



**Criminal Lawyers' Association**  
189 Queen Street East, Suite 1  
Toronto, ON M5A 2S1

**Tel:** (416) 214-9875  
**Fax:** (416) 968-6818

[www.criminallawyers.ca](http://www.criminallawyers.ca)  
[Anthony@criminallawyers.ca](mailto:Anthony@criminallawyers.ca)

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Policy Secretariat  
The Law Society of Upper Canada  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6

***Via e-mail: [policy@lsuc.on.ca](mailto:policy@lsuc.on.ca)***

Attn: Members of the Professional Development and Competence Committee

Re: Pathways Pilot Project Evaluation and Enhancements to Licensing report

I am writing on behalf of the board and members of the Criminal Lawyers' Association (CLA). The CLA is the largest representative of criminal lawyers in Ontario and one of the largest specialty legal organizations in Canada. The vast majority of our members practice law either in small firms of fewer than 10 lawyers or as sole practitioners.

We are pleased that the Committee has undertaken a thorough review of the pilot project and provided this report for comment. In our response below, we have considered each of the Committee's major recommendations in turn.

#### Committee Recommendations

- Ending the Law Practice Program at the completion of Year Three (2016-17)

We agree with a majority of the Committee members that the data suggest that the LPP is not sustainable in its current form. It is encouraging to see the efforts in developing a more robust, consistent educational component for transitional and experiential learning, and we agree with the recommendation that Convocation explore ways in which both the French and English LPP resources can continue to benefit the licensing process going forward. Nevertheless, it appears the perception

of this alternate path as being *second tier* persists. This is consistent with anecdotal feedback of our own members.

- Continued use and evaluation of the enhanced Articling Program

We encourage Convocation to continue its efforts toward developing a more comprehensive articling program, including considering incremental changes to the licensing process that might achieve the stated goals of the LPP, specifically the need to address the difficulty graduates face in finding an articling position. The underlying problems in the licensing process will persist after the Pathways pilot project ends, and it is critical that any future model adopted deal with these issues. Of particular concern to the continued development of a robust criminal bar are the cost barriers licensees face, as smaller firms and sole practitioners, particularly in smaller markets, may not be in a position to offer articling positions that will adequately offset the cost of a modern legal education.

- Introduction of two new licensing examinations

We support in principle the suggested modifications to the licensing examination process. Adoption of a competency examination focused on practice and procedure appears to be a reasonable gateway mechanism to address concerns over whether licensees possess the requisite knowledge base of procedural, as contrasted with substantive, legal matters prior to beginning the articling term. Likewise, the introduction of an assessment of practical skills at the conclusion of the articling period appears to be a reasonable means of confirming that the articling term has achieved its goal of experiential learning.

- Articling exemption for internationally-educated candidates with three years of practice experience

The proposed increase from ten months of practice to three years of practice experience to qualify for an exemption should theoretically minimize some of the concerns regarding the baseline skills of internationally-educated candidates.

- Exploration of process to permit abridgment of articling up to three months

We would encourage Convocation to consider expanding the availability of an abridgment beyond formally recognized skills training *programs* to any licensee capable of demonstrating a sufficiency of practical experience. In 2012, one of the recommendations suggested by the CLA to address the decreasing availability of articling positions was to permit students who complete certain practical courses (e.g. trial advocacy or appellate advocacy) or who work with a law school legal clinic during their studies to complete their articles in six months rather than ten. Such a reduction in the articling term would enable small firms who currently employ one articling student a year to employ two at no extra expense.

## Conclusion

In summary, the CLA is thankful for the opportunity to provide a response to the Committee's report. Our membership continues to be very interested in all future proposed developments to the licensing process. We encourage the Committee and Convocation to continue efforts to find new ways to address the shortfall in available articling positions without increasing the financial burden on new graduates, something that remains a concern to the defence bar going forward. We are committed to working with the Law Society to address these issues,

As outlined in our 2012 submissions when the Articling Task Force was first struck, the CLA maintains the following positions:

1. Articling is a valuable step on the road to the successful practice of law and should not be abolished.
2. A failure on the part of successive Ontario governments to fund Legal Aid Ontario adequately has had a significant impact on the ability of criminal lawyers to hire articling students.
3. Significant increases in the number of criminal law articling positions are not likely to take place without significant increases in funding to Legal Aid Ontario.
4. The Law Society should not take any steps that result in increasing the financial burden to those seeking to be called to the bar.
5. A practical training course is not a substitute for articling.

We were pleased to hear Treasurer Schabas' recent commitment to work on improving the Legal Aid program in this province. We firmly believe that a properly funded plan, with sufficient resources directed to supporting the private bar, would allow more of our members to take on articling students. This could in turn alleviate some of the major financial stresses experienced by students seeking criminal law articles.

If you have any questions concerning this response, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Moustacalis". The signature is written in a cursive, flowing style.

Anthony Moustacalis  
President