MEMORANDUM

To: Barry Currier, Managing Director, Accreditation and Legal Education, ABA Section of Legal Education and Admissions to the Bar; Dean Maureen O’Rourke, Chair, ABA Council on Legal Education, ABA Section of Legal Education and Admissions to the Bar; Pamela Lysaght, Chair, ABA Standards Review Committee, ABA Section of Legal Education and Admissions to the Bar

From: Phyllis L. Crocker, Dean and Jennifer Runsmichl, Assistant Dean for Career Services and Outreach, University of Detroit Mercy School of Law

Date: April 12, 2018

Re: Impact of Foreign Licensure Requirements on Law Graduate Employment Data

The ABA Employment Questionnaire provides the public, especially prospective students, with valuable information about post-graduation employment of law students. The Employment Questionnaire uses carefully crafted definitions that all schools follow. In the main, these definitions work and the ABA has been responsive when the definitions do not work. In that light, we ask the ABA to amend the definition of long-term employment to include articling clerkships in Canada, which are required for a recent graduate to become licensed as an attorney. As explained in more detail below, excluding this type of employment from the definition of long-term employment results in consumers receiving misleading information. In addition, it damages the reputation of University of Detroit Mercy School of Law and its graduates.

As the legal profession continues to globalize and the demand for cross-border legal services rises, the number of foreign consumers interested in U.S. legal education and domestic consumers interested in expanding their careers across borders is likely to increase. To further the common interests of the ABA, NALP, and law schools in reporting information about the legal profession and individual law schools that is complete, accurate, and not misleading, the definition of long-term should be broadened to better account for successful career outcomes in a globalized market. Starting with the Class of 2018, NALP is amending the definition of long-term to include articling clerkships in Canada, and we urge the ABA to make a similar change.

A. Dual JD Program at University of Detroit Mercy School of Law and University of Windsor Faculty of Law

Detroit Mercy Law offers a standard American JD Program and a Canadian & American Dual JD Program. Graduates of the Dual JD Program earn both a Canadian JD from University of Windsor Faculty of Law and an American JD from University of Detroit Mercy School of Law in 3 years.
The Dual JD Program has grown significantly in recent years. In the 1980s when the Program began, it accounted for a small number of Detroit Mercy Law’s total enrollment. The Program’s first graduating class in 1982 had only four graduates. Ten years later, eighteen graduates represented the Class of 1992. Class size was around the 20-student mark through 2000.

The Dual JD Program now accounts for 1/3-1/2 of Detroit Mercy Law’s graduating classes. In 2016, the Dual JD Program accounted for 36% of graduates at Detroit Mercy Law. For the Class of 2017, the Dual JD Program accounted for 47% of graduates at Detroit Mercy Law. We anticipate this percentage to remain about the same in the coming years.

Graduates of the Dual JD Program pursue careers across the U.S. and Canada, but the majority of Dual JD graduates begin their legal careers in Canada. Most graduates choose to work in Ontario, specifically in the Greater Toronto Area where the legal market is centered.

B. Attorney Licensure Requirements in Canada

Attorney licensure requirements are different in Canada than they are in the U.S. In Canada, law societies set the standards for admission to the profession in their province or territory. While the exact requirements vary, broadly speaking, one must possess a law degree from a recognized school, pass a licensing exam, and serve as an articling clerk under the supervision of a qualified attorney for a specified period of time. The duration of articling varies by law society and is often less than one year. Service as an articling clerk is an experiential learning requirement for licensure that graduates traditionally complete the year after they graduate. Articling is both the required and the best post-graduation outcome for the career paths of graduates seeking licensure in Canada.

In Ontario, where most Dual JD graduates article, the duration is ten months.\(^1\) The traditional articling cycle in Ontario runs from mid-summer to late spring. Graduates usually take the bar exams and then begin articling. Typically, then, a graduate is called to the bar in mid-June, the year following their graduation from law school. While many employers hire graduates who article with them, these decisions usually are not made prior to the March 15 ABA Employment Questionnaire reporting date.

C. The Effect of Articling on Employment Data

Detroit Mercy Law’s Class of 2017 included 151 total graduates: 71 Dual JD Program graduates accounted for 47% of the Class of 2017 and 80 American JD graduates accounted for 53% of the Class of 2017. 66 (93%) of the Dual JD graduates pursued articling. Of the 66 that pursued articling, 65 (98%) secured articling. Detroit Mercy Law reported 64 that secured articling as bar passage required and full-time\(^2\): 10 were long-term and 54 were short-term. The 54 reported as short-term account for 36% of the total graduating Class of 2017 at Detroit Mercy Law.

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\(^1\) Duration of traditional articling clerkships by law society: 9 are 12 months, 1 is 11 months, 1 is 10 months, 1 is 9 months, and 1 is 6 months (British Columbia, 9 months; Alberta, 12 months; Saskatchewan, 12 months; Manitoba, 52 weeks; Ontario, 10 months; Barreau du Québec, 6 months; New Brunswick, 48 weeks; Nova Scotia, 12 months; Prince Edward Island, 1 year; Newfoundland and Labrador, 12 months; Yukon, 12 months; Northwest Territories, 12 months; Nunavut, 12 months).

\(^2\) One 2017 graduate that secured articling was reported as Bar Passage Required, part-time, and short-term per ABA definitions and guidelines because the graduate split time between two employers.
Detroit Mercy Law’s Class of 2016 included 146 total graduates: 53 Dual JD Program graduates accounted for 36% of the Class of 2016 and 93 American JD graduates accounted for 64% of the Class of 2016. 48 (91%) of the Dual JD graduates pursued articling. Of the 48 that pursued articling, 46 (96%) secured articling. Detroit Mercy Law reported the 46 that secured articling as bar passage required and full-time: 9 were long-term and 37 were short-term. The 37 reported as short-term account for 25% of the total graduating Class of 2016 at Detroit Mercy Law.

The ABA defines a long term position “as one that the employer expects to last one year or more.” Short term positions are defined as lasting less than one year. Under these definitions, 15% of the 2017 Dual JD graduates’ articling employment was classified as long-term and 85% was classified as short-term; 20% of the 2016 Dual JD graduates’ articling employment was classified as long-term and 80% was classified as short-term. Even though graduates are engaged in the same type of work that satisfies the same licensure requirement, the current ABA definitions treat them differently.

Applying different classifications to a licensure requirement is misleading to consumers and results in inconsistent data.

1. **Applying the current ABA definitions of long-term and short-term to articling clerkships results in misleading consumer information.**

Under current definitions, articling clerkships that are less than 1 year are defined as short-term. While accurate, it is also misleading because of the perception of the difference between long-term and short-term positions. Consumers, including journalists, use the employment data published by the ABA to assess the strength of the entry-level legal job market. This reflects on the legal profession as a whole, as well as on the effectiveness of individual law schools in helping their graduates launch their careers. While not intended by the ABA, consumers perceive long-term positions as a sign of success and short-term positions as a sign of failure.

Consumers are misled, specifically, when they see that 38% of 2017 Detroit Mercy Law graduates and 30% of 2016 Detroit Mercy Law graduates have only short-term positions. The assumptions, again not intentional, but still real, are that those graduates were unable to secure the best positions. Yet the contrary is true because the percent includes mostly Dual JD graduates that secured the best possible outcome—an articling position that will fulfill one of the requirements to becoming a lawyer in Canada.

As an example, the employment data for the Detroit Mercy Law Class of 2016 published by the ABA showed that 30% of the graduates had short-term positions and 56% had long-term positions. Based on that data, journalists concluded that Detroit Mercy Law was one of the law schools with the highest underemployed rates for the Class of 2016. Detroit Mercy Law was included in lists of the most underemployed on websites including Law.com and Above the Law. Based on what the data showed, those reports were accurate—but highly misleading. If all of the articling positions had been classified as long-term positions, the data would have shown 5% in short-term and 82% in long-term positions. Detroit Mercy Law, therefore, would not have been one of the law schools with the most underemployed graduates—which would have been accurate because the graduates who are articling are not underemployed, they are in the best possible employment positions.
The Dean and Assistant Dean for Career Services at Detroit Mercy Law made multiple attempts to educate reporters about the misleading nature of the data. The requests to have the employment results reported accurately were unsuccessful. Journalists, respectful of the importance of consistency, will not deviate from the ABA definitions. While that makes sense, it perpetuates a misleading picture of Detroit Mercy Law graduates’ employment.

We know the ABA is not responsible for the perception of long-term and short-term positions. The ABA can, however, in this instance address what contributes to that perception in a way that an individual law school cannot. Individual law schools can post supplemental material on our own website, but that does not mitigate the damaging impact of misinformation that is disseminated nation-wide. Individual law schools alone cannot correct large-scale misinformation. Law schools need the ABA to amend the definition of long-term, as recommended below, so that the public is not, albeit unintentionally, misled.

2. Applying the current ABA definitions of long-term and short-term results in inconsistent data.

The length of Canadian articling clerkships varies according to the policies of the individual provincial and territorial law societies. They range from one year to six months. Under current definitions, some articling outcomes, therefore are reported as short-term while others are long-term, despite their satisfying the same requirement. The quality of employment data would be improved by consistently accounting for articling in the long-term definition.

3. Articling clerkships should be classified the same as judicial clerkships.

Even though one year is usually not considered long-term, the ABA definition of long-term encompasses that defined length as a way to include judicial clerkships. Many, although not all judicial clerkships are one year long. It is a length of service prescribed by courts for a position that most see as the best possible outcome for a graduate in terms of gaining practical experience and launching their careers. Similarly, articling clerkships are of a certain length, prescribed by Canadian law societies for positions that are the best possible outcome for a graduate in terms of gaining practical experience and launching their careers. It therefore makes sense to treat judicial and articling clerkships similarly—as part of the definition of long-term positions.

4. Including articling in the long-term definition is unlikely to result in a floodgate of similar requests to amend definitions.

We are unaware of any other law school where nearly 1/2 of their JD graduates are bound by the licensure requirements of a foreign country. Five other U.S. law schools offer American & Canadian Dual JD programs. None of these schools are impacted by their dual programs to the same extent as Detroit Mercy Law based on the number of 2016 graduates listed as employed in a foreign country on their ABA employment summary—from 11 to 1.\(^3\) Recognizing this, the Executive Director of Law School Transparency (LST) recently posted a 1-page explanation of Detroit Mercy Law’s Dual JD.

\(^3\) Other U.S. law schools offering programs in partnership with Canadian law schools are listed below. The number after the U.S. law school represents the number of their Class of 2016 graduates reported as employed in a foreign country on their 2016 ABA employment summary: University of Hawai‘i (2) and University of British Columbia; Michigan State University (10) and University of Ottawa; American University Washington College of Law (11) and University of Ottawa; University of Houston Law Center (2) and University of Calgary; and University of Colorado (1) and University of Alberta.
Program and its impact on employment outcomes on the LST website available at: https://www.lstreports.com/assets/notices/detroit-mercy.pdf. No other law school’s LST page includes any kind of explanation of its employment data.

D. Proposed Amendment to the ABA’s Current Definition of Long-Term

The current definition of long-term per the ABA’s 2018 Employment Questionnaire Instructions (for 2017 graduates) provides:

A long-term position is one that the employer expects to last one year or more. A law school/university funded position that the law school expects to last one year or more may be considered long-term for purposes of this definition only if the graduate is paid at least $40,000 per year. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position.

To address the misleading and inconsistent data that results from the current definition of long-term we propose the following language be added to the definition:

Articling positions that fulfill experiential learning requirements mandated for licensure and that are approved by a Canadian provincial or territorial law society are included in this definition.

We propose that, beginning with the graduating class of 2018, the full definition of long term read:

A long-term position is one that the employer expects to last one year or more. A law school/university funded position that the law school expects to last one year or more may be considered long-term for purposes of this definition only if the graduate is paid at least $40,000 per year. The possibility that a short-term position may evolve into a long-term position does not make the position a long-term position. Articling positions that fulfill experiential learning requirements mandated for licensure and that are approved by a Canadian provincial or territorial law society are included in this definition.

Thank you for your consideration. We look forward to talking with you about this proposed change.