



# Exploring the development of alternatives to articling: Recommendations

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## Lawyer Development Task Force

Steve McKoen, QC (Chair)  
Brook Greenberg (Vice-Chair)  
Jasmin Ahmad, QC (until September 9)  
Sasha Hobbs  
Julie Lamb, QC  
Thomas Spraggs  
Katie Sykes

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Prepared for: The Benchers

Prepared by: Policy and Planning Department

# Introduction

1. The Lawyer Development Task Force (the “Task Force”) was established in January 2020 and provided with a broad mandate that includes evaluating what is necessary to ensure the future development and maintenance of a well-educated and qualified bar.
2. In accordance with its terms of reference, the Task Force has begun to examine BC’s pre-call educational requirements, particularly in light of developments in other Canadian jurisdictions. The Task Force’s early work has explored a range of issues, including the regulatory objectives of, and inter-relationship between, the components of the “lifecycle” of pre-licensing lawyer development in BC. These discussions, which have been informed by the work of a number of legal commentators, as well as a review of the licensing approaches of other regulators, have led the Task Force to develop the first in what it anticipates will be a series of proposals for the Benchers regarding changes to BC’s lawyer licensing process.
3. For the reasons discussed in this memo, the Task Force recommends that the Law Society engage in a process of exploring the potential development of new pathways to licensing, in addition to articling, that will satisfy the Law Society’s pre-call experiential training requirements.
4. The development of options for alternatives to articling must be guided by two key principles. The first is that the primary focus of the licensing process is to ensure the competence of those that are admitted to practice law in BC. When evaluating the merits of prospective alternatives to articling, the Law Society’s competency mandate must remain paramount. At the same time, however, consideration must be given to regulatory fairness and ensuring that the licensing system does not create barriers to entry into the profession for otherwise competent, qualified candidates.

## Background

### **The current model for lawyer licensing and opportunities for change**

5. BC’s current educational model for lawyer licensing requires a period of study at university culminating in obtaining a JD, a term of articling under the guidance of a principal and the completion of the Law Society’s Professional Legal Training Course (“PLTC”). This model has been in place since 1983 and, aside from PLTC replacing the previous tutorials, has undergone minimal changes since 1945. Those that obtain their law degree outside of Canada are required to undergo certification through the National Committee on Accreditation (“NCA”) following an assessment of their legal credentials and the

completion of required exams before they can enroll in the Law Society's Admission Program (articling and PLTC).<sup>1</sup>

6. Over this same time period, the landscape of the legal profession has undergone significant changes. The numbers of law schools admitting students has increased and the number of candidates seeking entry into the profession has grown substantially. The profession has also seen a rise in the number of students obtaining their legal education outside of Canada. The impact of this trend in BC is apparent when reviewing student enrolment in PLTC, where the average number of foreign-trained graduates increased by 81% between 2010 and 2016. Currently, approximately 20% of those enrolled in the Law Society's Admission Program hold a Certificate of Qualification from the NCA rather than a Canadian law degree. In recent years, the percentage of candidates from equality-seeking groups entering the profession has also increased.<sup>2</sup>
7. Practice structures and locations have also shifted, with an increase in lawyers working in larger firms in urban centres and a decline in sole practitioners, particularly in smaller communities. Technological developments have had a profound influence on all aspects of the profession, and will continue to do so. The long-term impacts of the COVID-19 pandemic on firm culture and organization, and the legal marketplace, remain uncertain as does the likelihood of the occurrence of similar disruptive forces in the future.
8. Given the scope and scale of these social, economic and technological changes, the relatively static nature of legal education over this same time period raises a critical question: is a method for training lawyers that was created 70 years ago appropriate for 2020 and beyond? Recognizing that the fundamentals of pre-call legal education have not been discussed by the Law Society in detail in some time, the Task Force has examined, in broad terms, the current method for training entry-level lawyers in BC and considered whether it remains the optimal approach to licensing.
9. The variation in licensing programs across other common law jurisdictions demonstrates that BC's licensing scheme, which typically requires the completion of a four year undergraduate degree and a three year law degree, followed by a nine month articling

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<sup>1</sup> The Law Society assesses whether those with an NCA Certificate of Qualification must complete the entire PLTC and articling program based on their previous practice and educational experiences.

<sup>2</sup> See the Law Society of BC, "[Demographics of the legal profession](#)", which documents the growth in the percentage of lawyers identifying as racialized, a visible minority or a person of colour.

period<sup>3</sup> and a ten week bar admission course,<sup>4</sup> is not the only method for developing competent entry-level lawyers. Pre-call training requirements across Canada, Australia, the UK and the United States can take anywhere between five to seven years to complete. Although some foreign jurisdictions require a first degree prior to commencing law school, others permit students to proceed directly to an undergraduate law degree. Several regulators permit students to pursue a graduate law degree without completing an undergraduate law degree. In the UK, a student can bypass a law degree entirely by completing a lengthy apprenticeship.<sup>5</sup> Most regulators require licensing candidates to complete a practical training course following law school, ranging from several months to a year in length, and a period of experiential training in the form of articling, work contracts or work placements that are also months to years in duration. Other regulators have no such requirements.<sup>6</sup>

10. Notwithstanding these variations, each jurisdiction is presumably confident that their licensing scheme consistently produces competent entry-level lawyers. This is certainly the case in BC, where the Law Society has been satisfied that requiring prospective licensees to complete law school, articling and PLTC fulfills its statutory duty to ensure that newly admitted lawyers are competent to serve the public.
  
11. Having a functional system for pre-call lawyer education does not, however, preclude an examination of whether the system that is currently in place is the *optimal* approach to lawyer licensing. Could the current system be improved and, if so, in what ways? How might these changes benefit the public, applicants and the profession more broadly? What challenges and opportunities might modifications to the existing licensing scheme present? As discussed below, the Task Force recommends that the Law Society undertake a detailed examination of these issues.

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<sup>3</sup> These requirements vary. For example, those that complete a clerkship, article in another jurisdiction or have practice experience outside of Canada may have their articling term reduced by up to five months.

<sup>4</sup> Some individuals may be exempt from PLTC if they have completed a bar admission course in another Canadian jurisdiction or have engaged in the practice of law in another common law jurisdiction for at least five full years.

<sup>5</sup> In the United States, applicants must complete four years of undergraduate work followed by a three year law degree. In the UK, prospective lawyers need not complete undergraduate work before commencing a two to five year law degree. Following graduation, solicitors are required to complete a one year legal practice course and a two year apprenticeship/training contract. Barristers must complete a one year training course and complete a year of training in barristers chambers. Solicitors can also become qualified through the completion of a six year legal apprenticeship rather than attending law school. In Australia, law can be a three to five year undergraduate degree or a two or three year graduate degree followed by a three to six month practice legal training course, which includes a work placement.

<sup>6</sup> There is no requirement to complete a bar course prior to licensing in the United States or Ontario.

## Articling as the sole pathway to lawyer licensing

12. Currently in BC, candidates for licensing must complete a period of articling in order to be eligible for call to the bar.<sup>7</sup> As there are no alternatives means of obtaining pre-call experiential training, the inability to secure an articling position creates a barrier to licensing.
13. Whether articles should serve as the gateway to the profession has been the subject of discussion and debate for some time. Criticisms of articling include the variability across experiences and the challenges of effectively assessing consistency; the increasingly restricted location, size and substantive practice areas of firms that hire students; and the pressure on the articling system generated by the growing number of internationally trained students and, to a lesser degree, Canadian law school graduates.
14. The Task Force will be examining the extent to which these and other issues arise in the context of BC's articling program.<sup>8</sup> A core element of this work will involve the analysis of the results of a voluntary, online survey of lawyers in their first three years of call.<sup>9</sup> The results of the survey are expected to provide the Law Society with additional insight into the experience of those candidates that were successful in obtaining articles and may shape future recommendations with respect to the existing articling program.
15. Concerns have also been raised about the "regulatory fairness" of a system in which the market dictates access to an essential component of the licensing regime. Critics have highlighted that unfair barriers may be created for some candidates if entry into the profession is dependent on the availability of positions rather than an individual's qualifications and competence. Where there is a limited number of articling positions available, for example, students who are otherwise competent may not be able to secure a placement and thereby are unable to gain admission to the profession. Obtaining statistical data about the composition and experience of this group is difficult given that these

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<sup>7</sup> Some students are eligible to be called and admitted without articling on the basis of transfer from another jurisdiction under Law Society Rules 2-81 and 2-79.

<sup>8</sup> The Law Society's 2018-2020 Strategic Plan included a review of the Admission Program. This work commenced under the Lawyer Education Advisory Committee in mid-2018, and will be completed by the newly established Lawyer Development Task Force.

<sup>9</sup> The survey explores the availability of articling positions, remuneration, quality of articling experiences and competencies associated with entry-level practice, as well as issues surrounding wellness, harassment, discrimination and bullying within the articling experience.

individuals have not enrolled in the Law Society's Admission Program<sup>10</sup> and therefore are not represented in surveys or consultations involving articling students and lawyers.

16. Notwithstanding these concerns, the articling system has been the traditional form of transitional training for generations of lawyers, creating opportunities for students to acquire real-world practical experience prior to being called to the bar and fostering the development of professional networks.
17. Canadian legal regulators have consistently rejected the abolition of articles.<sup>11</sup> Within BC, for at least the past two decades, each time the subject of Admission Program reform has been raised, an early preference has been stated for a period of post-graduation experiential learning to bridge the gap between academics and practice.<sup>12</sup> In Ontario, however, concerns that a shortage of articling positions was creating barriers to entry into the profession led to a comprehensive review of the Law Society of Ontario's ("LSO") pre-call lawyer education requirements, commencing in 2011. Over the course of the following seven years, a series of consultations, studies and reports resulted in significant changes to Ontario's lawyer licensing process. This included the introduction of two new training programs that provided candidates with an alternative to articling: the Law Practice Program ("LPP") and the Integrated Practice Program ("IPP"), which both satisfy the LSO's pre-call experiential training requirements. These programs are discussed in more detail in the latter portion of this memorandum.
18. Although the available data suggests that BC is not currently experiencing an articling shortage akin to that in Ontario, the increasing number of Canadian law school graduates and internationally trained applicants have fuelled a growing demand for positions. Anecdotally, there are reports of a highly competitive articling market in which NCA students, in particular, are facing challenges finding placements. Looking forward, a variety of factors have the potential to further reduce the number of available positions, including changes in the demand for, and delivery of, legal services, the continued growth in the

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<sup>10</sup> Only those individuals that have secured an articling position are eligible to enroll in the Law Society's Admission Program.

<sup>11</sup> The Law Society of Ontario has directly addressed the issue of whether articling should be abolished twice in the last decade, in 2011 and 2018, and has rejected the elimination of articles on both occasions.

<sup>12</sup> In 2002, the Articling Task Force's comprehensive review of the Law Society's Admission Program expressed, at the outset, support for articling remaining a prerequisite to admission to the bar and did not fundamentally question the role of articling in the licensing process. Similarly, no detailed consideration was given to the issue of eliminating articles as part of the Lawyer Education Advisory Committee's 2015 review of the Admission Program, which included a recommendation to maintain the articling requirement with minor changes.

number of internationally trained applicants and the uncertain impacts of large-scale social and economic disruptions, such as the COVID-19 pandemic. In the event that these, or other conditions contribute to a decline in the number of articling positions, market forces, rather than the competence of applicants, have the potential to determine who becomes a lawyer in BC and who does not.

## Discussion

19. The Task Force is of the view that, as a modern and proactive regulatory body, the Law Society ought not wait for a “placement crisis” to emerge before considering whether a system in which articling is the only means for licensing candidates to satisfy the Law Society’s experiential training requirement remains the optimal approach. Accordingly, the Task Force recommends that the Law Society establish a process for examining the merits of, and options for, creating alternative pathways to licensing in addition to articling.
20. This work falls squarely within the Law Society’s statutory duty to establish standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission. In discharging this duty, section 21(1)(b) of the *Legal Profession Act* gives the Benchers the authority to make rules to establish requirements and procedures for call to the bar and s. 28 gives them the authority to take steps to promote and improve the standard of practice by lawyers, including by establishing, maintaining or otherwise supporting a system of legal education. The Law Society therefore has some significant latitude to modify its existing licensing processes and programs.
21. In accordance with this mandate, the Law Society’s primary concern is to ensure that the licensing program significantly contributes to the development of competent entry-level lawyers. At the same time, however, the scheme should ensure fairness to all candidates. Such an approach does not imply that the licensing process must guarantee every candidate entry into the profession, regardless of competence. However, it does demand that the Law Society ensure that the licensing program does not create or perpetuate barriers to entry into the profession for otherwise competent candidates. As discussed in more detail below, the development of alternatives to articling provides the Law Society with an opportunity to create innovative forms of experiential training that advance this and other goals.

## Alternatives to articling

22. In developing this recommendation, the Task Force undertook a detailed review of the two alternatives to articling recently adopted by the LSO. These approaches are presented not as models for adoption, but rather, as examples of the types of licensing pathways that may

warrant further study going forward. Importantly, the LSO has demonstrated that the shifting professional landscape may require novel and innovative forms of pre-call legal education, and that the regulator need not be constrained by traditional approaches when re-envisioning the future of lawyer licensing. Ontario's experience is valuable as it illustrates how articling can be retained as a licensing option, while developing parallel experiential training streams that address issues of regulatory fairness and realize a number of additional benefits.

### **Law Practice Program (LPP)**

23. The LPP is a program developed by the LSO as an alternative to articling, arising from its analysis of a perceived growing gap between the supply of, and demand for, articles in Ontario. In 2012, the program was initially approved as a three year pilot project at Ryerson University (in English) and at the University of Ottawa (in French). Each comprised four months of skills training followed by a four month work placement that would operate alongside the articling program.<sup>13</sup>
24. The first cohort of the LPP commenced in 2014. Over the course of pilot, the program was continually reviewed and assessed, and was the subject of additional consultation with the profession. After considerable discussion and debate, Convocation approved the LPP as a permanent pathway to lawyer licensing in Ontario in 2018.
25. The LPP is open to all students in the LSO licensing process that have completed either a JD from a recognized Canadian law school or have obtained an equivalent degree as evidenced by the receipt of a Certificate of Qualification from the NCA. The costs of administering the program are spread across all licensing candidates and licensed lawyers, and there are no additional fees associated with participation.<sup>14</sup> There are no limits on the number of registrants, and annual enrollment in the LPP has averaged 220 students in the English program and 15 candidates in the French program.

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<sup>13</sup> Articling Task Force Final Report, "[Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario](#)" (October 2012). At the same time, the articling program would be enhanced, with a recommendation to introduce a uniform final assessment to ensure that each candidate, whether they articulated or took the LPP, had successfully completed a set of practice skills covering core competencies.

<sup>14</sup> Each year the LSO's lawyer members contribute one million dollars (\$25-\$27 per licensee) to offset the costs of the LPP. Licensing fees for all candidates (not just those enrolled in the LPP) increased approximately \$1900 to offset the costs associated with the program at the commencement of the pilot project.



26. The composition of the LPP is more diverse than the articling program. Approximately half of LPP students are Canadian law schools graduates. Twenty-five percent of the other half typically start their undergrad in Canada, but complete a law degree in the U.K., Australia or the United States before returning to Ontario for licensing. The LPP also has a larger percentage of candidates from equality-seeking groups than the articling program.<sup>15</sup>
27. The LPP begins with a 17-week instructional and skill development component that replicates the experience of legal practice by organizing students into small virtual law firms. Using interactive, web-based modules and digital tools, students develop a range of lawyering competencies by completing tasks and acquiring practical skills as they work through simulated files.<sup>16</sup> Using online technologies to meet with practising lawyers that serve as the virtual law firm’s “supervising lawyer,” students discuss matters raised by the files, including practice and client management, professionalism and ethics. A three week in-person session also provides students with additional training and networking opportunities. The second portion of the LPP is a four month work placement during which candidates further develop lawyering competencies in the context of a practical legal workplace experience. Work placement teams assist students in locating positions, which may be paid or unpaid.<sup>17</sup> Most of the positions are in small firms and, for at least the first several years of the LPP, the majority were located outside of Toronto.
28. Upon successfully completing both components of the LPP, candidates must only pass the licensing exams and fulfill the LSO’s good character requirement to be called to the bar. Graduates of the LPP are generally succeeding in obtaining employment, with over 85% working in law or law related positions at the one year call mark.

### **Integrated Practice Program (IPP)**

29. At the time that the LPP was initially proposed, the LSO also suggested creating an additional pathway to licensing by integrating a training program into the law school curriculum. In 2012, Convocation supported, in principle, the accreditation of an integrated

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<sup>15</sup> For example, in the 2016/17 and 2017/18 cohorts, the percentage of self-identifying racialized candidates in the articling pathway was 17% and 22% respectively, while the percentage of self-identifying racialized candidates in the LPP were 22% and 36% respectively.

<sup>16</sup> The LPP covers seven key practice areas: wills and estates, real estate, business law, administrative law, family law, criminal law and civil litigation.

<sup>17</sup> During the pilot project, approximately 30% of LPP work placements were unpaid as compared to 3% of articling placements ([Professional Development and Competence Committee Report to Convocation](#), May 2018). Although work placements are not guaranteed, to date every student that has completed the first four months of the LPP has obtained a position.

practice program (“IPP”) embedded within the law school curriculum that fused formal legal education with skill development across a three year course of study and included a mandatory work placement.

30. The approval of an IPP requires the law school to demonstrate that its curriculum satisfies the requirements for skills and task exposure and assessment identified in the LSO’s competency achievement list.<sup>18</sup> Within this broader framework, however, law schools have considerable flexibility as to how they develop and deliver their curriculum.
31. In 2013, the LSO approved the first IPP at Lakehead University. In 2018, a second program was approved at Ryerson University. Although the Lakehead and Ryerson programs operate independently, they share a number of common features. During the three year law degree, students must complete numerous mandatory courses that integrate a theoretical foundation of legal knowledge with the development of practical skills.<sup>19</sup> For example, students write factums and make oral submissions in constitutional law, complete bail review hearings in criminal law, draft opinion letters in tort law, and participate in client interview role playing assignments in ethics and professionalism courses. Academic faculty typically have experience working in firms and many courses are taught by practising lawyers. In their third year of study, IPP students must complete a three month unpaid work placement, which is coordinated through the student services office. Practice experiences are monitored by the law school and evaluations are conducted by placement supervisors at the firm.
32. Graduates of an approved IPP must only pass the LSO’s licensing exams and fulfill the good character requirement to be called to the bar. As such, students benefit from focusing on the early integration of legal skills and knowledge and avoid the potential challenges of securing an articling position, as well as the additional time and costs associated with completing the LPP or articles.

### **Rationales for exploring innovative approaches to lawyer licensing**

33. In the course of examining BC’s current lawyer licensing scheme, the Task Force has identified several rationales for exploring alternatives to articling. A key impetus for this

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<sup>18</sup> These competencies are based on both the entry-level practice competencies set out in the Federation’s National Competency Profile and additional competencies set by the LSO.

<sup>19</sup> Ryerson’s IPP includes 26 mandatory courses. Lakehead’s IPP has more than 18 mandatory courses.

work is to proactively address concerns with the regulatory fairness of an approach in which the market dictates access to an essential component of licensing. These concerns have become increasingly relevant in an environment that is experiencing unprecedented changes, including the significant and continuous growth in the number of internationally trained applicants seeking entry to the BC bar and the uncertainties surrounding the magnitude and duration of the COVID-19 pandemic's impact on all facets of economy and society, including the legal profession.

34. Retaining a scheme in which articling is the sole pathway to licensing may result in factors other than the competence of candidates impacting whether otherwise qualified and competent individuals are able to complete the experiential training required to be called to the bar. The fact that many competent, qualified candidates do not face difficulties finding articling positions does not mean that those that are unable to secure articles lack the knowledge, skills or attributes to become competent lawyers. Rather, other factors, unrelated to competence, may be influencing the ability for some students to compete for scarce positions in a competitive articling market.
35. The LSO's licensing review, for example, suggested that equality-seeking groups may be disproportionality affected by challenges in obtaining articles in circumstances where the demand for positions outstrips the supply. Although a variety of factors made it difficult for the LSO to develop a robust statistical analysis of how placement issues affected specific demographics,<sup>20</sup> qualitative data resulting from consultations with the profession emphasized that those from equality-seeking groups — almost all of whom were supportive of developing alternatives to articling — may be less likely to secure articles, are underrepresented in articling positions in large firms, have fewer networks to assist with job finding opportunities and are more likely to have significant law school debt.
36. These issues were the subject of further study during successive evaluations of the LPP, which revealed that certain categories of candidates are more heavily represented in the LPP population, as compared to the articling stream, including internationally educated, racialized and older (40 years+) students. In approving the LLP as a permanent pathway to

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<sup>20</sup> The LSO's 2011 consultation report indicated that licensing candidates that identified as being from an equality-seeking group were less successful in securing an articling placement. The LSO noted, however, that a minority of members of equality-seeking groups self-identify, and that the experience of different groups within this cohort were not consistent, resulting in incomplete information respecting placement issues. The LSO also observed that the increased number of unplaced racialized candidates also correlated with an increase in NCA students and suggested that internationally trained candidates, whether originally Canadian or not, with more limited connections to Canadian legal practice, have more difficulty obtaining placements.

licensing, the LSO highlighted that the program supported fairness by ensuring access to the profession for all candidates, including those that had previously faced barriers to securing articling placements for reasons unrelated to competence.<sup>21</sup>

37. In BC, the Law Society has limited information about who does not obtain articles because these individuals are not enrolled in the Admission Program, and relies on self-reporting to obtain demographic information about those that do secure placements. This results in incomplete data sets. However, anecdotal reports suggest that NCA students and out-of-province candidates miss out on critical opportunities which lead to articling positions, including networking events hosted by law schools, firm interviews and recruitment information provided by BC law school career offices. The difference between the format of NCA students' transcripts and those of Canadian law school graduates, as well firms' unfamiliarity with out-of-province and out-of-country law schools is another factor that may influence hiring decisions. In some circumstances, bias within the articling interview process—whether conscious or unconscious— may also play a role in qualified candidates being unable to secure a position.
38. Developing alternatives to articling may therefore provide the Law Society with an opportunity to improve access to the experiential training portion of the licensing process for those that have historically faced barriers. In addition to the benefiting those individuals seeking call to the bar, the public interest is also greatly served by improving the diversity of the profession.
39. The Task Force also observes that a number of additional benefits may accrue from developing alternatives to articling. These include the opportunity to establish a form of experiential training that improves access to justice; for example, by providing work placement or training requirements that include areas of practice or practice settings that are dedicated to providing legal services to underserved or disadvantaged groups, and expanding the opportunities for experiential training in environments that fall outside of the traditional law firm or government articling experience. The development of alternative pathways also presents an opportunity to improve the consistency of students' experiential training and to reduce the extent to which the time and costs associated with articling create a barrier to entry into the profession for some students.

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<sup>21</sup> Law Society of Ontario, Professional Development and Competence Committee [Options for Lawyer Licensing: A Consultation Paper](#) (May 2018).

## Recommendations and next steps

40. On the basis of the rationales identified above, the Task Force recommends that the Law Society commence a process of exploring and developing options for the creation of additional pathways to licensing that provide candidates with an alternate means of obtaining the necessary pre-call experiential training. Possible approaches may include a program that follows the completion of law school, or that is integrated into a law school curriculum, or both. These options should be developed with the view to recommending a program that operates in addition to, rather than as a replacement for, articling.
  
41. The Task Force recommends that the review of the licensing program includes, but is not limited to, further examination of the LPP and IPP and whether the introduction of a similarly structured program in BC may benefit candidates, the profession and the public, both by improving opportunities for licensing and integrating with other initiatives, such as increasing the diversity within the profession and addressing access to justice issues. Additionally, in an effort to build a licensing program that is resilient and agile in the face of disruptors such as the current pandemic, consideration should also be given to enhancing the role of technology in experiential training, including increased opportunities for remote learning and mentorship.
  
42. With respect to timing, the Task Force believes that the Benchers' decision to approve, in principle, a recommendation to explore the development of new pathways to licensing need not wait for the analysis of the Law Society's current articling program to be completed. Although that analysis may inform future proposals regarding modifications to the existing articling program, the survey's focus on newly called lawyers, all of whom articulated, will limit the extent to which the results will advance the Law Society's understanding of the policy issues raised in this memorandum.
  
43. Once options are developed by the appropriate Law Society body, potential reforms to the licensing process will be returned to the Benchers for further discussion.