What you don't learn in law school

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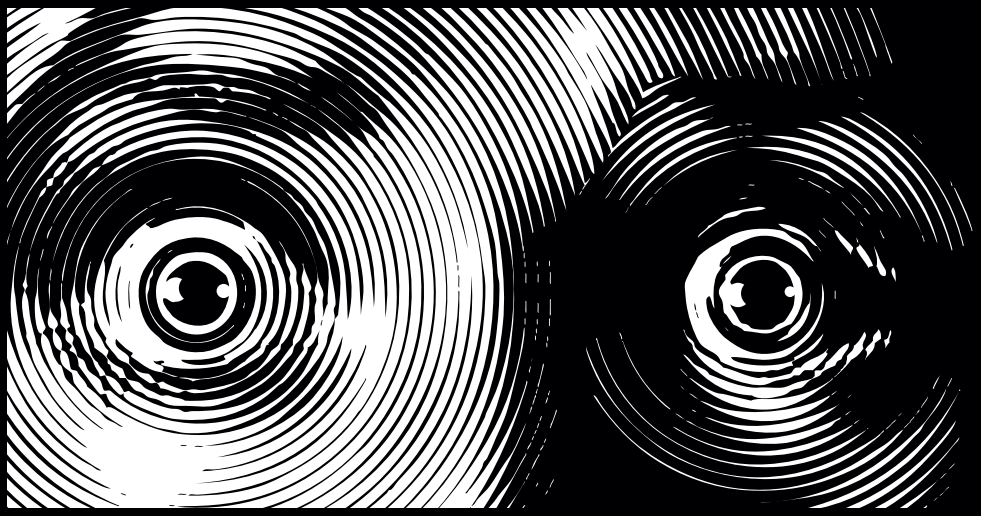
ARTICLING HORROR



STORIES

This year, thousands of law students will start their articling placements. Hundreds will experience harassment and abuse

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INSIDE

by Simon Lewsen

THE END OF ARTICLING

Articling students are uniquely vulnerable to harassment and discrimination. As you're about to read, many are forced to put up with the abuse to get called to the bar. Isn't it time to eliminate this toxic rite of passage?

IT HAD BEEN TWO MONTHS SINCE ERICA GRADUATED FROM OSGOODE HALL, AND SHE STILL HADN'T FOUND AN ARTICLING POSITION. IT WAS JULY OF 2017.

On one hand, she wasn't too disappointed: she expected her job search to be difficult. She'd wanted to work at a firm that specialized in both environmental and Aboriginal law, but she knew that such firms have limited resources to hire students. Erica had received two job offers, but the positions were unpaid. "I had to turn them down," she says. "I couldn't afford to work for free."

Then Erica met a sole practitioner who had a business and real-estate practice in the GTA. (Erica's real name, and the names of other former articling students, have been withheld. We have marked their names with an asterisk.) His office was a long commute from her home, where she lived with her parents. But she saw the job as a potential learning opportunity, and the $30,000 salary was looking pretty sweet.

The lawyer seemed engaged and thoughtful. When Erica told him that her father was a general contractor, he said that her exposure to that industry would make her an asset to his real-estate practice. And when she mentioned her Mi'kmaw heritage, he expressed an interest in learning more about Indigenous peoples in Canada. It felt like a great fit, so she took the job.

That turned out to be a terrible mistake. Once she started work, her new boss treated her as if she wasn't there. They barely spoke, and when he gave her tasks, they were of the most menial kind. He'd tell her to file papers or answer the phones.

Erica confronted her boss. It wasn't that she objected to handling occasional secretarial tasks; it was that she wanted experience in the practice of law. Her principal was surprised by this argument. He pushed his glasses to the tip of his nose and looked at her above the frames. "You need to take the firm as it is," he said.

Their relationship never improved. Erica asked, repeatedly, that he assign her meaningful work. He obliged, grudgingly, but his attempts were half-hearted at best. He'd ask her to write a closing report on a real-estate transaction she knew nothing about, or he'd tell her to draft a will for a client but then refuse to let her sit in on the consult meeting. If she made mistakes, he'd yell, swear or call her incompetent.

His temper could be terrifying. A month into the job, he handed her a reference number and told her to retrieve the corresponding file from the storage room. When she produced the wrong document, he went into a rage. "He stormed to my desk and started flaring pages all over the place looking for the piece of paper he'd given me," recalls Erica. Eventually, he found it, revealing that the mistake had been his all along: he'd written down the incorrect number. Still, he insisted that she was at fault for failing to catch his error.

Her boss's law clerk didn't behave much better. During one interaction over a mistake on a file, Erica spoke up to defend herself. The clerk straightened her back and lowered her voice. "I suppose you want to be a know-it-all little bitch," she said.

Around this point, Erica began phoning the Law Society of Ontario on a weekly basis. They assigned her a caseworker, who discouraged her from lodging a formal complaint that could further jeopardize her already strained relationship with her boss. Erica wondered if her best course of action was to put up with the mistreatment. The behaviour seemed wildly inappropriate, but she had no benchmark to measure it against. *And anyway,* she thought, *wasn't articling supposed to be tough?*

At other times, she contemplated quitting. But she feared the consequences. Would she find a better position? And if she got an interview, she'd have to explain why she was walking out on her current job, while, at the same time, making a case that she's a trustworthy employee, the kind who sticks around.

This dilemma reveals the central flaw in the entire articling system. When students are in the middle of an awful articling position, they aren't even lawyers yet. So they can't simply quit and find another job (which is hard enough on its own). The power that articling principals have over their students allows them to behave terribly with impunity. That harsh reality raises an obvious question: Is it time for the articling system to die?

The most remarkable thing about Erica's story is the fact that it's unremarkable. In 2017, the Law Society of Ontario published a survey of articling students in the province. It showed that 21 percent of students who had articled in the previous two years experienced unwelcome conduct or comments while on the job. Think about that statistic. As many as 2,000 law-school graduates take on articling positions in Ontario in a given year, and 21 percent of 2,000 is 420. That's a lot of bad experiences.

One person is deeply familiar with this subject. Fay Faraday is the lead lawyer on the Law Society of Ontario's Discrimination and Harassment Counsel. In this role, she offers assistance to anyone who has faced mistreatment at the hands of a lawyer or a paralegal in the province. And she often hears from articling students who accuse their principals of subjecting them to verbal abuse, sexual harassment and public humiliation. "It's profoundly disturbing," says Faraday. "But this is how some lawyers are choosing to treat their future peers in the profession."

Across the country, the picture is similarly bleak. In Quebec, 60 percent of law students report being asked discriminatory questions during articling interviews. In British Columbia, a growing number of articling principals now require students to put in three or four months of paralegal or administrative work before they start their articling term; in effect, these principals are extorting their students for additional low-paid labour. In Alberta, Saskatchewan and Manitoba, there have also been reports that students have experienced discrimination and harassment on the job. This is one of the reasons why the law societies of these three provinces have teamed up to commission a survey on the articling system as a whole. No region in this country has eliminated toxic articling placements.

This problem has deep historical roots. The law has, for the most part, been an apprenticeship-based industry. In medieval England, people learned common law not at Oxford or Cambridge but at the Inns of Court — a guild and also a forbear to the country's modern bar associations — where they socialized with lawyers and judges, observed legal proceedings and conducted moot trials. It wasn't until the Victorian era that attending law school and passing a written exam became official stops along the road to licensing.

But law school never replaced the apprenticeship model. There's a widespread understanding that you can't become a lawyer simply by reading caselaw; you must learn how the job actually works. And if professors don't teach such skills — which, for the most part, they don't — students have to acquire the training elsewhere.

In Canada, the profession still operates under a hybrid system that blends academic instruction with mandatory on-the-job training. And it's ripe for abuse. First, there's the problem of scarcity. In Ontario, the number of law-school graduates has increased by 70 percent in the past decade, outpacing growth in articling positions. By August of a given year, when most articling positions are due to start, between 200 and 300 candidates are still hunting for placements. The situation elsewhere is less extreme, but students in British Columbia, Alberta and Quebec still find themselves under intense pressure to land one of a limited number of jobs. In a hyper-competitive market, people are more willing than usual to tolerate abuse.

Workplace mistreatment is also most likely to occur in situations where the employee depends on the boss for more than just a job. "The articling principal is a gatekeeper to licensing," says Morgan Sim, an employment lawyer at Pinto James LLP in Toronto. "The employer has something in addition to a paycheque to lord over the employee."

Then there's the issue of oversight. It's simply not possible for provincial law societies to keep tabs on the thousands of articling positions spread out across the country. It's too easy for principals to behave badly with impunity. This allows shocking abuses to occur unchecked. ▸

HE STORMED TO MY DESK AND STARTED FLARING PAGES ALL OVER THE PLACE.

After graduating from law school, Hailey* accepted an articling position at what seemed like a conventional small firm. On her first day, she showed up at the office only to be told that she'd be working in the firm's "other location." She was then taken across the street to a residential tower. Her new workplace, it turned out, was the kitchen island in her boss's tiny apartment.

Typically, she was alone with him in the space. He rarely left the property, except to take meetings with clients, before which he'd often shower in an ensuite bathroom a few metres from where she sat. "There was frosted glass," says Hailey, "through which you could see the outline of a body."

The hours were brutal. She might stay at the apartment until 1 a.m. typing his notes because he refused to use a computer, but he still expected her to report to work at 7 a.m. the next day. If she was late, she was reprimanded. When he caught pneumonia, she caught it, too. And then there were the knives: a massive collection of pocket knives, carving knives and switchblades, which her boss frequently sharpened while speaking with her.

Like Erica, Hailey reported her experiences to the Law Society of Ontario and was encouraged not to escalate her complaints. (When given an opportunity to respond to allegations in this article, an LSO spokesperson wrote, in an email, "The Law Society takes complaints seriously and has protocols in place to respond." He went on to cite the organization's articling office, its formal-complaints process and its discrimination and harassment counsel.)

Eventually, Hailey found another articling position through family connections and quietly switched jobs. The experience, however, had been demoralizing. "I was broken mentally," she says. "My health had completely deteriorated. I was very close to just quitting law entirely."

THE EMPLOYER HAS SOMETHING IN ADDITION TO A PAYCHEQUE TO LORD OVER THE EMPLOYEE.

Bullying in the legal workforce is so commonplace that it's become normalized. There is a pervasive belief that lawyering is difficult work, and that the rookie class must be pushed hard from day one. To a degree, this maxim is true — legal work does require stamina, attentiveness and grit — but no workplace should tolerate abuse.

Doron Gold is a staff clinician at Homewood Health, which runs the Law Society of Ontario's member-assistance program. In this role, he offers confidential support to judges, lawyers and licensee candidates. Many of his clients are students, some of whom are suicidal. "I've known people who've had three or four placements and been harassed at every one," says Gold. Though he doesn't think the profession should abolish the articling system, he is concerned about the high number of problematic placements.

Abusive bosses often act like mistreatment is part of the normal course of professional development. Such attitudes are prevalent not only in small shops but also at some of the largest firms in the country. Jonathan* articled at a Bay Street firm, where he was often required to work past midnight. One weekend, he spent 30 hours preparing a report; his superiors then presented the work at a conference for a major law-enforcement agency but didn't mention his input. Jonathan didn't resent the long hours — that's what he'd signed up for, after ►

all — but he thought he'd at least get credit for his work. He recalls another incident in which he was heading to the bathroom late at night, whereupon a partner reprimanded him for the way he walked. "The partner said, 'You do good work, but you don't walk with gusto or purpose,'" Jonathan recalls. "I thought, *I'm going to take a dump at 10 p.m. What do you want from me?*"

To most of his colleagues, the long hours and random humiliations were typical. Nothing to get worked up about. But that lack of concern is itself a problem. Sure, articling students on Bay Street make good money; that doesn't mean they should have to work well into the night without complaint. "I liken the experience of articling on Bay Street to *Lord of the Flies*," says Jonathan. "We're all stuck on this island. We never leave. And we have to follow this weird internal social structure."

The Law Society of Ontario, to its credit, is in the midst of a decade-long effort to reform the lawyer-licensing regime. In 2014, it launched the Law Practice Program, an eight-month course — taught in English at Ryerson University and in French at the University of Ottawa — that law grads can complete instead of articling. In the fall term, candidates work through mock files in a range of practice areas, under the guidance of working lawyers. In the winter, candidates complete a four-month work placement. In 2013, the Law Society approved a new law school at Lakehead University, which weaves a work placement into its third year. And so, upon graduation, students don't have to article or enroll in the Law Practice Program.

These two initiatives, in theory, could have been major solutions. The students who attended Lakehead would exit law school as full-fledged lawyers. And those at other schools who couldn't secure a traditional articling job would be able to take the Law Practice Program. If only things had worked out so well.

The participation rate in the Law Practice Program has been low. The Law Society had hoped the program would attract at least 400 candidates per year, but in 2017–18, only 218 people enrolled. Keep in mind: there are at least 200 law grads in Ontario who fail to find an articling position on an annual basis, but who choose unemployment over the Law Practice Program.

That is a bad decision. There is no evidence that articling is better than the Law Practice Program. In fact, the opposite might be true. In 2016, the Law Society published a major report into how the program stacks up against articling. It came to the following conclusion: "In some ways the LPP delivery is superior to the Articling Program for consistency and attention to sole and small firm practice realities." That line should be on billboards. Too many students are choosing to pursue an articling position at any cost, even when a high-quality alternative exists. If we eliminated articling, they wouldn't be able to make that mistake.

Last year, the Law Society passed a series of modest reforms to the articling system. These include a minimum-compensation guarantee; a more intensive application process for principals, along with a requirement to take a short online course; and a spot-audit system, which will allow regulators to show up at firms, review files and interview both principals and students. These new rules should all be in effect by 2021.

And yet, it's hard to see how these small measures will address the underlying power imbalance that makes articling students so vulnerable in the first place. Maybe, then, it's time to consider a more radical proposal. Maybe it's time to bring articling to an end.

I WAS BROKEN MENTALLY. MY HEALTH HAD COMPLETELY DETERIORATED. I WAS VERY CLOSE TO JUST QUITTING LAW ENTIRELY.

A solution has always been in clear view: to eliminate articling and incorporate hands-on training into law school. If a particular school refuses to revise its curriculum, then its graduates can take some version of the Law Practice Program. This approach would remove the inequalities inherent in the articling system, whereby some lucky students get high-quality training at top-tier firms and others toil as low-wage secretaries for sole practitioners.

The good news is that we're already heading in this direction. There is, of course, the innovative curriculum at Lakehead University. In Toronto, Ryerson University is set to open a law school in September 2020, which will provide extensive vocational training. Its students, like those at Lakehead, won't need to article.

The faculty of law at the University of Calgary has also built hands-on training into its coursework. "We have extensive practical education in all of our courses," says Ian Holloway, the law school's dean. "It actually deepens real theoretical understanding."

Holloway is critical of what he calls the "false dichotomy" between theory (which one learns in school) and practice (a subject that is unfit for the classroom). As he puts it, "The two go hand in glove."

It should come as no surprise, then, to learn that he is a staunch critic of articling. He supports a standardized training program that isn't subject to the whims of the job market. This would allow all students to get some basic instruction in transactional work, advocacy and negotiation — skills that even the best articling programs sometimes neglect or are unable to provide. After all, it doesn't make much sense that someone could article at a big commercial firm, decide not to stay and, soon after, conduct a murder trial.

Of course, no amount of in-class training will turn law students into experienced lawyers. But the death of articling would hardly mean the death of mentorship. If anything, it would create an incentive for all law firms to understand mentorship the way the best already do: as an ongoing process. And meanwhile, when new lawyers work at a firm with a poor mentorship program, they can quit without jeopardizing their entire career.

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In the end, Erica did not complete her dreadful articling term. It was so awful that she decided, despite the risks, to look for another job. And she was lucky to find one.

When she informed her principal that she was leaving for another office, he told her that he'd kept a record of all the mistakes she'd made on the job. If she formally reported him to the Law Society, he implied, he'd retaliate by blowing up her career. Erica kept quiet.

In her second articling placement, her co-workers were difficult, but the job was bearable, and she got a great deal of high-quality work. That enabled her to get the thing she wanted most: a licence to practise. After being called to the bar in June 2018, she started her own office, which specializes in wills, real estate and administrative matters. As the business grows, she hopes to move further into environmental and human-rights law, too, allowing the more lucrative files to subsidize pro bono work.

Though she's critical of how her professional regulator handled her workplace complaints, she's grateful for another Law Society initiative called the Coach and Advisor Network. "They connect you with a more senior call who's willing to mentor you for free," says Erica, who regularly has coffee with advisors she met through that program. She's been self-employed for less than a year, but she's already turning a profit. She regularly has coffee with advisers who are also supporters and peers. This informal network provides her with the ongoing support that she needs to sustain her career.

Erica, for her part, doesn't claim that her articling experience was a complete wash. She did pick up at least one valuable lesson on the job. "I'll know exactly how not to operate," she says, "when I start bringing in employees of my own." JD