



The Law Society of
Upper Canada

Barreau
du Haut-Canada

LICENSING AND ACCREDITATION TASK FORCE

CONSULTATION REPORT

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CONSULTATION REPORT

Convocation Process

- 1. On January 24, 2008 Convocation approved the dissemination of a consultation report to the profession, law schools and legal organizations for the purposes of receiving written comments on Part 3 (Skills and Professional Responsibility) and Part 4 (Articling).**
- 2. Convocation determined that written submissions be accepted until May 31, 2008 after which the Task Force will prepare a further report for Convocation's consideration.**

Task Force Process

3. To date, the Task Force has met on April 17, 2007, May 24, 2007, June 26, 2007, June 28, 2007 (with the Ontario law school Deans), July 6, 2007 (all day meeting), August 9, 2007 (all day meeting), September 11, 2007, September 24, 2007, October 4, 2007, October 23, 2007, November 20, 2007 and January 10, 2008.
4. In addition to the Task Force members, the Treasurer and the Chief Executive Officer have attended some of the meetings. Bencher Carole Curtis was a member of the Task Force until her appointment to the bench in mid January 2008. Staff members to the Task Force are Diana Miles, Nancy Reason and Sophia Sperdakos.

Background and Introduction to the Issues

5. In March 2007 Convocation approved the recommendation of the Professional Development and Competence Committee to establish a Licensing and Accreditation Task Force whose mandate is to,
 - undertake an analysis of and make recommendations on the most effective means by which the Law Society's established competency requirements for

call to the bar of Ontario can be achieved within the pre-and-post-call continuum of legal education;

- review the criteria for approving law degrees, and make recommendations on more appropriate criteria; and
- analyze the impact of increased numbers of applicants for admission to the bar of Ontario, from domestic and international sources, on the viability of the current licensing process, and make appropriate recommendations.

6. In June 2007 the Federation of Law Societies of Canada also established a Task Force on the approved common law degree to consider a number of issues related to legal education and to make recommendations for the consideration of and possible adoption by member law societies. The Chair of the Law Society's Task Force is also a member of the Federation Task Force. The Law Society's Task Force provided background materials to the Federation Task Force. The Federation Task Force is to,

- a. review the criteria currently in place establishing the approved common law degree for the purposes of entrance to law societies' bar admission/licensing programs ("the approved common law degree") and determine whether modifications are recommended;
- b. if modifications are recommended, to propose a national standard for the approved common law degree; and
- c. consider the matters in (a) and (b) in relation to the National Committee on Accreditation requirements for granting a certificate of qualification and determine what changes if any should be made to those requirements. By articulating standards for the approved common law degree the Federation can more clearly identify for internationally trained candidates and those with civil law degrees from Quebec the meaning of "equivalent to a Canadian common law degree." This will address the requirements of the fair access to regulated professions legislation that requires processes to be transparent, objective, fair and impartial.

7. It became clear to the Law Society's Task Force that some of the issues it has been considering have national scope, as illustrated in the mandate of the Federation Task Force. These include,

- a. the approved law degree;

- b. the implications of fair access to regulated professions legislation (which now exists in two provinces with a third introducing legislation shortly); and
 - c. the National Committee on Accreditation requirements.
8. A national discussion by regulators of these issues and a national approach is critical to ensure,
- a. the continued portability of the Canadian common law degree from jurisdiction to jurisdiction within Canada;
 - b. the continued sustainability of a national process for accrediting international law degrees; and
 - c. compliance across jurisdictions with fair access to regulated professions legislation.

Given this, the Law Society's discussion of these national issues and the time line for their discussion have become interwoven with those of the Federation Task Force. The Law Society's Task Force will continue to give its views to that Task Force, whose deliberations are ongoing and consultative.

9. At the same time, however, it is important that the discussion and resolution of other issues within the Law Society Task Force's mandate continue to be advanced and addressed at their own pace, in particular as they relate to the skills and professional responsibility program and the articling component of Ontario's licensing process.
10. This interim Report to Convocation,
- a. provides background information on the issues that have a national scope, including outlining the Federation Task Force's progress. This material is provided for information only at this stage, not for consultation (Part 1);
 - b. provides a description and analysis of the current Law Society skills and professional responsibility program and articling components of the licensing process (Part 2);

- c. presents a proposal respecting the skills and professional responsibility component of the Law Society's licensing process for which comments will be sought from the profession (Part 3);
- d. presents options respecting the articling component of the Law Society's licensing process for which comments will be sought from the profession (Part 4); and
- e. set out the steps of the consultation process (Part 5).

Continuum of Legal Education

11. Respecting the continuum of legal education the Professional Development & Competence Committee noted in its reporting recommending this Task Force's establishment that there is,
 - the need to determine the most effective way for the Law Society's established competency requirements for call to the bar to be achieved within the pre-and-post-call legal education continuum. The consideration of this question necessitates an analysis of each level of the legal education continuum - law school, aspects of the licensing process (specifically the skills program and articling) and post-call learning – not as individual units, but as components of a whole that together should produce candidates with the required competencies for call to the bar.

12. In September 2007 the Task Force provided Convocation with an interim report on the nature of its discussions to date and the factors underlying its deliberations. It noted that to the extent possible the continuum of legal education should,
 - a. encompass law school, the licensing process and post-call learning;
 - b. avoid duplication among the components of the continuum;
 - c. ensure there are no gaps among the components of the continuum; and
 - d. position the learning at the point in the continuum when it will be most effective.

13. It also noted that a meaningful discussion of the continuum necessitates,
 - a. a willingness to consider new approaches;

- b. accurate knowledge and an understanding of current law school curricula, particularly skills and professional responsibility offerings; and
 - c. a critical analysis of the current skills component in the licensing process, including consideration of whether it remains viable or necessary.
14. It has reflected on these considerations as it has undertaken its ongoing work.

PART 1: ISSUES OF NATIONAL SCOPE - INFORMATION

Background

15. A national standard for the approval of common law degrees for the purpose of entrance into law society bar admission or licensing processes has never been articulated in Canada. The only articulated standard for 50 years is a Law Society of Upper Canada document, set out at **Appendix 1**, that was prepared in 1957 and amended in 1969 (“the amended 1957 requirements”) and which other law societies appear to have tacitly accepted.
16. The amended 1957 requirements set out a lengthy list of courses law schools should *offer* to candidates and a brief list of courses that candidates must take, namely civil procedure, constitutional law of Canada, contracts, criminal law and procedure, personal and real property, and torts. The requirements take a minimalist approach to defining the structure and make up of the law school on issues such as numbers of faculty, learning supports, and physical plant. They do not address issues that though relevant today were not contemplated in 1957 or 1969, for example, whether on-line learning could result in an LL.B. degree or whether such degrees would qualify as approved law degrees.
17. A comparison of the amended 1957 requirements with the reality of law school structure and course offerings in 2007 reveals a significantly more sophisticated structure than was articulated in 1957 or perhaps even contemplated, and a vast array of course offerings well beyond those listed in the document. The required courses have remained substantially unchanged in 50 years. No review

mechanism was built into the document and it is fair to say that there has been no substantial national regulatory discussion of the issue.

18. The establishment of both the Law Society's Task Force and the Federation's Task Force reflect regulators' concerns that the amended 1957 requirements on what constitutes the approved law degree for the purposes of entrance to law societies' bar admission/licensing programs are inadequate to describe the legal education landscape as it currently exists and will evolve in the future. The regulators' discomfort with the requirements has grown in part as a result of events that have shone a light on those requirements, revealing their gaps and problems created by the passage of time. Two of these are renewed interest in establishing new law schools and issues related to the accreditation of international law degrees.
19. In 2006 and 2007 two Ontario universities submitted proposals to the Ministry of Training, Colleges and Universities in Ontario (MTCU) and the Law Society of Upper Canada for the establishment of new law faculties. With no other document as a guide, the proposals refer to the amended 1957 requirements that offer little meaningful guidance on what components are advisable in the 21st century to establish a faculty that will produce an approved law degree for the purposes of entrance into the bar admission / licensing process. Additional universities in Ontario have now expressed interest in establishing law schools and others across the country may also be interested in doing so. It is worth noting that the last new faculty of law established in Canada was at the University of Calgary in 1979.
20. The national scope of this issue is evidenced by the fact that responsibility for recognizing new law faculties/programs for the purposes of entrance of graduates into law society bar admission /licensing processes is located with the Federation of Law Societies of Canada. In 1994 it was passed to the National Committee on Accreditation (NCA), a Committee of the Federation. Locating the responsibility

with the Federation was done to ensure the portability of candidates' degrees.

The Federation website states the following:

With the dissolution of the Joint National Committee on Legal Education in February 1994, the Federation has decided to transfer the responsibilities of the Portability Subcommittee to the National Committee on Accreditation. The Portability Subcommittee was formed by the Federation to assess and recommend to the Law Societies the recognition of new full-time, part-time or joint degree programs from all Canadian law schools.

21. Following the first submission for a new law faculty that the Law Society received in 2006 Convocation decided that it would not consider any subsequent applications until such time as the review of the amended 1957 requirements has occurred. It advised the Ministry of Colleges, Training and Universities of its decision. The National Committee on Accreditation is in agreement with this approach.
22. The approved law degree issue is also relevant to the process for accrediting the credentials of those with international law degrees. The NCA is responsible for evaluating the legal training and professional experience of persons with international or Canadian non-common law credentials who wish to be admitted to a common law bar in Canada.
23. Ontario has recently passed the *Fair Access to Regulated Professions Act*. Manitoba has passed almost identical legislation and Nova Scotia has indicated it will introduce legislation in the spring. The Act's purpose is to ensure that regulated professions and individuals applying for registration are governed by registration practices that are "transparent, objective, impartial, and fair." A positive duty is placed on regulated professions to meet the requirements of the Act. If a regulated profession makes its own assessment of international qualifications it must do so in accordance with the Act's requirements. If it retains a third party, such as the NCA, to do this evaluation it must "take reasonable steps" to ensure the third party does the same.

24. The NCA is currently reviewing its processes to ensure that requirements do not constitute an unreasonable barrier to admission for the internationally trained. Given the requirements of the Act, there is a greater responsibility to ensure that those requirements that internationally trained candidates are required to meet have a clear causal link to the approved law degree.

25. The increasingly varied origins of those with international degrees and the underpinnings of their law degrees must also be taken into account in considering the accreditation process. This diversity includes,
 - a. Canadian residents who go abroad for their law degree to a variety of universities, in particular those in England, Scotland, Australia and the United States and then seek to return to Canada;
 - b. internationally trained candidates who receive their law degrees through distance learning;
 - c. internationally trained candidates with one and two year law degrees;
 - d. internationally trained candidates with law degrees obtained immediately following graduation from high school; and
 - e. internationally trained candidates with law degrees obtained by way of examination only.

The Federation Task Force

26. The Federation Task Force has prepared a preliminary discussion paper to initiate a national consideration of the approved law degree and related issues. The Federation has not adopted the draft discussion paper as policy. The Federation Task Force has indicated that the paper represents its *preliminary* thoughts and that it will be developing a more detailed report that, with the Federation Council's approval, it will use as the basis for a full consultation with law societies, law schools and legal organizations. It is anticipated that the input of the working group of law school Deans will be discussed in that subsequent report. The Federation's draft discussion paper and an accompanying memorandum are set out at **Appendix 2**. A working group of that Task Force is

being established with three law school Deans on it to consult on the issues discussed in the paper.

27. The Law Society's Task Force has been asked for its comments on the draft discussion paper because of its direct involvement with the issues. It is meeting with Ontario law school Deans to seek their thoughts on the draft discussion paper. It will provide its views to the Federation Task Force.
28. At this point in the Federation Task Force's process the discussion paper has been circulated to law societies *for information* so that they will be familiar with the issues when the consultation process is ultimately undertaken in the spring of 2008.

PART 2: THE LAW SOCIETY'S LICENSING PROCESS: SKILLS AND PROFESSIONAL RESPONSIBILITY PROGRAM AND ARTICLING

29. The Law Society has reviewed and altered its bar admission/licensing process many times over the last two decades, beginning in particular with the report of the Spence Committee in 1988 and most recently in 2004-2005. The last Task Force that studied the issue was called the Task Force on the Continuum of Legal Education, but in fact confined itself to reviewing the teaching term of its bar admission course (now the licensing process).
30. The almost continuous evaluation of the licensing process in Ontario reflects a number of factors, in particular the changing landscape of legal education and the implications of increasing numbers of candidates seeking admission to the bar in Ontario.
31. In focusing primarily on the bar admission/licensing component of the legal education continuum Law Society task forces and committees have done so for a

number of reasons. For example, the Spence Committee noted in its Report in June 1988:

While we have considered the full continuum of legal education we have not attempted to restructure it. *Rather our focus has been upon measures that might be adopted at those stages that are under the direct administration of the Law Society of Upper Canada* in the belief that much can be accomplished here without more fundamental reform of legal education. [italics added]

With respect to the LL.B program we do not propose any changes in the present agreement between the Law Society of Upper Canada and the universities offering the LL.B programs. However we have attempted to design a Bar Admission Course that builds upon a better understanding of the knowledge and skills students will have acquired by the time they receive their LL.B.'s.

32. In addition, Convocation has been reluctant to reform multiple components of the process at one time, preferring to pursue incremental change. To some degree this explains the number of times Convocation has addressed the issues.
33. This approach, while understandable and even effective at certain points in time, has done little to look at legal education as an interwoven framework from admission to law school through call to the bar and beyond to continuing professional development. It has also made the consideration of duplication between stages of education difficult to address because the components are treated as somehow unique.
34. When Convocation established this Licensing & Accreditation Task Force it did so with a view to an examination of all the legal education components, including those affecting internationally trained candidates. This is, in fact, taking place with the Law Society assessing the skills and professional responsibility program and the articling requirement and playing a key role in the national discussions respecting the approved law degree and the National Committee on Accreditation requirements.

35. In considering the skills and professional responsibility programs and the articling requirement, the Task Force has felt the weight of the status quo affecting its discussions. It is sometimes difficult to effect change when there is a tradition of doing things in a particular way.
36. However, the Task Force is of the view that there is danger in continuing to assess the licensing process on the basis of memory and past experiences, rather than on present context, effectiveness and results. Moreover, much as it may be preferable to consider programs on their merits alone, they do not exist in a vacuum. It is irresponsible to ignore practical factors that impede the viability of programs and undermine their goals.
37. In considering the skills and professional responsibility program the Task Force has asked itself a number of questions:
- a. What are the goals/purposes of the program?
 - i. Is the program duplicative?
 - b. Is the program accomplishing its goals?
 - i. Are there factors that render the goals difficult or impossible to acquire?
 - c. What conclusion and recommendations should be drawn from (a) and (b)?
- It has asked similar questions in considering the articling requirement.
38. In the case of the skills and professional responsibility program this analysis has led the Task Force to a single proposal on which it seeks comments and advice from the profession. In the case of the articling program the analysis has led the Task Force to three options on which it seeks comment and advice to choose the most viable for further research.

PART 3: SKILLS AND PROFESSIONAL RESPONSIBILITY PROGRAM

The Current Program

39. The Skills and Professional Responsibility Program began as a five-week instructional program. It was reduced to a four-week instructional program in 2007 after the candidate evaluations indicated a perceived repetitiveness within the learning modules and Convocation approved a reduction in the length of the program.
40. The candidates receive three and a half hours of instruction per day, for four weeks for a total of 12 instructional days, six assessment days and one reassessment day for those who require it. Attendance is mandatory.
41. The Law Society must set aside two full days to conduct each of three assessments during the program. In 2007 there were 1400 candidates in the process. Two days of assessments allows only a 15 or 20 minute assessment period plus five to 10 minutes of performance feedback on each activity. The assessments are completed individually or in pairs, depending on the activity.
42. Candidates are expected to undertake preparatory work for each day of instruction and to engage in a number of assessments that may require advance practice and then formal presentation, and prepare and submit a number of assignments which are completed both in and outside of class time.
43. The total instructional, exercise and preparatory time that a candidate will likely dedicate to this program during the four week period includes,
 - a. 19.5 hours of instruction;
 - b. 19.75 hours of exercises/practicing activities;
 - c. 5.90 hours of independent preparation for class work; and
 - d. 14.85 hours of preparation, assessment and feedback time on assessments and assignments.

Total time spent in and out of class on program requirements is 60 hours.

Goals of the Program

44. The development of skills training in Canadian bar admission/licensing programs began in earnest in the mid 1980s. It reflected a belief among regulators that law school education did not equip candidates with the practice skills necessary for the early years following call to the bar. Although it was agreed that post-call learning, experience and maturity immediately built upon the foundation lawyers had at call to the bar, it was felt that at call to the bar there were certain minimum skills lawyers should have in addition to their legal knowledge.

45. When the Law Society's Task Force on the Continuum of Legal Education completed its report in October 2003 it recommended maintaining a skills program, redesigned in the current form. In its earlier interim report to Convocation, however, it had proposed doing away with the skills component. There continued to be concern in Convocation that insufficient numbers of candidates were receiving the exposure to skills training during law school that the profession deemed appropriate for newly called lawyers to have. Accordingly, the program is intended to fill a gap in law school education.

46. Following approval of the licensing program a series of focus group discussions were held with members of the profession throughout the province to consider the appropriate competencies candidates should be exposed to in the skills and professional responsibility program. The competencies were refined and finalized and provided to Convocation in June 2004. The taxonomy of skills and professional responsibility competencies are set out at **Appendix 3**.

47. The learning objectives or goals of the program, to be evidenced through the design of the learning activities, were to,
 - a. provide candidates with opportunities to increase their awareness of issues relating to ethics and professionalism;

- b. improve their ability to identify issues when they arise; and
 - c. develop their analytical skills in dealing with issues they will confront in the practice of law.¹
48. The goals are modest (e.g. increasing awareness; improving ability to identify), reflecting an understanding of the limited amount that can be accomplished in the allotted instructional, assessment and feedback hours.
49. Central to the design of the program is the following feature:
All...instructors in this Program will be practising lawyers. Prior to the commencement of the Program all...instructors will receive comprehensive training on facilitation in a small group learning environment, group dynamics, conflict resolution, skills development and how to apply assessment criteria consistently. Candidates will be asked to evaluate instructors and constructive feedback will be provided to facilitate instructor improvements.²
50. In the Task Force's and Convocation's view, the role of practising lawyers was of central importance to the program to provide candidates with an early exposure to mentors and role models and the opportunity to be taught by those with direct and current experience of practice.
51. The program by its very nature also requires a small group learning environment. Classroom sizes are currently at 24 per class. This is already a higher number than is optimum for skills training. It would be inappropriate to go above this number if there is to be sufficient opportunity for practising skills and receiving instructor feedback. The less feedback, the less effective the program for individual candidates.³

¹ Professional Development, Competence & Admissions Committee. Report to Convocation, February 24, 2005, p.7

² Ibid.

³ In the Spence Report the classroom size goal was 14 students. With increasing numbers and the demands for more instructors this was virtually impossible to achieve.

Task Force Survey of Law Schools and Duplication

52. When the skills training issue was last considered it was difficult to evaluate whether actual (as opposed to perceived) gaps or duplication existed in skills education between what law schools taught and the profession considered essential. This was because at that time there was no Law Society taxonomy of skills (Appendix 3) against which to measure law school teaching.
53. Early on in its deliberations the Task Force met with Ontario law school Deans and sought their cooperation in tracking their course curriculum against the taxonomy, for the purpose of exploring the gap/duplication issue.
54. The Ontario Deans and subsequently the Deans of virtually every law school with a common law degree program responded to a lengthy survey setting out the competency descriptions and asking them to,
- a. track programs in their curriculum that addressed these competencies;
 - b. identify the number of law school hours that were spent on the competencies in comparison with the hours required in the Law Society's skills program; and
 - c. indicate whether the courses were mandatory.
55. The results, which have greatly informed the Task Force's discussions, are set out in a summary document **Appendix 4**.⁴
56. In the Task Force's view the survey provides strong evidence of the following:
- a. Skills education forms a significant part of the law school curriculum, in many cases the mandatory curriculum. This is equally true for professional responsibility as it is for the other identified skills.
 - b. It is overwhelmingly the case that the skills instruction candidates receive typically involve more hours of instruction than candidates receive in the licensing program, in some instances significantly more. This is hardly

⁴ Law schools understand that their responses were to be included in this public report. Supporting material from the law schools related to Appendix 4 can be viewed at <http://www.lsuc.on.ca/media/licsupp.pdf>.

surprising given that any skills unit in the licensing process spans at most a few half-days of instruction, while skills and professional responsibility programs in law school are taught for a term or even a full academic year.

- c. Intensive courses and clinical experience have multiplied over the years since the Spence Report and are now present in most law schools. These provide integrated and complex training that cannot be duplicated in the licensing process. The skills of client relationships and practice management appear to be most frequently addressed in this context. In the Task Force's view it is difficult if not impossible to learn these skills well other than in "practice" context.
- d. The survey reveals evidence of significant duplication and only modest gaps between the Law Society's skills and professional responsibility program and law school education in these competencies.
- e. With few exceptions, the majority of law schools identify a mandatory professional responsibility course. This is in addition to any teaching integrated into substantive courses.

57. The Task Force was impressed with the breadth of skills and professional responsibility offerings in law schools that address the Law Society competencies and the extent to which many of these offerings are mandatory. In considering the extent to which the Law Society's program is accomplishing its goals and can do so in the future and the ongoing need for the program the Task Force has placed significance on the law school survey information.

Achievement of skills and professional responsibility program's goals

58. The Task Force is convinced that the Law Society's skills and professional responsibility program has already encountered difficulty in accomplishing its goals. In all likelihood the external circumstances beyond the Law Society's control that have already affected the program's viability, and are discussed below, will become increasingly challenging in the future, making it virtually impossible to run the program in its current form.

Factors that affect the achievement of the program goals

59. In 2007 approximately 1476 candidates applied to the licensing process. This number has been steadily increasing from year to year. A number of factors are currently in play that will likely result in the number of candidates in the licensing program rising even more significantly in the future. In addition, there will continue to be pressures to facilitate quicker access to the licensing process. The factors that are contributing to increased enrollments or may do so in the future) include the following:
- a. The University of Ottawa has increased the size of its student body by approximately 60 students per year.
 - b. Bond University in Australia has a number of Canadian students who it is anticipated will return to Canada for admission. Although not all of them will come to Ontario, it is anticipated that approximately 25 per year may. In addition, other Australian law schools are beginning to recruit Canadian students.
 - c. Lakehead University has applied to establish a law school with an annual entry of 25-30 students.
 - d. Wilfrid Laurier University has applied to establish a law school with an annual entry of 75 students.
 - e. There is likely to continue to be the standard 4% increase in registration levels, many from international jurisdictions. This could increase even more as more domestic students address the inability to gain admission to Canadian law schools by attending law school elsewhere and then returning home through the NCA process.
 - f. Efforts are increasing by those seeking to have international law degrees apply on par with Canadian LL.B. degrees.
 - g. The Law Foundation of Ontario is studying the desirability of increased part-time LL.B. studies.
60. While not all of these factors may materialize or may not do so all at once, the Law Society cannot ignore the pressures on a system already taxed to the maximum. Law school enrolment figures and NCA certificates of accreditation numbers are not within any law society's control or influence.

61. With the increasing number of candidates coming into this process, the ability for the Law Society to mount the skills and professional responsibility program becomes more and more difficult. In 2007, the Law Society spent in excess of \$400,000, paid by candidates, in instructor fees and disbursements to ensure that all four teaching sites and all classes had sufficient instructional support. In addition, the Law Society will spend, in excess of \$300,000, paid by candidates, to rent facilities for class instruction.⁵ In Toronto the program is currently run at Ryerson University after the spring term is over. It is very possible that in the near future university space may no longer be available as universities are moving to adding summer semesters for their own registrants. Even more expensive hotel space may then become the only option for the skills and professional responsibility program.
62. Even without a sizeable increase in registrants, the program has been unable to fulfil one of its main goals, namely that only practising lawyers teach the candidates.
63. The Law Society has had increasing difficulty in recruiting these role models to teach. Although the time commitment for the skills program is similar to the time commitments in the old program for teaching substantive law subjects such as Civil Litigation and Real Estate (10 half-days), the profession has been reluctant to become involved or stay involved in the skills program.
64. This may be because lawyers felt more comfortable in a substantive law teaching environment than they are teaching skills. It may be a result of the case-based methodology that results in greater complexity of the teaching or the requirement

⁵ These figures do not include other costs attributable to the skills and professional responsibility program. The total cost of the program is approximately two million dollars or a little less than 1/3 of the costs of the licensing process. Additional costs include salaries, indirect costs attributable to the program, materials and translation.

to attend a training session and use specifically developed instruction methods to enhance consistency of instruction across the province.⁶

65. The end result is that many of the lawyers who have demonstrated a willingness and availability to instruct are no longer practising lawyers. The provision of experience-based information on practice management that is considered one of the practical benefits of the program does not really occur because many instructors are not in a position to provide it.
66. Large law firm commitment to the program is extremely limited. Very few of the over 100 instructors who participate are from larger firm environments. Yet the majority of candidates will article in those environments upon completion of the program.
67. In 2007, the Professional Development & Competence Department was required to use full-time lawyer employees of the Law Society to fill instructor requirements, taking those employees away from their regular work often in areas outside of licensing process. As stated above, while many of these lawyers were in private practice at some point in their careers they are not currently. Ironically, candidates may have significantly greater exposure to the practising bar in their law school education than they currently do in the licensing program.
68. The Task Force believes this to be a serious impediment to the attainment of the program's goals. The Law Society's claim to expertise in skills training is tied to its ability to attract the members of the profession to pass on their ability and ethics to the next generation of lawyers. If they cannot or will not, the Task Force believes this seriously limits what the program can achieve.

⁶ Despite instructor training, consistency in teaching across seminars continues to be a problem given the number of seminars and the size of each class.

69. Moreover the Task Force does not believe it is a realistic answer to resolve to recruit or exhort the members of the profession more effectively. The Law Society has already made numerous efforts to seek out instructors, to little avail. The program's continuation cannot be based upon the assumption or even the hope that greater efforts will convince the practising bar to take up teaching again.

70. The Law Society's policy analysis often benefits from considering whether other jurisdictions have faced similar issues. In this instance there has been little benefit to examining other jurisdictions. This is because the number of candidates in the licensing programs of other regulators' in common law jurisdictions does not begin to approach the Law Society's. Those programs do not require the same scope of voluntary practitioners and never have. The table below sets out the number of candidates registered for bar admission programs by province. Ontario has 44% of the national total. The next highest is Quebec with 27% followed by British Columbia with 11%.

Number of Candidates Registered for bar admission by province

Province	Number of registered candidates	Number of sessions per year	% of national total
Alberta	340	2	10
British Columbia	366	3	11
Manitoba	71	1	2
Nova Scotia and PEI	75	4	2
New Brunswick	50	1	1
Newfoundland and Labrador	32	1	1
Ontario	1,476	1	44
Quebec	900	2	27
Saskatchewan	64	1	2
Total	3,374	-	100

71. As discussed above,⁷ the skills and professional responsibility program's instructional goals are modest. No one could reasonably argue that after the limited number of instructional days in each of the covered skills or competencies candidates have mastered any of them. At best the program may raise awareness or allow some modest practice in a new area. If a practising lawyer provides the feedback this may give the candidate some additional insight on "real world" context. To the extent, however, that candidates have already covered the competency or skill in law school, the Task Force questions how much benefit the candidate will receive from a brief review. This may become even less helpful if the instructor is not a practising lawyer. In addition, even the best of non-practising lawyer instructors may find the candidates resistant to their message simply because they are not in private practice.
72. Overall, the candidate evaluations support the view that the program is of only modest benefit, if at all. The 2006 and 2007 group of candidates evaluated the program. In both years the preponderance of views was that the training in each distinct competency/skill set was too brief in scope and nature to be worthwhile. Many of the candidates who provided feedback indicated that they received all of this training in a far more substantial manner, with more variety and in the context of more personally relevant substantive law areas, in their various law school courses in the three years prior to licensing. They also pointed to inconsistent teaching across seminars.
73. Some candidates found the hands-on learning activities related to skills, in particular the motion argument activities, to be interesting and potentially useful. Candidate evaluations found the interaction with instructors and other candidates to be interesting. Generally, however, candidates indicated that the case based work is too contrived to be useful. A number of candidates complained that the program does not approximate reality and will not be useful in articles or practice.

⁷ Paragraph 47.

74. There was substantial feedback on the focus of the activities in the program, with some candidates negatively noting the emphasis on litigation. Many candidates have no intention of litigating and “resent” the requirement to be forced to participate in, and be assessed upon, these activities.
75. Some candidates thought that it was unfair to be judged on a skills exercise or assignment after being given such a short amount of instruction and preparatory time. However, it should be noted that no one fails the program. The components of the program are presented as iterative exercises and candidates who do poorly on an assessment or assignment are required to submit a revised assignment or return on the last day of the program to be reassessed.
76. **Appendix 5** contains student feedback from 2006 and 2007.
77. Evaluations must of course be considered in their context. By the time candidates reach the licensing process they have been in the undergraduate and law school stream for anywhere from between five and nine years. If they have graduate education or have returned to law school after working for some years in another career, this period will be even longer. The classroom approach to skills seems like an impediment to the real thing, namely articling and practice. The length of the program is a problem from two different perspectives, too short to allow for an intensive learning process and too long for those who are overly ready to be part of the “real world”.

Conclusion and Proposal

78. The Task Force is of the view that the skills and professional responsibility program is not meeting its goals for the reasons set out above. Moreover, external pressures such as increasing enrollments, potential shortage of teaching space, and in particular difficulty in recruiting members of the practising bar to instruct in the program, render the program increasingly unsustainable.

79. This conclusion, coupled with the strong evidence that law school skills training is accomplishing most, if not all, of what the current Law Society skills and professional responsibility program does, has made the Task Force confident in proposing that the skills and professional responsibility program of the licensing process be discontinued.
80. The Task Force has not provided other options, such as reworking the program yet again, because in its view other options are neither necessary to fill a gap nor viable in the current environment.
81. The Task Force has reflected on a number of consequential concerns that may be raised about this proposal and addresses them as follows:
- a. Professional responsibility and ethics has a particular resonance for the Law Society, rendering its continued involvement in this topic important even if law students are all taught professional responsibility at law school. The Task Force agrees with this and its recommendation does not eliminate the Law Society's involvement in this area.

Currently, 15% of the questions in each of the Law Society's barrister and solicitor licensing examinations are on professional responsibility and ethics. The testing is integrated into the substantive law area being examined. The Task Force recommends that this percentage be increased to 30% in each examination.

This will have two possible effects. The first is that candidates will pay even more attention to preparing for the professional responsibility component of the examinations because the questions will represent almost one-third of the possible marks. The second is that to the extent particular law schools do not have mandatory stand alone courses in professional responsibility, they may begin to feel the pressure of their students to require this.
 - b. There may be concern that those candidates who have entered the licensing process through the National Committee on Accreditation will lose an introduction to skills in the Canadian context. While this is true, the Task Force believes that the limited nature of the current program renders this less of a gap than might at first seem the case. There are a variety of ways in which to address this issue through,
 - i. creation of a stand alone shorter program to assist these candidates;

- ii. focused post-call learning opportunities designed to assist all sole practitioners or newly called lawyers;
- iii. mentoring; and
- iv. guidance to these candidates on the numerous Law Society on-line and other practice supports and equity initiatives that exist to assist practitioners.

If following consultation on the Task Force's proposal Convocation is of the view that this issue requires addressing, a proposal can be put forward and its costs estimated that will provide supports to internationally trained candidates.

- c. To the extent that there is some continuing concern that there are gaps in the law school coverage of skills and professional responsibility competencies, there is a significant role to be played by post-call professional development. In the Task Force's view the preferred methodology for filling any proven gap would be to allow the individual lawyer to obtain this knowledge and instruction post call to the bar in a situation that is more relevant and capable of being immediately applied in practice.

The Task Force also notes that although the discussions about the approved law degree are in their early stages, the Federation's Task Force has raised as possible required competencies the following:

- i. Principles of legal ethics and professional responsibility.
- ii. Dispute resolution and advocacy skills.
- iii. Legal research skills.
- iv. Oral and written communication skills specific to law.⁸

- 82. To the extent that other issues are identified during the course of the consultation the Task Force will undertake to address them. The Task Force seeks comment and advice on the proposal it has put forward here respecting the skills and professional responsibility program.

PART 4: ARTICLING PROGRAM

- 83. The Law Society's articling program has been an established part of the licensing process for decades. It reflects the transition from the earlier legal education system that was predominantly an apprenticeship system to the university model that replaced it. It has provided students-at-law with an opportunity to experience

⁸ See Federation Task Force's draft discussion paper, Appendix 2.

and learn about the practice of law in a relatively risk free context of supervised law firm placement. In the Law Society's current licensing process the articling term is 10 months. Candidates may begin articling at any time after the end of the skills and professional responsibility program.

84. Unlike the medical model of education, however, articling is not interwoven into the framework of legal education. There is little direct link between the education candidates receive during law school and the "clinical" component that is articles. The profession has long viewed the articling program as a bridge between the two worlds of education and practice.
85. The articling program has not been without its critics or problems and has undergone a number of reviews in Ontario, the two most detailed ones occurring in 1972 (the Report of the Special Committee on Legal Education - also known as the MacKinnon Report) and 1990 (Proposals for Articling Reform - also known as the Epstein Report). The MacKinnon Report recommended the abolition of the articling program, which Convocation declined to accept. The current structure of the articling program flowed out of the Epstein Report.
86. There have been a number of occasions since the Epstein Report when the articling program has been raised in the context of discussions on the licensing process and on diversity in the legal profession. On each occasion the tendency has been to make modest recommendations to alleviate some of the pressures on or problems with the program. The most recent recommendations came from a 2005 Task Force on Employment Opportunities for Articling Students, chaired by bencher Kim Carpenter-Gunn. The focus of the report was on addressing difficulties that certain groups experience in finding articles.
87. In the Task Force's view, in light of external and internal factors that are jeopardizing the articling program's continued viability, it is time to examine the articling program more thoroughly than has been done in some time. The Task

Force agrees with the Professional Development & Competence Committee's comment in its report recommending the establishment of this Task Force in March 2007:

The projected increase in the number of candidates entering the licensing process, from both domestic and international sources... will have a serious effect on the viability of the current licensing process. This issue has an urgency to it that cannot be ignored...

88. The vast majority of articling jobs are located in Toronto, including the GTA (71%) and Ottawa (16.5%). London and Hamilton are the next largest employers of articling students at 3.5 % each. Most of the jobs in Toronto are found in the large downtown law firms and government employs a significant number of students-at-law in Toronto and Ottawa. **Appendix 6** sets out the location of jobs and the size of firms.
89. There has been a steady and persistent increase in new applications and registrations arising from these applications in the bar admission/licensing process in recent years. To illustrate,

Year	New Applications ⁹	Actual Registrations ¹⁰
2001	1247	1133
2002	1312	1199
2003	1317	1258
2004	1356	1313
2005	1403	1301
2006	1457	1360
2007	1476	1408

⁹ Indicates the new applications received for the bar admission/licensing process (October to September) of each year. Note: applications to the process are continuous. Applicants may enter the process upon completing their LL.B. or NCA Certificate requirements. Requirements may be met at different times of the year.

¹⁰ Indicates the number of new registrants from the application process who are/were in the process as at December 31 of each year. Excludes applications that did not result in a registration (failed to meet the criteria or withdrew in advance of approval), registrants who voluntarily withdrew or had to withdraw due to failed admission requirements after entering the process.

90. The external factors the Task Force has identified elsewhere in this Report, such as increased law school enrolments, possible establishment of new law schools, increasing numbers of internationally trained candidates,¹¹ which have implications for the delivery of the skills and professional responsibility program, are equally problematic for the articling program. In addition, since it began its work the Task Force has continued to receive information about the increasing interest in establishing new law schools in Ontario, international law schools seeking to attract Canadian students, and proposals for different delivery methods for the LL.B degree. These include,
- a. interest expressed by a further law school in Australia in developing a program that caters to Canadian law students, similar to Bond University's program;
 - b. Athabasca University, which specializes in distance learning, examining the possibility of a distance education law program;
 - c. an increasing number of distance education law schools in the United Kingdom, including London University and Wolverhampton; and
 - d. an increasing number of Canadian students going abroad to law school who will return to Ontario and other parts of Canada through the NCA route.
91. All of these factors have implications for numbers of candidates potentially seeking articles. **Appendix 7** contains the Director of Professional Development and Competence's background analysis of the articling situation as numbers rise. As can be seen from the analysis, in a system that appears able to place approximately 1300 articling students in a stable economy, it is likely that the number of candidates seeking articles in 2009 could be approximately 1730. This does not reflect additional candidates that would come from any new law schools.
92. As the system is currently structured, the prospect of this number of candidates seeking articling placements raises issues for the Law Society and for the legal profession not only in Ontario, but also potentially in the rest of the country.

¹¹ Paragraph 59.

93. The Law Society requires candidates to complete an articling program in the licensing process, but has never guaranteed them articling placements, because the process of hiring articling students is between candidates and the law firms. Nonetheless the Law Society has always demonstrated concern over unplaced candidates, sought to assist them, maintains statistics on placement, and has considered issues of equity and diversity as they relate to the articling program.
94. The number of available articling placements has not grown in any substantial number in recent years. To the extent the number of available placements fluctuates there may be more pressure downward to reflect economic realities and changing law firm and government hiring policies, than upward.
95. The Task Force is convinced that the articling program cannot continue to drift. But the difficulty is what to do to address the issues. Whereas the Task Force has been able to conclude on the evidence that the best option for the skills and professional responsibility program of the licensing process is to abolish it, it has found the articling issue a more complex and challenging one that requires a more detailed analysis of and consultation on the various options that may be considered.
96. In considering the articling program the Task Force has asked itself a number of questions:
- a. What are the goals/purposes of the program?
 - b. Is the program accomplishing its goals?
 - i. Are there practical realities that render the goals difficult or impossible to acquire?
 - c. What options are available to address the inability to meet the goals of the program?

Goals of Articling

97. To assist its consideration of the issues surrounding the articling program the Task Force has identified what it believes to be the goals of the program:

- a. To provide law school graduates with exposure to certain defined practice skills in a professional environment in a consistent manner across articling positions.
 - b. To provide law school graduates with exposure to professional responsibility and ethical issues in a professional environment, in a consistent manner across positions.
 - c. To provide law school graduates with the opportunity to evaluate practice environments for the purposes of subsequent professional life.
 - d. To fill law school gaps in law students' development as professionals.
 - e. To facilitate the transition to sole or small firm practice.
98. All of these goals are in the interest of contributing to the Law Society's commitment that lawyers called to the bar and admitted as solicitors are equipped with the skills, knowledge and sense of professional responsibility and purpose required to see them through the initial three years of practice.
99. The 1990 Epstein Report amendments were particularly focused on increasing quality, articulating educational components for the program and introducing consistency across articling positions. **Appendix 8** contains a sample educational plan that addresses the skills and knowledge to which the articling student is to be exposed. The Epstein Committee was responding to ongoing complaints that articling students had widely disparate experiences from firm to firm and from city to city. The report noted the following:
- ...the Sub-Committee assumed in its deliberations that articling would continue. This assumption reflects the profession's commitment to articling...It may be that the recommendations of this Sub-Committee will not cure the problems related to articling. It is intended, therefore, that while these recommendations suggest the continuation of articling in a somewhat modified form, the matter should be entirely reviewed within a three-year period of implementation.¹²

¹² A full review of the program did not take place.

Achievement of Goals

100. In considering whether the articling program is currently accomplishing its goals or will be able to do so in the future, the Task Force has identified the following concerns:
- a. As can be seen in Appendix 7, it appears to be clear that the demand for articling places in Ontario will increase in the coming years without a realistic likelihood that significant numbers of new placements can be located. If the economy undergoes a downturn there may be fewer placements than is currently the case in a thriving economy. The implications of this are that increasing numbers of candidates may be unable to complete their requirements for call to the bar. This is perhaps the most serious problem to address as the indications are that it will become a permanent feature of the program. Current placement information is set out in **Appendix 9**.
 - b. There is evidence that some candidates from Aboriginal, Francophone, racialized communities and National Committee on Accreditation candidates face different challenges to find articling jobs than do other candidates. **Appendix 10** is an excerpt from a report from the Law Society's Equity and Aboriginal Affairs Committee outlining the issues candidates from these groups face. The Task Force is of the view that there is every reason to be concerned that as numbers seeking articling placements rise the issues these groups face will become even more troublesome. Given the *Fair Access to Regulated Professions Act* requirements, the Law Society must be even more concerned about NCA candidates who might be disproportionately represented among those who do not obtain placements.
 - c. Despite the introduction of education plans, it continues to be virtually impossible to assess the consistency of articling experiences across the province. Unlike the medical profession where clinical training occurs within hospitals over which the province has control, the Law Society has only limited influence on principals. The role of articling principal is a voluntary one and principals who find it too onerous simply cease to act. Indeed, when the Epstein reforms were introduced, a percentage of principals ceased taking articling students because the paper work was too much trouble. Given the need to hold onto as many placements as possible and continue to seek out others, there is a limit to what can be imposed upon principals in an effort to improve the program quality, thus potentially limiting the ability to enhance the program.
 - d. There continue to be few jobs outside the large metropolitan areas or in firms of 10 lawyers or fewer. This has implications for the extent to which articling can accomplish one of its goals to act as a transition to sole or

small firm practice. If most candidates article in large firms it is unlikely they are receiving training in the hands-on skills they will most require to operate their own practices.

101. These problems have led the Task Force to believe that the articling program is at best only partly meeting its goals and at worst on the brink of a situation that will only deteriorate due to the increase in numbers, thereby threatening the program's viability. Once again, it is important to note that little assistance can be found by examining the experience of other provinces. The Table provided earlier in this Report on bar admission program registrants illustrates the significant difference in numbers for whom jobs must be found in Ontario compared with all other provinces.

Consultation Options on which Comment and Advice is Sought

102. In the course of its discussions, the Task Force considered a number of possibilities for addressing the challenges of the articling program. Some of these considerations, while interesting, would not on their own provide a broad enough course of action. In the Task Force's view, palliative options are insufficient to address the short and long-term challenges facing the articling program, although they may be helpful as components of more broadly based approaches.
103. The Task Force has identified three primary options to address the issues the articling program is facing. None of the options is new. The 1972 McKinnon Report addressed some of them. Other jurisdictions, particularly in the United Kingdom and Australia have adopted some of them. Perhaps none of them is without criticism. But the Task Force is convinced that something must be done beyond exhorting the Law Society to try harder to fund more placements and improve quality. Something more fundamental must be done.

104. At the same time, the Task Force encourages those with whom it is consulting to suggest additional options they believe provide practical, long-term and realizable solutions to the issues this part of the report raises.
105. The three options on which the Task Force is primarily seeking comment and advice are as follows:
- a. Continue the program, but make it clear that the Law Society makes no guarantees that candidates will find employment.¹³
 - b. Accept that if there is to be an apprenticeship requirement the Law Society should take responsibility for all candidates having an opportunity to qualify; develop an alternative stream for those unable to find a placement.¹⁴
 - c. Abolish the articling requirement.¹⁵

The fourth option, namely additional or alternative solutions will be outlined briefly below.

106. Appendix 11 sets out the pros and cons of each of the three primary options in chart form. Each option is also discussed below. The Task Force has made no decisions respecting any of the options. The Task Force is seeking comment and advice on each of the three options, suggestions for other practical options and input on which options it should develop further in its subsequent reports.

Option One: No Guarantee of Placement

107. The Law Society has never guaranteed that all candidates would find articling jobs. It has put in place a number of supports to assist candidates in doing so and has continued to try to expand the number of available articling placements, but in the end the market has more or less governed hiring.

¹³To some degree the status quo in Canada; more stark reality in Scotland, England and Wales

¹⁴ Australian system

¹⁵ U.S. model

108. Other Commonwealth regulatory bodies make it clear to candidates that completion of various components of legal training does not guarantee completion of others or guarantee of obtaining a call to the bar. The Law Society of Scotland notes on its web site:
- It should also be noted that gaining a place on, or successful completion of, an LL.B. degree does NOT guarantee a place in the Diploma in Legal Practice course, a training contract¹⁶ or future employment in the legal profession in Scotland.
109. The Law Society of England and Wales' website describes in great detail the challenges to completing the requirements for call to the bar as a solicitor. England and Wales candidates must complete both a legal practice course and a training contract. The Law Society of England and Wales' website sets out the cost requirements for the legal practice course, makes it clear that there is no guarantee a candidate will obtain a training contract and points out the implications of these realities.
110. The Law Society of England and Wales appears to have taken the view that its responsibility is to ensure that individuals are given the information about the risks involved in taking up their legal training. It is then up to them to make their choices. If the entrance requirements are legitimate competency requirements, it is not unreasonable to include them even if not everyone will obtain a placement. The Law Society of England and Wales' notice is set out at **Appendix 12**.
111. In assessing this approach used in England and Wales it is important to step back and consider that guarantees of placement are seldom built into professional requirements. From the outset, competition for places is endemic to the professional education process. It is realistic for candidates to be hopeful of placement, but perhaps unrealistic to expect guarantees. The earlier in the process that individuals are alerted to this type of warning the better, so that they can make decisions about their future in an informed context.

¹⁶ equivalent to articles

112. In comparing the Canadian situation with that of England and Wales and Scotland, and other legal education regimes, however, it is important to identify the differences in the legal education systems. In these other jurisdictions, the law degree is truly an undergraduate degree, most students attending law school immediately following high school, sometimes in conjunction with obtaining another undergraduate degree. The length of the program is shorter in some circumstances than our three year degree. Many of those pursuing the law degree do not intend to become members of the legal profession or practise law.
113. In Canada, the law degree is *de facto* a graduate degree as most students have already obtained a first university degree when they enter law school. There is a high expectation among students that they will enter the legal profession and there is a greater commitment of time and money devoted to that end goal because of how much more education is involved. NCA candidates may have given up a career and a life in another country with even more financial and time consequences. The stakes of failing to obtain an articling position may arguably be higher, at least for many of the candidates in Ontario and Canada generally, than it is in England and Wales.
114. Moreover, the difficulty this option presents is not that it is heretofore unheard of or even uncommon in the professional world, but that given the Task Force's estimates of increasing numbers, unplaced candidates in larger numbers than has previously been the case may become a permanent feature of the program.
115. This would result in the Law Society and the profession in general being faced, on an ongoing basis, with candidates who cannot complete their licensing requirements. To the extent that Aboriginal, Francophone, racialized and NCA candidates are disproportionately represented in this group, the profession may be increasingly uncomfortable with the consequences. It is possible that should internationally trained candidates be disproportionately represented in this group

the requirements of the *Fair Access to Regulated Professions Act* would identify articling as an unreasonable barrier to admission.

116. An advantage of this option in the short term is that it may provide the Law Society with time. By articulating the status quo in a clear way to all candidates,
- a. the Law Society may have time to better assess the numbers issue. If the increase in numbers turns out to be less than anticipated, this reduces at least some of the urgency of the issue;
 - b. the Law Society may have time to once again explore the expansion in available placements and a re-assessment of what kind of placements may qualify as meeting the requirements;
 - c. the discussions respecting the approved law degree, NCA requirements and new law school applications will be completed with possible implications for the articling requirement;
 - d. a national analysis of articling requirements might be contemplated, with a view to creating national solutions and improvements.
117. In periods of economic downturn in the past, the Law Society has faced high levels of candidates failing to find employment contracts. While it is true that these have tended to be of relatively short duration, the precedent for accepting labour shortages as a reality of the system does exist.¹⁷
118. It is interesting to note that the McKinnon Report addressed this issue in 1972:
- The indications are that the demand for articling positions will increase substantially in the next few years. The demand will reach 900 by 1974 and would almost certainly exceed the supply of positions available. Unless the system of legal education is changed some of the graduates of Ontario law schools will be unable to qualify for admission to the Bar – a situation that would be unacceptable to everyone concerned, the student, the public, and the legal profession.

¹⁷ Anecdotal evidence suggests that those unable to follow the traditional route of call to the bar often find other careers in which to use their legal education.

119. That Special Committee recommended the abolition of articling as the appropriate way to address the numbers issue. This was rejected. Articling placements continued to be found, but there is little doubt that there were periods when candidates did not find jobs and the system has continued nonetheless.

Option 2: Articling or a Practical Legal Training Course

120. If the Law Society and the profession find Option 1 unacceptable, but wish to continue some form of practical training requirement before call to the bar, then in the Task Force's view an alternative means of meeting the training requirement must be found for those who cannot obtain articling positions.
121. In the Task Force's view the only realistic option, although not without drawbacks, is the introduction of a practical legal training course (PLTC), as is found in the states of Australia, for those candidates who cannot find articling positions.
122. The practical legal training programs vary in length and scope, but for the purposes of this discussion the Task Force describes the program offered at the Leo Cussen Institute in the State of Victoria, one of the earliest PLTC courses.
123. The on-site program runs for approximately 31 weeks. It is offered once yearly with an enrollment of 140 students. Attendance is mandatory and students are required to attend from 9:00 a.m. – 5:00 p.m. five days a week. The program meets the National Competency Standards in place to ensure lawyers are called to the bar with requisite knowledge, skills and ethics. There is a three-week professional placement as part of the program wherein Leo Cussen Institute places students in legal offices for work experience. There are full time instructors, as well as part time practitioner instructors. Students complete assignments and assessments. Students pay for course. Additional information on the Leo Cussen program is set out at **Appendix 13**.

124. Since 2004 the Institute also offers an on-line version of the course. On-line students must arrange their own three-week professional placement and during the 31 weeks of the program they must attend in person for 16 days of “on-site intensives.”
125. The practical legal training course exists as an alternative to articling. In a recent review of legal education in Victoria the author of the report commented that articles are consistently students’ preferred option over the training courses because,
- a. they are paid a salary as opposed to having to pay for the course; and
 - b. articling represents a foot in the door of the legal environment.¹⁸
126. At the same time the author pointed out that if there were no practical legal training courses, “several hundred graduates each year would not be able to qualify for admission to practice.”
127. The report also points out that the demographics of students in Victoria has changed dramatically.

There are more mature-aged students who are prepared to pay fees to obtain a law degree and who complete their degree part-time while maintaining other careers. These students, once they graduate, are not willing to sacrifice their existing career to do articles full time or to take a full time practical training course. Others are not financially able to support families at the current salary rate for articles, and still less able to pay course fees for a practical training course which prevents them earning income for six months. Many younger students who have supported themselves throughout the undergraduate degree are equally reluctant to take a full time, fee-paying practical training course.

This change in the student demographic has occurred throughout Australia and, combined with the emergence of technology, has led to the development of alternative modes of practical training courses...new courses have been developed and approved by the Council of Legal Education.¹⁹

¹⁸ State of Victoria, Department of Justice, *Review of Legal Education Report* (2006), p.24

¹⁹ *Ibid*, p. 25.

128. In addition to Leo Cussen practical legal training is offered at universities in Victoria, both in person and on-line.
129. While it is possible under the Victoria model for a student to voluntarily choose the practical legal training route over the articling route, the main rationale for introducing programs such as this is to address shortage of placement issues. The Task Force's description of this as an option is in the same context - to address placement shortfalls.
130. Introducing this option could have a number of benefits:
- a. To the extent the estimates of increasing numbers are correct, the introduction of a practical legal training course could make the difference between a candidate being called to the bar or not.
 - b. As described above, for those with families to support and in-person time constraints, an on-line part time course could assist.
 - c. For those who live in remote communities where there are no articling jobs, they could complete most of their requirements in their communities.
 - d. For those who intend to pursue sole or small firm practice the training course may in fact give them more focused and consistent practice management training than occurs in firm settings with busy practitioners.
131. This option would, however, involve a significant shift in the way in which the profession and the Law Society approaches and thinks about practical training. A possible hurdle for this approach would be in satisfying prospective employers and perhaps the profession in general that applicants with a practical legal training credential are equally qualified as those who articulated. This would be less of an issue for those graduates who intend to be self-employed.²⁰ Much would depend upon,
- a. the reputation of the programs and their affiliations (e.g. with universities);

²⁰ This is more of an issue in the Australian States where no one is entitled to practice as a sole practitioner or partner unless they have first worked in an employment setting for a period of years.

- b. the willingness of leaders of the bar to stand behind the courses, both by teaching and offering to take candidates if there is a brief placement component; and
 - c. the quality of those who graduate and their willingness to act as ambassadors for the program.
132. This option may still present a hurdle to those who will have to find the funds to pay for the course. Part-time options may assist that will spread the cost out, but it may still be the case that candidates in serious financial need will not be able to afford the course. This option requires further consideration of this issue and the extent to which, if at all, the Law Society or other bodies such as the Law Foundation of Ontario could or would subsidize costs or provide financial aid.
133. In addition, this option can only proceed if there are third party providers interested in opening schools. This requires an infrastructure, full-time faculty, and resources that are well beyond the Law Society's capacity or mandate to provide. The Task Force is of the view that this option should not be contemplated with the Law Society as the provider. A further difficulty with this option is whether there would be a sufficient number of candidates on an annual basis willing to enroll. While this option may be interesting and even inevitable, it may not be viable in the shorter term. It would be important to learn more about its origins in Australia and how the courses ensured enrollments in the early years.

Option 3: Abolish the Articling Requirement

134. This option is, of course, the most radical and final in its scope and nature. Once dismantled it is unlikely the program could be easily resurrected, so any decision to end the requirement should only be made after careful consideration.
135. None of the American states requires articling. It is interesting to note that in recent major studies on U.S. legal education the Commonwealth articling programs are always depicted as providing an advantage to those whose

education includes them. Despite this there appears to be no inclination in the United States to introduce such a program.

136. In the Law Society's current situation of anticipating a significant increase in candidates seeking placement, there is a certain attractiveness to doing away with the requirement altogether. This is the only way to ensure that a potentially unreasonable barrier to call to the bar is eliminated. It does away with the ongoing concerns that articling is uneven and that its educational value is only as good as the individual principal's commitment to teaching and mentoring.
137. At the same time, however, it is important to consider the possible negative implications of such a move:
 - a. There is the potential for the public and the government to perceive this move as a reduction in standards, with a corresponding concern about self-regulation.
 - b. It is true that large firms are the primary employers of articling students. With no articling requirement the period of trying out new graduates would shift to the first year associate pool. But the numbers the firms hire in this capacity may be significantly fewer than the number of articling students they hire. For those who are not hired as first year associates and those who would not have articulated for large firms in any event, there could be competency implications for moving straight from the licensing process to call to the bar with no further training in between. This training gap could have even greater implications for NCA candidates who have had little opportunity to become acclimatized to the Canadian legal system before call to the bar.
 - c. The abolition of articling in one jurisdiction would have implications for all jurisdictions, since candidates in Ontario could be called to the bar significantly sooner than elsewhere in the country.
 - d. Although the National Mobility Agreement is premised on each jurisdiction's acceptance of the others' licensing requirements, it is true that at the time the Agreement was negotiated all jurisdictions had some form of articling.
138. In considering this option the Task Force has tried to contemplate what might reduce concerns about the abolition of a pre-call requirement. Many American

jurisdictions have what are called “bridging” programs. These are required professional development programs of short duration for newly called lawyers designed to address issues of professional responsibility and practice management. It would be possible to introduce a mandatory professional development curriculum requirement for the first year or two after call to the bar to address some of the competencies currently included in the articling education plans. This would not be likely to have a hands-on practice component.

Option 4: Alternatives to Options 1, 2 and 3

139. In the course of its discussions the Task Force considered a number of ideas to alleviate pressures on the articling system to facilitate the continuation of the program. It identified options 1 and 2 as the most capable of addressing the broad concerns. The Task Force did consider other possibilities such as,
- a. shortening the articling term to five months, with the thought that firms who took one 10 month student would take two 5 month students;
 - b. allowing for a call to the bar for those who do not have articles that would require supervised practice should the lawyer decide at a future date to practice;
 - c. continuing to seek out additional articling placements; and
 - d. seeking outside funding to subsidize articling positions.
140. The Task Force did not choose to focus on any of these options alone as, in its view, they are not sufficiently practical to result in a long-term solution. In the Task Force’s view, while there may be other options for the program than discussed in Options 1, 2 and 3, the key to any option must be that it is practical and likely to resolve the issue. The Task Force welcomes additional options during the course of this consultation, but cautions that they be practical and capable of addressing the problem at its most challenging level. So for example, is an option of outside funding or subsidization of articling principals a practical one if there are several hundred candidates unable to find positions? Is it likely that articling principals will find it useful to hire students for only five months

and then train a second student for another five months, particularly given the learning curve for new students?

141. The profession is urged to consider Options 1, 2 and 3 as well as pursuing alternative options as discussed in Option 4. The Task Force welcomes all input and advice.

The Numbers Issue

142. The Task Force was not mandated to consider the issue of numbers in the profession. It is inevitable, however, that this issue will be raised in the course of the consultations. Accordingly, the Task Force makes a brief comment on this issue here.

143. In the Task Force's view, further limiting numbers who may gain access to the profession is not a reasonable or indeed viable option for myriad reasons the most compelling of which are,
 - a. numbers are in fact already limited by the fact that there are only 16 common law schools in Canada. Applications for places in those schools far exceed the number of available places. Increasing numbers of Canadian students who can afford to do so are attending international law schools and then seeking accreditation of their international law degree through the NCA. Many more who cannot afford to go overseas simply do not have access to the profession. To further reduce access to the profession, in the Task Force's view, is inappropriate and short sighted;
 - b. further limiting numbers who may be called to the bar may have the unintended result of removing from the pool some of the future most competent, ethical and talented members of the profession. Further cut-offs will inevitably become tied to performance levels on examinations. High performance on examinations is not necessarily determinative of proficiency in practice;
 - c. it is possible, perhaps probable that such further arbitrary limitations could run afoul of the *Fair Access to Regulated Professions Act*;
 - d. the Federal Bureau of Competition has recently published a report in which it studies the regulatory rules of a number of professions, including the legal profession, and reflects on the implications of self-regulation on

competition issues. The report makes recommendations aimed at reducing arbitrary or unnecessary limitations on competition within the professions. Some of these recommendations apply to the legal profession. Further limiting numbers who may gain entry to the profession would be unlikely to find favour with the Federal Bureau of Competition.

PART V: THE CONSULTATION PROCESS

144. As has been set out above, this report is divided into two streams. The first, setting out the developments in the discussions about the approved law degree discussion is provided only for *information* (Part 1). The second, addressing the skills and professional responsibility program and the articling program (Parts 2, 3 and 4) are intended for *consultation* with the profession. In particular, the Task Force seeks comment and advice on the proposals and options so that it can continue to develop its position and ultimate recommendations to Convocation on these issues.
145. Further consultations may follow this one to address issues provided in Part 1 of this Report for information only as they are further developed and to consider any further issues that arise from this consultation.
146. The Task Force's mandate included a commitment to consult interested parties such as,
- a. law schools and Law Deans, both within and outside of Ontario;
 - b. the Ontario Bar Association;
 - c. the County and District Law Presidents' Association;
 - d. other legal organizations such as the Advocates' Society and the Criminal Lawyers' Association,
 - e. legal organizations representing Aboriginal and equity-seeking groups;
 - f. large law firms that hire articling students;
 - g. government lawyers;
 - h. sole practitioners and small firm lawyers;
 - i. the National Committee on Accreditation working group on NCA standards;
 - j. the Federation of Law Societies of Canada;
 - k. the Government of Ontario;
 - l. Legal Aid Ontario;

- m. the Law Foundation of Ontario; and
 - n. the judiciary.
147. The Task Force will place notices in the Ontario Reports, on the Law Society website and through e-mails to the profession advising members of the Report and seeking written input by May 31, 2008. In addition, it will send the Report to law schools and organizations, including those identified above seeking written comment and advice on the report and providing questions that might facilitate the responses by May 31, 2008. If organizations would like Task Force members to attend one of their meetings to further discuss their written submissions the Task Force will endeavour to do so.
148. The Task Force will then consider all the comments and compile a report for Convocation on the comments and advice received. Its next steps will depend to some degree on both the outcome of the input and on the continuing national work respecting the approved law degree.
149. The Task Force is hopeful that the profession will take an interest in these important issues and provide comments and advice to assist it in finalizing its Report and recommendations.

Appendices

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[Appendix 3](#)

[Appendix 4](#)

[Supplementary material to Appendix 4](#)

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