions would significantly reduce the Gap, but this does raise another issue - underserviced geographic areas are having difficulty attracting articling students. It is important for the bar and for the public's access to justice that the solutions to the Gap do not exacerbate this problem but, instead, help to alleviate it. Articling or its equivalents should incentivize practice in underserviced areas to the extent possible;

(c) The Taskforce's Report seems to indicate that law-school graduates from equity-seeking groups are disproportionately affected by the Gap. The Report does not indicate the reasons for this. There is no suggestion that hiring practices are the cause and, in fact,

such a suggestion would be contrary to the approach of those members of the bar that engage in student recruitment and hiring efforts. Nonetheless, any indication that there is a disproportionately negative effect on equity-seeking groups not only calls into question the legitimacy of articling as an entry-to-practice criterion, it threatens the reputation of the profession. While solutions to systemic inequities go well beyond a discussion of the articling process, it is important, again, that any proposal designed to resolve the Gap mitigates, rather than exacerbates, such inequities. It is critical, for example, that remuneration and affordability be considered to avoid having a process that further disadvantages those who have already experienced the socio-economic disadvantages of systemic discrimination. Candidates from equity-seeking groups must not be disproportionately or systemically streamed into a "lesser", default training-option;

(d) Ceux qui cherchent un stage avec le but d'exercer en français ou en français et anglais, trouvent qu'il est démesurément difficile de trouver un poste de stagiaire qui donne l'occasion de préparer des documents et/ou fournir des services en français; and

(e) The Gap is not just a quantity issue. The narrow variety of existing positions can also be seen as problematic. Some areas of practice and practice structures do not readily allow for traditional articling spots. With respect to the latter, clinics, public interest organizations and sole practitioners are less able to absorb the cost of articling students. In terms of practice areas, criminal firms, particularly outside of urban centres, tend to be small and less able to absorb an articling student. The fact that the majority of articling spots are at large and medium-sized firms in larger urban centres, leads not only to access to justice issues in under-serviced geographic and practice areas but also to issues surrounding the relevance of training received for those who wish to practice on their own or in another setting in which articles are not typically available.

Consideration of these issues must go into the design of any solution to the Gap problem.

II- Essential Elements of any Practical Legal Training Component

(a) What is Articling Designed to Do?

In its Report, the Taskforce outlines the acquisition of entry level competencies as the principal justification for articling as a licensing pre-requisite. Backing up one step further to actual first principles, it is necessary to relate the pre-requisite to public safety. The Office of the Fairness Commissioner, for example, asks:

> How does the qualification relate to competent and safe practice at the entry level of the profession to ensure public safety? How well does it predict competence?

Articling is designed to protect the public by providing an opportunity to employ theoretical knowledge in a supervised practical setting, to learn the "business of law" and client relations and to allow the sharing of practical advice. There is a concern expressed in the Report that articling cannot be justified if its contribution to competence is not measured in some standardized way. However, the correlation between practical training and competence has to be a matter of expert advice and practical experience in the same way that the correlation between competence and performance on examinations is a matter of expert and practical input. Neither correlation is truly measured. The regulator does not go back and determine whether those who scored well on bar admission examinations become lawyers who serve the public well. Experts tell us that the ability to pass these examinations will help predict whether a candidate has, and can access, the knowledge necessary to serve the public well. Similarly, while it is not universal, lawyers overwhelmingly indicate that the practical training received during articles have made them better able to serve their clients.

The primary differences between the examination requirement and the practical requirement are that the former is standardized for all candidates and the latter is not and that one predicts competence by *testing* it while the other predicts competence by *teaching* it. So, while there is room for more standardization of the basic competencies that are covered by the articling experience, it is not necessary, feasible or even desirable that the experience be the subject of testing, rudimentary measurement or complete standardization. Different approaches to legal problems make for richer solutions. The real-world practice of law is not a standardized environment and a variety in experiential training is a valuable public good.

In order to ensure that articling and any solution to the Gap continue to accomplish the requisite public protection goal, we have examined, from the perspective of the bar, the kinds of improved competencies that result from a good articling experience and the factors inherent in the articling model that allowed these competencies to be learned. These competencies and the critical factors for imparting them should be consistently maintained and fostered in articling and any other transitional training programs.

(b) How Does a Good Articling Experience Make Competence in Practice More Predictable?
When lawyers parse their articling experience to determine how it improved their ability to serve the public well, they identify many learned or improved competencies, including:

(i) They were given the practice and advice necessary to turn technical legal knowledge into effective documentation such as pleadings, contracts, deeds and other transaction documents;

(ii) They were exposed to, and guided through, the kinds of issues raised by the client relationship, including: client requests that raised ethical considerations; managing expectations; the early warning signs of difficult clients and how to manage them; and legal and business conflict considerations;

(iii) They had an opportunity to see what the application of the Rules of Professional Conduct look like in a practical setting and when put to the test;

(iv) They were able to watch lawyers litigate, negotiate and conduct corporate deals. They had an opportunity to witness first-hand and in real-time the results of effective versus ineffective skills in adjudicative, ADR and transactional settings and were able to practice these skills to some extent;

(v) They received varying exposure to the economics of a law firm, the proper handling of trust funds and rules resulting from anti-money-laundering legislation;

(vi) They were exposed to various practice management issues including potential conflicts between the business of law and the practice of law, records retention and destruction, tickler systems, appropriate delegation of work and the need for, and ways to achieve, work life balance;

(vii) They had exposure to the many ways in which compliance with accessibility requirements are tested and resolved in practice, including accessibility for clients with mental health issues;

(viii) They saw the ways in which civility is challenged and how a good lawyer remains civil when put to the test; and

(ix) They experienced the pressures and rewards of meeting the expectations of principals and senior lawyers.

(c) What Aspects of Articling Promote Learning these Competencies?

The essential features of the articling process that allow for this kind of skill development include:

(i) Proximity/availability: Those who have worked in multidisciplinary areas where cross-pollination is essential have found that there is no replacement for co-location and the attendant ability to walk down the hall and ask a colleague a question or share an idea. Similarly, the proximity of students to their principals is crucial to practical learning;

(ii) Variety and Local Experience: Exposure to many cases gives a better sense of what could go wrong and what works on the ground rather than merely in theory. Local courts, tribunals and bars have idiosyncrasies that introduce endless variability and cannot be fully outlined in theoretical training. One does not truly know what is

expected in a variety of circumstances unless he or she observes and experiences them;

(iii) Low-risk Practice: Practice in a low risk environment where the final product is approved by the principal not only builds skills but the confidence necessary for effective post-license practice;

(iv) The human element of client contact: The knowledge that allows one to answer hypothetical scenarios is not truly tested or honed without exposure to the tears, fears, joy and dissatisfaction of a client;

(v) Expectations and Feedback: Articling allows for immediate feedback and exposure to real-life expectations and consequences;

(vi) Legal knowledge meets economic reality: Only exposure to real cases can teach future lawyers that the plethora of theoretical ways to argue a case are not always economically feasible for the client, the firm or the justice system. In addition, success and failure have economic implications. Exposure to practice is necessary to see the relationship between the work produced and profitability and viability of the firm;

(vii) Learning the learning curve: Exposure to various vintages of lawyers, in courts and offices and on transactions, allows students to see what the learning curve looks like. Without this exposure new lawyers may not have the confidence to serve clients;

(viii) Problem Solving: Practical training exposed future lawyers to practical problem solving approaches. The variety of work done during articling, for example, gave them a broad base of practice areas to draw on for problem solving even if they did not continue in a particular practice area. In addition, exposure to a variety of work allows students to build networks of people they can trust for advice or referrals in areas in which they do not choose to practice; and

(ix) Exposure to the Challenges and Tools of the Trade - There is no way to theoretically teach balancing simultaneous demands from multiple lawyers and clients. It is a matter of experience. In addition, practice management is increasingly about tools – software etc.- learning to effectively choose and employ those tools is a matter of exposure and practice.

III- Other Factors

The relationship between the transition program and public safety or competence is the key factor in justifying practical training as a licensing prerequisite. However, the fact is that a program will not work without buy-in from the participants – those who are being trained and those who must do the training. It is impossible to imagine a practical legal training program that did not involve the practicing bar as participant trainers. In order to foster optimal participation from the bar, there are certain factors that must be appreciated:

(i) The willingness to train a candidate through an apprenticeship cannot create an obligation of future employment;
(ii) To the extent articling positions are remunerative and allow some to determine the fit of a candidate for future employment, the length of the exposure to the student has to be sufficient for lawyers to do that evaluation and for students to see cases through and start adding value. It should not be so long as to oppressively extend relationships that have been fairly tested and proven to be unworkable; and
(iii) The time and effort to train new students should be recognized for the value it adds to the profession. The assignment of CPD credits for time spent acting as a principal is a good example. In addition, administrative procedures around employing an articling student should not be overly burdensome or time consuming;

From a students or articling candidate's perspective, a training program should:

(i) Recognize that entry to practice procedures follow an increasingly expensive post-secondary education;
(ii) Be relevant to the practice setting in which the candidate is targeting or is likely to find him/herself;
(iii) Provide real practical experience and the opportunity to practice skills;
(iv) Include accessible mentorship;
(v) Be subject to standards that do not stifle a variety of approaches and practice areas but ensure certain basic exposures, supports and skill development. While there may be a broad range of experiences, there should not be a broad range in quality; and
(vi) Improve future employment prospects. This is achieved both by exposing students to the bar generally in order to build networks and by building mentoring relationships that offer assistance with placements even for students not hired back at a particular firm.

IV- The Model

The current articling process is generally a good model to achieve the regulatory entry-to-practice goals of protecting the public by increasing competence as well as the other objectives that are necessary for buy-in and participation. We recognize, however, that if the current system arbitrarily excludes potential candidates from the opportunity to fulfill the entry-to-practice criterion, it will not continue to survive scrutiny. The question becomes: What is the best solution to maintain the benefits of the current model and solve the Gap problem, as more specifically defined above?

In order to address the current Gap problem, preserve and improve articling as a model for imparting entry to practice competencies, maintain necessary stakeholder buy-in and resolve or avoid exacerbating related problems, it is necessary to draw on elements of various models.

(a) Cautions in Choosing any New Model

Before changes are made to the transitional training process, the following should be considered:

(i) As outlined briefly above, some additional information is required, including additional advice from economists and other legal and labour market experts to determine whether, and under what circumstances, the Gap problem will remain or grow if no action is taken by the Law Society. Admittedly, to some extent the permanence of the problem is irrelevant in that it is important for the regulator to have some control over the availability of transitional training spots regardless of how the market fluctuates. However, if the Gap problem is a transient one, it is important that we do not build inflexible and costly structures to solve it. We cannot develop a solution to an articling shortage that ultimately eats away at the articling process by incentivizing alternative approaches for firms and students who would otherwise engage in the articling process; and

(ii) We firmly recognize that entry to practice criteria cannot, and should not, relate to the level of competition in the post-entry market. We do not by any means suggest otherwise. However, the fact is that, as a profession, we cannot ignore the extent to which resolving the articling Gap will simply push the problem further down the pipe where it may manifest in a lack of remunerative employment for lawyers. This is not a reason to avoid solving the problem but should be considered when designing the solutions. It is necessary to continue a dialogue with all players, including the government, the regulator and law schools, to ensure that the legal profession in Ontario remains vibrant and able to fulfill its crucial role in civil society. The OBA

has enjoyed a good relationship with the academy in recent years and looks forward to continued dialogue between the profession and the law schools.

(b) The Practical Legal Training Course as an Available Option

A practical legal training course ("PLTC") is an element of the solution to the Gap problem. The preferable way to introduce the PLTC is in combination with traditional articles. Option 4 in the Taskforce Report outlines this combination to some extent. The virtues of the combination option include:

(i) Allowing traditional articling to continue. As discussed above, traditional articling is, at its best, an effective way to impart entry to practice competencies. In addition, it is a model that requires relatively little central administration and expense. The expense is borne largely by those who choose, for business purposes or out of professional obligations, to bear the expense and who reap the direct benefits of a future employee pool, professional satisfaction and the assistance of the students during the articling year; and

(ii) The addition of a second option for practical training allows candidates to access a means of satisfying the practical entry-to-practice requirement and mitigates or eliminates the criticism that some are denied the ability to be licensed based on factors such as market forces that are irrelevant to merit or public protection.

A desire has been expressed, particularly among students, that the PLTC be a universal entry-to-practice requirement that replaces the third year of law school. While this would have the advantage of economy for students, it is our understanding that this model does not have the necessary support among the academy and, in any event, as indicated, the complete elimination of articling should not be the solution to solving the Gap.

(c) Design Considerations

There are design considerations that will be critical to the PLTC's success in providing appropriate training and addressing both the defensibility of such training as an entry-to-practice requirement and the stakeholder buy-in considerations. These include:

(i) **Affordability** - Students and members of the bar have identified the need to ensure that the PLTC is affordable. Affordability will require keeping the program administration costs down leveraging: existing networks that span the province's regions and a variety of practice areas; underutilized facilities; and other already available administrative capacities. The PLTC that is ultimately sanctioned by the Law Society should not be one that involves expensive and cumbersome new

structures built from scratch. In jurisdictions such as Australia and New Zealand, the PLTC's are expensive, separate structures with costly programming. It must be recognized that the students who avail themselves of the PLTC in those jurisdictions have not had to incur the expense and associated debt of an undergraduate program prior to law school as they enter their law program directly from secondary school. In Ontario, use of existing resources and structures should keep cost per participant to a minimum and may even allow for some remuneration of students. If this model is ultimately chosen, further consultation must be conducted on the potential role of institutions, such as law schools, and legal associations with existing networks, capacities as well as broad regional and practice-area coverage.

Any over-representation of equity-seeking groups among those who do not participate in traditional articling is a problem that must be solved with ideas that go beyond this discussion. The bar has and will continue to work hard to eliminate the effects of systemic discrimination in all aspects of the practice of law. However, assuming complete solutions will not be instant, it is especially critical that, in the meantime, the socio-economic disadvantages associated with systemic discrimination are not exacerbated by price rationing candidates out of a PLTC program. This would simply replace one arbitrary exclusion (a shortage of positions) with another (inability to afford to participate). To ensure accessibility, it may be necessary to establish scholarship or other assistance programs in addition to taking all measures to achieve affordability;

(ii) **Keeping the P in PLTC**-In order to perform the function of teaching a necessary set of competencies, the PLTC must impart experiential practical skills rather than theoretical or legal knowledge alone. It cannot simply become a fourth year of law school. In order to achieve this, the program must contain periods of out placement in firms, corporations, clinics and other legal settings and the instruction portion of the program should be provided by experienced practitioners. Assigned mentorship should also be a component. The length and structure of the placements will require careful consideration. In a clinic setting, for example, the clinic will take on a different file load to account for the additional assistance of students who are placed there. In order to be able to process this expanded case load, students will have to either be placed for a long enough period to see cases through to the end or there will have to be a continuous stream of staggered placements to assist in managing this. Placing a single student in a clinic for one three-month period will not be a feasible model;

(iii) **Access to Justice Considerations (under-serviced practice and geographic areas)**- The PLTC can be designed with the collateral benefit of improving access to justice by exposing students to practice areas and practice structures that do not typically lend themselves to articling spots, as described above. Engaging segments of the legal market that are not participating in the current articling process also alleviates the concern that it will be as difficult to find PLTC outplacements as it is to find articling spots - there will be an expansion of the marketplace in which spots can be found.

Instruction and outplacements could focus on preparing students for the practice areas in which there are currently few articling opportunities. Issues particular to criminal law, sole practice, clinics, public-interest advocacy and similar sectors could be intensively covered. Some elements of these practice structures may even be better suited to practical instruction than practice exposure. Basic book-keeping and account management skills, for example, are crucial in the early stages of a sole practice yet it is unlikely a more senior lawyer still engages directly in these activities or will have the time to review them with a student. Thus practical instruction will be more likely to impart some of the necessary skills to future sole practitioners.

In addition, a well-designed PLTC has the potential to improve service in remote and under-serviced geographic areas. Students may be hesitant to "try out" a remote or non-urban area for the 10-12 months of traditional articling and employers may be unwilling to invest 10-12 months of training in a student who may not stay in the community. However, shorter outplacement opportunities could mitigate this hesitation, thus allowing for some exposure to these communities, which may, in turn, bring people back post-call. This aspect of the PLTC emphasizes again the importance of involvement by associations with broad regional and practice area coverage;

(iv) **Avoiding the Stigma**- There is significant concern, particularly among students and members of the Equity Committee, that those who participate in the PLTC will bear the stigma of being forced into a "second choice" option after failing to obtain an articling position. This is especially problematic if equity-seeking groups are over-represented in the PLTC population. However, a well-designed program that adds value and earns the respect of the bar, will not carry a stigma. In addition, the PLTC can act as more than a default. If the PLTC provides programs specifically focused

on practice structures and areas of the law, such as clinics, sole and small firm practice, criminal law, poverty law and public-interest advocacy, in which traditional articles are not as commonly available, this will not only assist in improving access to justice but in making the PLTC a more relevant, "first-choice" option for some students, while at the same time alleviating the shortage and eliminating the overall "second-choice" status of the program;

(v) **Flexibility**- The PLTC should have the flexibility to expand and contract in indirect proportion to the availability of traditional articling positions. This flexibility will be achieved partly through the partnerships and use of existing resources outlined above as opposed to building an entirely new structure whose existence depends on a fixed level of participation. The PLTC may, however, have some degree of permanence as it fulfills its access to justice role and provides choice to those for whom articling is not a desirable option; and

(vi) **Langue** – Étant donné la nature bilingue de certaines régions de la province, il faut tenir compte de la nécessité d'offrir des occasions d'instruction et de stage en français. Les francophones devraient être en mesure de piloter à chaque étape du processus dans les deux langues officielles du pays.

Obviously, these are broad, basic design considerations and are premised on the assumption that, once solutions are chosen, additional consultation will take place with the bar around these and other design and implementation details. This further consultation with the bar and others, including law schools, will be critical to the success of the PLTC.

(d) Other Elements of a Full Solution

(i) Articling Standards

As the Taskforce outlines in its Report, the ability to justify articling as an entry-to-practice criterion is not exclusively about the Gap issue. There is also some need to ensure that articling is a tool that imparts competencies in a consistent, reliable way. From the perspective of students and the bar, there appears to be a variation in the quality of articling experiences that threatens such reliability. As outlined above, it is not desirable to restrict the substantive variety of articling positions, to dictate approaches to mentoring, practicing and problem solving or to apply some rudimentary measurement to the value of the process. However, it is very likely that some additional standards or guidelines should be imposed on articles to achieve more consistency in quality. The vast majority of lawyers already identify their articles as having been helpful, so these standards need to be geared toward small, if any, tweaks to the typical

experience and toward guiding the outliers who are currently providing unhelpful employment that cannot be justified as a competency building experience. As a starting point, the standards should outline what competencies should be imparted (see section II(b), at pages 6-7) to the student and the kinds of exposure required to achieve this (see II(c), pages 7-8). It is important that the standards be developed in consultation with those members of the bar who act as principals. If the standards are developed inappropriately or applied in an administratively intense, cumbersome way, they will act as a disincentive to taking on an articling student and exacerbate the Gap problem.

(ii) Subsidized Some Articling Positions

The possibility of subsidizing some additional articling spots was dismissed perhaps too readily by the Taskforce. It is understandable that subsidization was dismissed as a *complete and exclusive* solution to the Gap. The direct cost of subsidies and indirect administrative costs of supporting more than two hundred spots is a multi-million dollar project that would require a fixed funding structure. It is difficult to imagine that this funding could be achieved by means other than a levy on the bar via increased Law Society fees, which is not feasible. Some sole practitioners who play a critical role in access to justice by serving impecunious clients have advised that the feasibility of their practices would be jeopardized by the increased Law Society fees. The elimination of even a small portion of that bar would be devastating to access to justice for the vulnerable. Large public-sector institutions and agencies pay significant aggregate Law Society fees for their employees and are experiencing fiscal cutbacks. Increasing fees for these organizations may mean the ability to employ fewer lawyers or fewer articling students, thus exacerbating the Gap and other issues. Even for medium and large firms who pay significant aggregate Law Society fees and who already take on a significant economic responsibility in hiring several articling students, the economy now, and into the foreseeable future, is not one that lends itself to adding what would be a considerable expense. In addition, there are considerations beyond economics that prevent lawyers from taking on articling students. So, it is unlikely that subsidies will solve the entire Gap problem or give the Law Society the level of control necessary to ensure consistent access to the practical training necessary for fulfillment of its entry to practice requirement.

Viewed as a one part of a combined solution, however, subsidization of positions would be a much smaller project. The direct and administrative costs would be significantly reduced and would not need to be as inflexibly fixed.[1] Therefore, creative solutions for funding, such as fundraising efforts and grant programs, could be explored. Combining some subsidization with a

[1] As, in years where few positions could be subsidized, the PLTC would still allow access to the entry to practice requirement.

PLTC would: allow for different models of access to justice improvements in underserviced geographic and practice areas; allow some students who were willing to practice in these less remunerative areas to avoid the additional expense of the PLTC; and still allow the Law Society to have the requisite degree of control over access to its pre-licensing transitional training requirement (all those unable or uninterested in an articling spot, subsidized or otherwise, would still have access to the PLTC). The possibility of a pilot project and potential funding sources bear further discussion with stakeholders.

Conclusion

Once again, the OBA appreciates the opportunity to consult on these critical issues. We look forward to continued dialogue on the issues raised and to assisting with design and implementation considerations when solutions are developed.