Abolishing articles: it's the only real solution

OPINION

CATHERINE McKENNA

The time has come to abolish articles. Sound radical? It's not. If you take a hard look at all the problems with the articling system, it's the only logical option.

The idea of abolishing articles doesn't come out of left field. It has been raised repeatedly over the years and is one of the options set out in the Law Society of Upper Canada (LSUC)'s recent Licensing and Accreditation Task Force Consultation Report.

This report highlights a number of problems with the articling system in Ontario, focusing on the growing shortage of articling positions relative to candidates seeking placement.

The LSUC estimates that the articling system can place 1,300 students, resulting in 55 to 75 unplaced candidates per year over the past six years in Ontario. However, by 2009 it expects a 30 percent increase in demand for articling positions. As a result, the number of unplaced candidates will jump to over 400 unplaced students per year. This increase in demand is expected to come from increased enrolments at law schools and increasing numbers of candidates trained abroad.

The projected shortage of articling positions is a significant issue that potentially has implications for the legal profession across the country. However, there are additional problems with the articling system that should be of far greater concern to the profession. Many of these problems likely exist to some degree in other provinces.

First, the system is funneling the bulk of students to positions with big firms in major centres. The report points out that most articling positions are with large firms – over 60 percent of positions are with firms of 11 or more lawyers. Further, these positions are limited almost exclusively to large cities, with 71 percent located in the Greater Toronto Area and 16.7 percent in Ottawa.

This is a problem for a number of reasons. Clearly the articling system is not meeting the stated goal of facilitating the transition to sole or small firm practice. While students may be receiving a useful articling experience, they are not receiving the necessary skills or training for small or sole firm practice.

The current system also exacerbates access to justice issues. Most people can't afford to hire big firm lawyers and instead rely on lawyers working on their own or with small firms. These lawyers also handle most of the legal aid cases and legal services to the ethnic community. The articling system is not preparing enough lawyers who will provide legal assistance to the average member of the public or who will spend their career advancing public interest causes.

Second, there is no assurance in the quality of the articling experience. A frequent complaint by lawyers who have been through the program is that the quality of the experience varies greatly. The report explains that in the quest to increase the number of positions, the LSUC is not able to ensure quality control.

Third, the system is not merit based and appears to discriminate against certain groups. As anyone who has been through articling interviews recognizes, success in finding an articling position is based more on fit with a particular firm culture than on merit. Supreme Court Justice Rosalie Abella aptly described the articling interview process as "the humiliating beauty pageant that is the gatekeeper to articling."

The report points to evidence that aboriginal, francophone, racialized and foreign trained candidates make up a disproportionate number of the students who are unable to find articling positions. While troubling, these findings are not surprising. These groups remain under-represented in medium and large firms.

Clearly the articling program is in dire straits. But why not simply warn students that there is no guarantee of an articling position? Or, why not create a practical legal training course for students that can't find articles? These are the two other options put forward in the report. Unfortunately, neither makes much sense.

Simply telling law students that they have no guarantee of an articling position is unacceptable unless all of the problems in the system can be addressed. It would be unconscionable for the profession to ignore the fact that members from disadvantaged groups are less likely to find articling positions. Also, this would not address the lack of articling positions with small firms, nor would it ensure that all articling experiences meet a minimum standard.

It is also not clear how creating a practical legal training course at great cost and with great effort would meet the goals of articles. How would it adequately provide practical, hands-on legal training? Also, there is a very real concern that a disproportionate number of students in this stream would be

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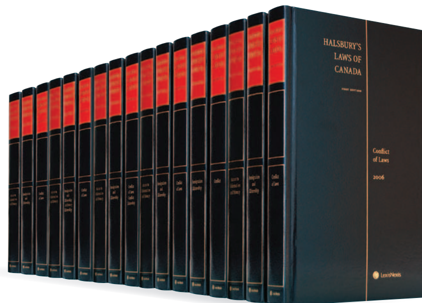

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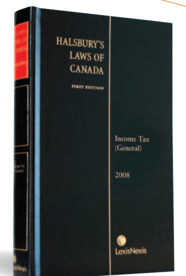

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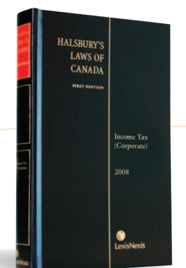

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Tinkering just means debate will come back

McKenna
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from disadvantaged groups.

There is no real option but to abolish articles. To many lawyers, this will be heretical. They will point to the possibility of legions of new lawyers without adequate training hanging out their shingle to the detriment of the public interest.

While it is a very legitimate concern that new lawyers have the necessary skills, knowledge and sense of professional responsibility for the practice of law for their initial years of practice, there are a number of more effective ways that this can be accomplished.

Law societies should be working closely with law schools to introduce a mandatory practical learning component for students. Law schools have made great strides in this realm with most if not all schools offering intensive practical courses or clinical experiences. Through these experiences, students meet with and assist clients directly – something many articling students never have the opportunity to do.

Practical courses should also be included in the core law school curriculum. These courses should focus not only on ethics and professionalism and the business of running a law practice but also on challenging issues facing the profession, including maintaining a work/life balance and addressing the problem of the retention of women in private practice.

In terms of ensuring a minimum level of knowledge, law societies should introduce a more rigourous and comprehensive set of licensing exams. And, in an acknowledgement that becoming a good lawyer is a life-long process, post-call training and mentoring should be reinforced.

When LSUC's Convocation meets later this month to discuss its report, Benchers will have a difficult decision to make — one that may have implications for jurisdictions across the country. However, simply tinkering with articles will mean that ten years from now, this debate will inevitably come up again. Deciding to pull the plug on articles is the right decision for future lawyers, the legal profession and for the public. ■

Catherine McKenna is counsel to the Canadian Real Estate Association and executive director of Canadian Lawyers Abroad.

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Lawyers seen as sexy anti-Christs

Miller
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years and publishing three books of popular legal history, my *aperçu* has acquired this corollary: unless it is fictionalized or otherwise romanticized, legal history is the girl at the prom who is much sexier than she looks — the girl standing next to me and my Blackstone's *Commentaries* at the gym wall.

I have tried to think why – legal history has as much blood, guts, and intrigue as military or political iterations, after all – and I suppose it is partly because (as many have advised to me over the years) "people hate lawyers" and "the law is all gobbledygook." Of course, this is usually envy talking: lawyers have always been heroes, as well as sexy anti-Christs, in the popular culture, and many resort to legalese when it suits their selfish interest. Yet in the context of actual legal practice and history, even intelligent readers seem to fear that we are heavy sledding.

But add even a little romance, and they seem to forget that anxiety. Think, for example, of Robert Hughes' *The Fatal Shore*, a history of Australia that is three-quarters legal history (as it cannot help but be), or of Somerville and Ross's *Irish R.M.* Think of the popularity of the many biographies of Abraham Lincoln, and of Catherine Drinker Bowen's highly readable biographies of Edward Coke and Francis Bacon (readable, at least, among those who read). Think of Kirk Makin's book, *Redrum the Innocent*, on the Guy-Paul Morin case. Every one of them is largely about law, but none of them sets itself up to be.

History as history is perhaps irrelevant in an age of planned obsolescence, a phenomenon seen as modern but is itself some 50 years old. Still, as another year of law school begins, I have to believe there are many students as captivated as I was, 30 years back, by the back story on *Donoghue v. Stevenson* (how the friend might have been May Donoghue's date at Minchella's cafe, who poured the decomposing snail onto her ice cream), or the anthropological quaintness of feoffment with livery of seisin as the original agreement of purchase and sale – where the buyer drops a clod of the land at the purchaser's feet.

At least I hope there are students left who see law not only as a gourmet meal ticket but a ticket to the gourmet story of a culture. ■

Jeffrey Miller's latest book is Murder on the Rebound, *a comic novel set in Toronto's legal community. He supplements his writing, freelance, as a French-English translator and legal researcher. Web: www.jeffreymiller.ca*