

The Law Society
of British Columbia



Recommendations Concerning Remuneration and Hours of Work for Articled Students

Lawyer Development Task Force

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Prepared for: Benchers

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Purpose: For Decision in Principle

Executive Summary

1. In recent years, concerns have been raised about the existence of, and problems associated with unpaid and underpaid articles. The Law Society has been considering these issues from time to time, including past recommendations to the Benchers that the Law Society continue to gather information on the working conditions of articulated students prior to determining the appropriate approach on remuneration for articles to ensure that policy decisions in this regard are evidence-based. More recently, at the Law Society's October 2020 Annual General Meeting ("AGM"), a Member Resolution was approved that raised a number of concerns regarding articulated students' working conditions, and that directed the Benchers to address these issues by ensuring that articling agreements are consistent with section 16 and Parts 4 and 5 of the *Employment Standards Act* ("ESA").
2. The Lawyer Development Task Force has undertaken a comprehensive, evidence-based examination of articulated students' wages and hours of work, analysing a large body of survey data and evaluating the potential implications of various approaches to addressing concerns related to these issues. Many of the rationales for establishing standards for mandatory levels of compensation and limits on hours of work during articles are unified by themes of ensuring fairness and preventing exploitation, which are matters that the Law Society can address through its regulatory powers.
3. With this in mind, the Task Force supports taking some action to address the issue of unpaid and underpaid articles and excessive hours of work. At the same time, however, the Law Society's statutory mandate requires the Benchers to consider the negative implications that may arise from a policy decision to mandate remuneration and place limits on hours of work during articling, particularly as related to the public interest.
4. On this basis, the Task Force recommends that the Benchers approve, in principle, the introduction of minimum levels of financial compensation and maximum hours of work for articulated students, with limited exceptions, and that the details of the new standards are developed by the Law Society following additional consultation with the profession in the coming year.
5. The Task Force is also concerned, however, that the evidence reviewed by the Task Force to date suggests that introducing these requirements would reduce the availability of articling positions, thereby creating barriers to licensure for some students. As articling is currently the only means for students to complete the experiential training portion of the licensing process in BC, remuneration standards should not be considered in isolation from the issue of the availability of articles and the development of alternative pathways to licensure. In order to avoid the foreseeable, negative consequences arising from the introduction of mandatory levels of financial compensation, the Task Force recommends that these standards are not implemented until the Law Society has established at least one

alternative to articling, through which candidates' ability to fulfill the experiential training portion of the licensing process will no longer entirely be dependent on the availability of articles.

Proposed Resolution

6. The Benchers adopt the recommendations of the Lawyer Development Task Force that:

Recommendation 1: The Benchers endorse, in principle, the Law Society establishing limits on the number of hours of work during articles, with limited exceptions. Developing a specific formula or method for calculating the limits on hours of work, and identifying the circumstances under which employers and students may be eligible for a discretionary exemption from the new standards, will occur following additional consultation with the profession and will be referred back to the Benchers for final approval no later than September 2022.

Recommendation 2: The Benchers endorse, in principle, the Law Society establishing minimum levels of financial compensation during articles, with limited exceptions. Developing a specific formula or method for calculating the minimum level of compensation, as well as identifying the circumstances under which employers and students may be eligible for a discretionary exemption from the new standards, will occur following additional consultation with the profession and will be referred back to the Benchers for final approval no later than September 2023.

Recommendation 3: To address the potential reduction in articling positions resulting from establishing standards for financial compensation, and to ensure that the introduction of the requirement does not create barriers to licensing for some students, the new standards for financial compensation will not be implemented until at least one additional pathway to licensure is in place, which the Task Force expects to occur by September 2023.

Background and Process

7. At the Law Society's October 2020 AGM, a Member Resolution was approved that directed the Benchers to ensure that articling agreements are consistent with section 16 and Parts 4 and 5 of the *ESA*.¹ The Resolution states:

¹ The Member Resolution was carried with 1,567 votes in favour, 1,163 against and 187 abstentions.
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Be it resolved that membership directs the Benchers:

To amend the appropriate sections of the Law Society Rules and/or Code of Professional Conduct within 12 months of the date of this resolution, requiring that articulated student agreements provide articulated students with at least such rights and protections as are guaranteed under section 16 and Parts 4 and 5 of the Employment Standards Act, RSBC 1996, c 113, and ensure that articulated students are able to seek financial redress for practices that contravene the amended Law Society Rules and/or Code of Professional Conduct.

8. Following the AGM, the Law Society disseminated a survey to articulated students, newly called lawyers and law firms that had recently hired articulated students that sought to gather information on matters relevant to articulated students' working conditions. In January 2021, the President asked the Lawyer Development Task Force to review the results of the survey and to return to the Benchers, no later than September 24, 2021, with recommendations.
9. Over the last six months, the Task Force has reviewed and discussed a comprehensive set of materials and issues relating to the matter of articulated student remuneration and hours of work. This work included an analysis of the scope and application of the relevant provisions of the *ESA*; a review of the Articling Agreement, Law Society Rules and *Code of Professional Conduct for British Columbia* ("BC Code"); and a consideration of other provinces' employment standards legislation, articling guidelines and agreements, and policy decisions on remuneration. The Task Force also reviewed a large body of data produced by the Law Society's recent surveys on articulated student remuneration and days and hours of work, and met with the proponents of the Member Resolution.
10. This foundational work has informed the Task Force's evidence-based approach to identifying problems associated with articulated student remuneration and hours of work, and to consider the potential implications of different approaches to addressing these concerns, as discussed in this recommendations report.

The Problem

11. In order to be called to the bar in BC, licensing candidates must complete a period of transitional training following law school. Currently, the only option for obtaining the requisite experiential training is through the Admission Program, which consists of articles and the Professional Legal Training Course. Students cannot be admitted into the Admission Program unless they have secured articles.
12. The Law Society does not guarantee that all students will be able to obtain an articling position, nor does it directly regulate the employment relationship between a student and

the firm once articles are secured. Although students and principals must sign the Law Society's Articling Agreement, which addresses the nature of the relationship between the principal and student, the content of articles and reporting requirements, the Articling Agreement does not include provisions relating to remuneration, hours of work or other matters relating to students' working conditions. Similarly, the Law Society Rules and the *BC Code* provisions governing articles do not address remuneration, or hours and days of work.

13. In recent years, concerns have been raised about the existence of, and problems associated with, unpaid and underpaid articles. Anecdotal reports of students articling for low or no pay and, in extreme cases, paying their principal, led to a more detailed examination of these issues by the Lawyer Education Advisory Committee in 2015. Following its review, the Committee recommended, and the Benchers accepted, that principals be encouraged to pay reasonable wages, and that the Law Society continue to gather information on remuneration, and then determine whether to develop a policy on minimum payment for articles.
14. Developing a policy on articulated student remuneration was subsequently identified as an organizational priority in the Law Society's 2018-2020 Strategic Plan. In 2019 and 2020, student remuneration and hours of work during articles were explored in more detail in a series of Law Society surveys. These results provided the Law Society with its first statistically significant data set regarding the working conditions of articulated students. As described in more detail in the next section of this report, the results confirm that the majority of students receive a salary during their articles and that monthly earnings vary considerably. The results also indicate that students devote significant amounts of time to their articles, and that based on their monthly salaries and hours of work, many students earn less than the statutory minimum wage. Additionally, the survey results did bear out that a small minority of positions are unpaid, and that, in a few of these cases, students are paying for costs associated with their articles.
15. The Law Society sets regulatory requirements for entry into the legal profession, and these requirements include completing the articling process. The Law Society therefore has the ability to examine and address these issues, and in doing so, ensure that public interest considerations are paramount when weighing various policy options. The discussion and recommendations that follow aim to move the Law Society's policies toward striking this balance.

Research and data analysis

16. The subject of this report addresses issues provided for under section 16 and Parts 4 and 5 of the *ESA*. This requires an understanding of the scope and application of these provisions.
17. Section 16 of the *ESA* addresses minimum hourly wages. Under subsection (1), employers covered by the Act are required to pay an employee at least the minimum wage as prescribed in the regulations, which is \$15.20 per hour as of June 1, 2021.
18. Part 4 of the *ESA* addresses hours of work and overtime. These provisions require that employers ensure:
 - an employee is paid overtime wages of 1 ½ times their regular wage for time over eight hours of work, and double for time over 12 hours and 1 ½ times their regular wage for time over 40 hours a week;
 - an employee has at least 32 consecutive hours free from work each week, or is paid 1 ½ times their regular wage for time worked during the 32 hour period the employee would otherwise be entitled to have free from work;
 - an employee has at least eight consecutive hours free from work between shifts;
 - an employee is not required or directly or indirectly allowed to work excessive hours or hours detrimental to the employee's health or safety;
 - no employee works more than five consecutive hours without a meal break of at least half an hour;
 - an employee working a split shift must be allowed to complete the shift within 12 hours of starting work;
 - an employee that reports for work must be paid a minimum of two hours at their regular wage, or if previously scheduled to work more than eight hours that day, is paid a minimum of four hours at their regular wage; and
 - at the employee's request, a time bank for the employee may be established and credited with overtime wages.²
19. Part 5 of the *ESA* addresses statutory holidays. These provisions require that an employee who is given a day off on a statutory holiday, or is given a day off instead of the statutory holiday, must be paid an amount equal to at least an average day's pay determined by a formula. Additionally, an employee who works on a statutory holiday must be paid 1 ½ times their regular wage for the time worked up to 12 hours and double their regular wage for any additional time.

² This Part also permits the employer and employee to enter into an averaging agreement covering up to four weeks.
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20. Most professionals are excluded from the entirety of the *ESA*, including lawyers and articled students.³ In the most recent independent review of the Act, several rationales for exempting self-governing professions were identified, including their self-governing nature, the fact that individual professionals exercise a high degree of autonomy in decision-making in their work, and that strictly controlled hours are inconsistent with professional responsibilities when the needs of clients and patients, for example, are urgent and arise unpredictably.⁴
21. This approach is relatively consistent with that of other Canadian jurisdictions, where lawyers and articled students are excluded from all or part of the applicable provincial employment standards legislation. Provinces such as Manitoba and Ontario exclude articled students from provisions relating to hours worked and payment. Other provinces, including Alberta, Saskatchewan and Nova Scotia, exempt articled students only from overtime-related provisions, but not from statutory minimum wage standards. BC's approach to exempting legal professionals and articled students from the *ESA* is, therefore, not unique.
22. Exemption from provincial employment standards legislation does not, however, prevent legal regulators from establishing their own rules and policies on remuneration and hours of work for articled students. Nevertheless, with the exception of a recent policy decision by the Law Society of Ontario ("LSO"), the Task Force is not aware of any Canadian law society that has established minimum standards for payment during articles in their rules, articling agreements or codes of conduct, although it is acknowledged that minimum wage legislation of general application applies to articled students in some provinces. Many law societies are also silent on the issue of wages in the articling guidelines, recruitment procedures and handbooks provided to principals and articled students.
23. The LSO's recent examination of the issue of mandatory payment during transitional training, which occurred in the context of broad reforms to its licensing process, is

³ Pursuant to section 3 of the *ESA*, the Act does not apply to employees excluded by regulation. A list of exclusions are identified in section 31 of the Employment Standards Act Regulation, B.C. Reg. 396/95. Other professions exempted from the *ESA*, in its entirety, include architects, most chartered accountants and their articled students, chiropractors (including those registered as fourth-year chiropractic students entering preceptorship programs), dentists, professional engineers and engineers-in-training, licensed insurance agents and adjusters, land surveyors and articled pupils, registrants of the College of Physicians and Surgeons of BC (including residents), naturopaths, optometrists, licensed real estate agents, persons licensed under s. 35 of the *Securities Act*, veterinarians and professional foresters. Other classes of employees are also excluded from the *ESA*, either in its entirety or from specific sections. For example, nursing students, managers, teachers and university faculty are excluded from the Act's hours of work and overtime provisions. Employees covered by a collective agreement may also be excluded from certain parts of the *ESA*.

⁴ The British Columbia Law Institute, "[Report on the Employment Standards Act](#)" (December 2018).

instructive.⁵ When the LSO established the Law Practice Program (“LPP”) in 2018 as a new, permanent pathway to licensing, it included the introduction of a required salary for both articulated and LPP candidates in accordance with LSO requirements, with limited exceptions.⁶ Although concerns were raised that mandatory remuneration could reduce the number of available transitional training positions, and that some clinics, public interest organizations and sole practitioners may be unable to comply with the new requirements the introduction of a required salary for articling and LPP placements — to be calculated by a formula that would be developed following additional work — was approved. It was also proposed that some principals and work placement supervisors may be eligible to apply for an exemption in certain circumstances. With the disruptions created by the pandemic, however, work on implementing this policy decision has not progressed.

24. In considering the issue in British Columbia, the Law Society needs to be mindful of what is happening in other jurisdictions, but also must primarily be guided by the Law Society’s strategic objectives and statutory mandate and base its policy decisions on the best available evidence, consultation and, ultimately, what is in the public interest.

25. In line with this approach, the Task Force has reviewed the large body of survey data on articling remuneration and hours and days of work collected by the Law Society in 2019⁷ and 2020.⁸ Although the survey sample sizes and questions varied, the results were relatively consistent. With respect to financial compensation, the data suggest that the large majority — approximately 97% — of articling positions in BC are paid, including up to one-third of those surveyed reporting salaries of more than \$4,000 per month.

26. Approximately one quarter of respondents reported earning \$2,500 or less per month during articles. This equates to an annual salary of \$30,000 or less, which approximates payment at or below the “minimum wage” under the *ESA*.⁹ Additionally, approximately

⁵ This issue first arose following an LSO survey that raised concerns that some employers were taking advantage of candidates’ need to fulfill their transitional training requirement by employing law school graduates for minimal, or in some cases, no compensation.

⁶ Law Society of Ontario, Professional Development and Competence Committee Report “[Options for Lawyer Licensing](#)” (December 2018).

⁷ The issue of articling remuneration was addressed as part of the 2019 Admission Program survey distributed to all one to three year calls (call years 2015, 2016, 2017). Respondents were asked a range of questions about working conditions as well as whether the Law Society should be involved in setting minimum standards of financial compensation for articulated students.

⁸ Following the voting on the Member Resolution at the 2020 AGM, the Law Society conducted two online surveys. One was sent to all current articulated students and lawyers who had articulated in the past three years (call years 2018, 2019 and 2020), and the other to the designated representatives of firms that currently have articulated students or have hired an articulated student in the past three years.

⁹ As of June 1, 2021, the minimum wage in BC was set at \$15.20 per hour. Therefore, \$2,432 is the minimum amount of compensation for a four week period of work for employees for whom the *ESA* applies.

three percent of survey respondents did not receive a salary during their articles.¹⁰ Limited data is available as to who is taking unpaid positions, although the 2019 survey results suggest at least half came into the Admission Program with an NCA Certificate of Qualification,¹¹ a cohort of candidates that typically includes a higher proportion of individuals from equity-seeking groups.¹² Four respondents also reported paying for costs associated with their articles, including covering disbursements, travel costs, office space and other overhead.¹³

27. With respect to hours of work, the surveys indicate that almost all articulated students work what would be considered “overtime” under the *ESA*. Almost all respondents reported working eight or more hours per day during articles, and nearly half worked 10 hours per day or more, and in excess of 50 hours per week.¹⁴ More than one-third of students surveyed also reported working six or more days per week and more than half report working on statutory holidays.¹⁵

28. The Task Force also reviewed the qualitative data from the 2019 and 2020 surveys, which included over 500 written comments. These remarks indicate support within the profession for the Law Society setting minimum standards for financial compensation during articles, as well as identifying concerns about the potential for negative consequences arising from the introduction of such a requirement, including a reduction in the number of available positions and changes to the articling experience if some employers are unable to meet the new standards.

¹⁰ In the 2019 and 2020 surveys, 14 respondents and 26 respondents, respectively, reported receiving no payment during articles. These figures are reasonably consistent with the survey results of several other law societies, including Ontario, Alberta, Manitoba and Saskatchewan, which found that between one and four percent of articling positions are unpaid.

¹¹ The National Committee on Accreditation (NCA) assesses the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program. The Certificate of Qualification is issued once a candidate has finished the work required by the NCA, and shows that a candidate’s knowledge of Canadian law is similar to the knowledge of those who obtained their law degree through an approved Canadian law school program.

¹² The remainder of the unsalaried respondents did not answer the survey questions about their path of entry into the Admission Program. No questions were asked in the 2020 survey about students’ path of entry.

¹³ The 2019 survey included a question as to whether students paid for their articles and the nature of that payment, if any. No questions were asked in the 2020 survey as to whether students paid for their articles.

¹⁴ Notably, in the 2020 survey, employers consistently reported higher levels of compensation and less time spent working than did recently and newly called articulated students.

¹⁵ Questions about work on statutory holidays were not included in the 2019 survey.

Discussion

29. Many of the policy rationales for establishing standards for mandatory minimum compensation during articles are unified by themes of ensuring fairness and preventing exploitation. Given that candidates for admission must complete articles in order to be called to the bar, the final stage of a student's pathway to licensing is, to a large degree, influenced by, and dependent on, their principal. This dynamic has the potential to create power imbalances that can, unfortunately, lead to exploitative working conditions including students accepting positions for limited or no pay, or agreeing to work excessive hours.
30. Lack of payment can also create barriers to entry into the profession for those who cannot afford to go with little or no income for the duration of the articles. Some qualified individuals simply cannot accept positions that do not provide the level of compensation necessary for them to repay student loans or otherwise make ends meet. If paid positions are unavailable, these candidates will be unable to complete the licensing process.
31. However, some students also report positive experiences with principals who, because of the nature of their practice, could afford to pay them very little or not at all, but were nevertheless willing to take on the responsibilities and provide the educational experiences necessary for the student to complete their training.
32. The survey data reveals that there is a recognition within the profession that the legal community has an ethical obligation not to use articulated students as a source of cheap, or free, labour. Certainly, articulated students can and do provide valuable work that contributes to the success of their employers, and typically, firms charge their clients, at least in part, for the services conducted by their students. But it must also be remembered that articles are intended to serve a teaching and learning function, and that as a result, it can be expected that the work produced by articulated students may not always be valuable or profitable for the employer. Nevertheless, fairness principles would suggest that a principal charging a third party for services performed by their student should pay the person doing the work.
33. As the Admission Program is a Law Society requirement, ethical considerations would suggest that the Law Society has some responsibility to minimize opportunities for students to be exposed to harmful working conditions within the licensing program it has created.
34. With this in mind, the Task Force has concluded that these policy considerations support taking some action to address the issue of unpaid and underpaid articles and to consider how to address the question of hours of work. At the same time, however, the Law Society's statutory mandate requires the Benchers to consider the negative implications that may arise from a policy decision to mandate remuneration and limits on hours of work during articling, particularly as related to the public interest.

35. The introduction of a requirement that students be paid for articles would not adversely affect many employers, as most pay their students. However, the survey results suggest that establishing a requirement that articulated students are paid the statutory minimum wage as prescribed by the *ESA* could affect a number of law firms that have recently been providing articling positions.¹⁶
36. Additionally, a large majority of students work more than eight hours a day and more than 40 hours per week.¹⁷ Therefore, if the *ESA* provisions regarding the minimum levels of mandatory payment for overtime were also adopted, almost all employers that hire articulated students would be required to pay overtime wages, calculated at 1 ½ times the base wage. These additional wages will be significant for many employers.
37. The potential financial implications of introducing wage protections for articulated students can be expected to result in some employers – particularly small firms and sole practitioners – deciding that they can no longer afford to offer articling positions, or to reduce the number of positions. Notably, the 2019 survey data indicates that of those firms and other legal employers that hired articulated students in the past three years, one-quarter will not be hiring students in 2021. Although it is not possible to discern the relative impacts of the intent expressed through the Member Resolution, the COVID-19 pandemic and other factors on hiring decisions, the data suggests that a reduction in articling positions in the coming years is likely.
38. The Task Force understands, therefore, that the Benchers must exercise caution in making policy decisions that have an expected outcome of triggering a contraction of the articling market, particularly at a time when the impacts of the pandemic on the profession and the legal marketplace are uncertain and evolving. Under the current licensing regime, in which articling is the only option for obtaining the necessary experiential training to be called to the bar, a shortage of articling positions will create additional obstacles to entering the profession for some. This result is problematic, particularly in the context of the Law Society’s efforts to reduce barriers to entry by, for example, developing alternatives to articling.
39. Introducing new standards for financial compensation will also likely have a disproportionate impact on particular practice settings, including legal aid and public interest advocacy firms, as well as legal clinics and non-profit organizations that provide

¹⁶ See the survey results described at para. 26.

¹⁷ As detailed in para. 27, the survey results indicated that that approximately half of students work more than ten hours a day and/or more than 50 hours per week, and up to one-third work six or more days a week.

services to vulnerable or disadvantaged members of the public. If these employers are unable to meet the new requirements, a loss of articling positions and future lawyers in these areas of law can be expected. It is also possible that imposing mandatory salary requirements could affect the ability, or willingness, of employers to pay that salary while the student is in the Professional Legal Training Course, or to pay the cost of the course, both of which most employers currently agree to do.

40. Employers could avoid some of these financial implications by ensuring that articulated students do not work overtime. There is concern, however, that curtailing students' work to fit within a standard eight-hour day, 40-hour week model would fundamentally alter the articling experience for many in a number of ways.
41. First, restricting students' hours may fail to adequately prepare new lawyers for the realities of practice. It would greatly misrepresent how lawyers have to work at certain points in time, such as in trial preparation or at trial, or in the lead up to the closing of a transaction. Clients' needs frequently demand attention outside of the standard work week contemplated in the *ESA*. Although there should not be an expectation that students work excessive hours for marginal levels of compensation, the professional duties owed to the client may require working additional hours when needs arise. Recognition that the nature of legal work demands flexibility around rates of pay and hours of work is, in fact, one of the reasons articulated students and lawyers (and most other professionals) are excluded from employment standards legislation.
42. Second, a loss of overtime could be expected to include the loss of training experiences during articles that are of low economic value for firms, but high educational value for students, such as observing court proceedings undertaken by leading counsel. Training, of course, is fundamentally integral to the purpose of articling and an essential element of developing competence in entry-level lawyers.

Assessment

43. The Task Force has weighed the policy considerations associated with, and the implications of, various options for addressing the issues raised by the Member Resolution and the survey data. These options include bringing the Articling Agreement and the Law Society Rules into alignment with the standards set in the *ESA*; instituting measures that encourage, but do not require, employers to provide their students with adequate levels of pay and hours of work; funding unpaid and underpaid articling positions; and devising an alternative method for establishing a level of minimum compensation and/or regulating articulated students' hours of work.

44. Although the Task Force supports some of the rationales articulated for imposing wage and hour requirements, it does not recommend that, at this time, the Law Society introduce new requirements that are consistent with section 16 and Parts 4 and 5 of the *ESA* on the basis that the Task Force is concerned that doing so is likely to have significant impacts on the current availability of articles. Specifically, implementing statutory minimum wage requirements for all hours worked is expected to reduce the number of articling positions as the result of some employers' inability to provide the required levels of compensation. Should the reduction in the number of positions result in students being unable to secure articles, this will create more barriers to entry into the profession than exist under the current model. Furthermore, the strict regulation of hours of work would also be likely to result in principals providing students with fewer non-remunerative learning experiences.
45. The Task Force recommends, however, that the Law Society does more than simply encourage employers to provide articulated students with reasonable remuneration. To date, this approach has not adequately addressed concerns about unpaid and underpaid articles. This option also fails to address the concerns associated with excessive hours of work, which are often linked to insufficient remuneration. Something more than encouragement seems to be required at this stage.
46. The Task Force also does not support a model in which the issue of unpaid and underpaid articles is addressed through the Law Society subsidizing or otherwise funding these positions on the basis that providing financial support to legal employers to hire students is outside the scope of the Law Society's regulatory functions, and would engage a myriad of fairness issues.
47. As described in further detail below, the Task Force members support, in principle, the introduction of requirements for minimum levels of financial compensation and maximum hours of work for articulated students. The Task Force recognizes, however, that introducing these standards is likely to reduce the availability of articling positions. On the basis that articling is currently the only means for students to complete the experiential training portion of the licensing process in BC, wage and hour requirements should not be considered in isolation from the issue of the availability of articles. The Task Force therefore recommends an approach that improves articulated students' working conditions while taking care to mitigate the reduction in articling positions that may result from the introduction of a new wage requirement.
48. Specifically, to address the concerns raised in the recent survey data, the Law Society could establish some minimum levels of financial compensation for articulated students.
49. Additionally, the Law Society could establish limits on the number of hours articulated students are required to work, although the maximum would likely be higher than the standard hours of work established by the *ESA* in order to address the realities of legal

practice and to ensure that the training experience is not fundamentally altered. As a result, employers would not be required to compensate students for all time worked outside of standard hours of employment. However, limits would be established that protect students from excessive demands.

50. Recognizing the diversity of working environments in which articling positions are offered, and to ensure that the new standards retain the necessary flexibility to address unconventional employment arrangements, the Task Force recommends that a process is developed by which employers and students may apply to the Executive Director for an exemption from the new wage and hour standards. For example, some legal employers, including those operating within non-profit, legal aid and public interest advocacy sectors may be eligible to apply for a discretionary exemption from the standards to ensure that these settings are able to continue to offer articling positions.
51. The specific method or formula for establishing the standards for minimum payment and maximum hours of work will be developed following further consultation with the profession. The circumstances under which an exemption from the new standards may be sought, as well as options for enforcing these requirements, will also be explored.
52. Following this consultative process, the matter will be returned to the Benchers for a final decision. As employers must enter into articling agreements with students in advance of the commencement of articles, a sufficient period of notice must be provided to the profession prior to the introduction of the new requirements.
53. Implementing these new requirements would help to address concerns about poorly paid articles and unregulated overtime, thereby reducing opportunities for exploitation and barriers to licensing for some candidates. This approach also addresses a number of other issues raised in the Member Resolution, including the ethical obligation to ensure that students are compensated for the valuable work they provide to firms and to minimize students' exposure to working conditions and financial pressures that can negatively impact on mental health.
54. The Task Force is cognizant that there is a level of opposition within the profession to the Law Society becoming involved in the employment relationship between firms and students. It is also aware that instituting some level of mandatory remuneration is very likely to create extra financial burdens for some employers and that this could affect the number of articling positions available. In this regard, the Benchers must guard against making a policy decision intended to improve the fairness of the licensing process, only to inadvertently create additional barriers to licensure by reducing the supply of articling positions.

55. In order to avoid foreseeable, negative consequences arising from this proposal, the Task Force has concluded that the optimal approach is to coordinate the implementation of the new standards for financial compensation with the introduction of alternatives to articling, through which candidates' ability to fulfill the Law Society's experiential training requirement will no longer depend entirely on the availability of articles. It is contemplated that providing at least one alternative pathway to licensure will mitigate concerns that the new standards will reduce the number of training positions.
56. Work on developing additional pathways to licensure remains a priority for the Task Force, and options on alternatives to articles will be presented to the Benchers by the Task Force at a later date. If one or more alternative pathways are approved in principle by the Benchers, considerable time and resources will be required to develop and implement the new experiential training programs. The Task Force anticipates, however, that at least one alternative may be in place by September 2023.
57. The Task Force recommends that the new standards for financial compensation are not introduced until at least one additional pathway to licensure has been established. Ensuring that the implementation of these standards is contingent on, and synchronized with, the introduction of alternatives to articles is important to mitigate the potential impact of the wage requirements on the availability of articles and thus, the ability of candidates to obtain the necessary experiential training to complete the licensing process. In this regard, linking the implementation of the financial compensation standards with alternatives to articles is not reflective of equivocation or delay; rather, it is a necessary step in coordinating inter-related and complimentary Law Society initiatives.
58. In contrast, a minority of the Task Force recommends that if alternatives to articling are not in place by September 2023, the Law Society should proceed with the implementation of the standards for financial compensation to ensure that the introduction of these new requirements is not deferred for an indeterminate period of time.

Recommendations

59. Three recommendations are presented to the Benchers for discussion and decision.
60. The Task Force recommends the following in relation to hours of work during articles:

Recommendation 1: The Benchers endorse, in principle, the Law Society establishing limits on the number of hours of work during articles, with limited exceptions. Developing a specific formula or method for calculating the limits on hours of work, and identifying the circumstances under which employers and students may be eligible for a discretionary exemption from the new standards, will

occur following additional consultation with the profession and will be referred back to the Benchers for final approval no later than September 2022.

61. The Task Force recommends the following in relation to *developing* the standards for financial compensation during articles:

Recommendation 2: The Benchers endorse, in principle, the Law Society establishing minimum levels of financial compensation during articles, with limited exceptions. Developing a specific formula or method for calculating the minimum level of compensation, as well as identifying the circumstances under which employers and students may be eligible for a discretionary exemption from the new standards, will occur following additional consultation with the profession and will be referred back to the Benchers for final approval no later than September 2023.

62. The Task Force recommends the following in relation to *implementing* the standards for financial compensation during articles:

Recommendation 3: To address the potential reduction in articling positions resulting from establishing standards for financial compensation, and to ensure that the introduction of the requirement does not create barriers to licensing for some students, the new standards for financial compensation will not be implemented until at least one additional pathway to licensure is in place, which the Task Force expects to occur by September 2023.

63. In coming to this recommendation, the Task Force also discussed an additional provision that was proposed by a minority of the Task Force namely, that if alternatives to articling are not in place by September 2023, the Law Society will proceed with the introduction of the new standards for financial compensation. Ultimately, this version of the recommendation was not supported by the Task Force in a vote. If that set of circumstances occurs, the Benchers of the day should determine what to do on the basis of then-current information.

Budgetary Implications

64. The recommendations will require a commitment of additional financial and human resources from the Law Society. Foreseeable, short-term budgetary implications are largely limited to the costs associated with commencing a profession-wide consultation and any additional focus group work. However, the costs of implementing specific new standards for remuneration and hours of work, once developed, are more uncertain and will depend upon the details of those proposals, including the degree to which additional regulatory oversight is required. It is not possible at this stage to forecast the expense of such a

program. An assessment of budgetary implications will be included in the final report on the proposal when it is made.

65. In the meantime, the cost of developing the proposal further is largely accounted for through staff resources that are already assigned to the Task Force.

Conclusion and next steps

66. The relatively high-level nature of the Task Force's recommendations aims to strike a balance between demonstrating the Law Society's commitment to addressing the issues of student remuneration and hours of work, without prematurely endorsing a specific standard or formula for either issue during articles. This approach is intended to provide the profession with a clear signal about the Law Society's policy direction on the issues, while providing opportunities for further consultation on, and examination of, the potential implications of introducing specific requirements. The consultation should extend to all practising lawyers and their legal employers, current articulated students and other stakeholders.
67. If the proposed recommendations are adopted by the Benchers, the matter will return to the Lawyer Development Task Force to oversee broader consultation with the profession on matters including the appropriate level of compensation during articles, limits on working hours, eligibility for exemptions from the standards and the enforcement of the new requirements.