THE LAWYER'S DAILY

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Should Employment Standards Act apply to articling students? | Kendelle Pollitt

By **Kendelle Pollitt**

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(December 7, 2020, 12:44 PM EST) -- It goes without saying that law students who do not land an articling job cannot become a lawyer in Canada. Yet, for numerous years and across the country, the demand for articling jobs has been surpassing supply. In addition to those studying in Canadian law schools, an increasing number of Canadian law students are studying abroad, mostly in Australia and the U.K.

Add to that foreign lawyers immigrating to Canada who also need articles to be admitted to the bar and the result is a growing surplus of law graduates looking for articles.

Unfortunately, fierce competition to land (and keep) an articling job is the perfect breeding ground for exploitation of our profession's most vulnerable members: articling students.

Articling students are typically at the bottom of the totem pole in terms of staffing hierarchy. Many students graduate from law school with a crushing amount of student debt and need paying jobs to meet basic living expenses such as housing, food and transportation.

In British Columbia, a student's articling agreement, as required by the Law Society of B.C, stipulates that a student's primary vocation must be articling and he or she cannot undertake other forms of employment without the express consent of the Law Society of B.C.

However, students are more frequently being put in a position to accept articling jobs for little to no compensation, even though they are producing billable work for their principal lawyer. As a profession, students should not be working for free.

While the theoretical concept that internships, including articling, are primarily for the benefit of the student and not the employer, it simply is not ethically sound to bill out students for productive work, and in turn, not compensate them fairly, or at all in some cases.

Fierce competition further increases the vulnerability of law students to being bullied, harassed or otherwise mistreated without adequate recourse. In the current environment, students who find themselves in a poor working situation are less likely to report the problem due to fear of being unable to find another position.

Given the professional stakes, it is understandable why a student would continue with an articling arrangement despite mistreatment. That way, once they complete their term, they can at least call themselves a lawyer, with a broader possibility of job opportunities.

This does not present well for our profession.

The exploitation of articling students has generally been swept under the rug, despite becoming a growing challenge in the profession. We must address the ethical concern of how articling students are treated.

To address this issue in B.C., two recently called lawyers proposed adoption of the provincial

Employment Standards Act for articling students at the Law Society of B.C. Annual General Meeting on Oct. 6: "Resolution 3: Resolution to direct the Benchers to ensure that Articling Agreements are consistent with section 16 and Parts 4 and 5 of the *Employment Standards Act*."

This resolution was passed by the membership; however, the margin to adopt the resolution was relatively narrow, with 58 per cent of the membership in favour. While these resolutions bear weight on the decisions of law society benchers, they are not binding. Ultimately, it is up to the sitting benchers, who are elected by the members, to determine whether to follow a resolution.

As a profession, we need to protect our vulnerable members and provide them with a safe place to learn and grow. At the same time, we need to set realistic expectations for them of what the profession entails — dedication, competency and the autonomy to manage one's own time and priorities. It is generally accepted that the governance of lawyers' work does not fit into the tight confines of generic employment law legislation — this is evidenced by the fact that lawyers themselves (along with numerous other professions) are not subject to the *Employment Standards Act*.

Is applying this Act to articling students helping them to learn what it is like to be a lawyer?

Adopting the *Employment Standards Act* for articling work presents several challenges for the profession. Further, in my view, it is likely this step will not only produce unintended consequences for articling students, but also further reduce the available articling opportunities throughout the province.

The practice of law does not always work by an eight-hour clock, fit into a neat averaging agreement for hours worked or facilitate tightly scheduled work breaks. Cutting a day short and/or restricting work hours may limit important exposure to valuable learning experiences. The richest learning experiences for articling students may come in those unexpected final hours of preparing for court or closing a deal, which may occur after 5 p.m. or cluster over a particular time period.

Further, for the principal lawyer, training an articling student can be taxing and time consuming. Lawyers are giving up billable time to teach, and hence serve the profession.

The adoption of the *Employment Standards Act* in B.C. would require the principal lawyer to apply rigorous compliance standards and protocols, as well as strictly monitor the student's workday. The Act is not only imposing on the articling student, but places too much obligation on the principal to monitor the daily (and hourly) moves of the articling student.

This additional burden on the profession may discourage lawyers and law firms from maximizing articling opportunities for the student, or worse, discourage them from offering articling jobs at all.

As a profession, we have had a lagging response to the growing problem of inadequate management of articling students and short supply of positions. This is an issue that can no longer be ignored and must be addressed. However, adopting outside legislation to govern the treatment of our future lawyers and membership is not the answer.

Our membership is the best positioned to craft (and enforce) an appropriate response to the growing concerns presented in our current system of articling. We are a self-governing profession for good reason — and this issue is one that requires self-governance.

Kendelle Pollitt is the founder and principal of Pier Law & Mediation*. She is both a family lawyer and a family mediator practising in White Rock, B.C. For several years, Pollitt has been litigating in both the provincial and Supreme Courts of British Columbia, as well as negotiating settlements on behalf of her clients.*

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