

An Argument for the Payment of Minimum Wages to Articling Clerks

One of the long held beliefs in the legal profession is that articling clerks should not be paid a minimum wage during the articling period. This view continues today as principals are not required to pay any minimum rate of pay to the articling clerks they hire. Surveys undertaken at the University of Moncton and the University of New Brunswick Law Schools indicated that the mean salary for articling clerks in 1982 was approximately \$95.00 a week with a number of students only receiving \$50.00 per week. With the increase in the articling period from 18 to 44 weeks the financial strain on articling students increases. On a yearly basis \$100.00 per week only amounts to \$5,200.00 a year which is significantly below the poverty line. The question raised by most articling students in this context is why is there no legislative recourse to address this unfortunate situation.

New Brunswick law governing the regulation of workers' rights has seen the enactment of many pieces of legislation that seek to ensure the fair treatment of employees. A significant piece of legislation was the *Minimum Wage Act* R.S.N.B. 1973 c. M-13. This legislation seeks to ensure that employees are paid a basic rate for their efforts. However, certain exemptions to the Act have been permitted. The definition of "employee" is: "a person employed to do any work for remuneration but does not include a person who is employed in domestic service or agriculture". This legislation would seem to establish that articling clerks should be paid a minimum wage. However, this is not the interpretation of the Department of Labour and Manpower who in response to a request on the status of articling students stated that, "articling students do not fall under the jurisdiction of the legislation, they are considered to be in a learning environment pursuing a course of study and instruction and are not employees".¹

Under federal law the *Canada Student Loans Act* R.S.C. 1970 does not recognize the articling period as a course of study as it requires repayment of student loans 6 months after law school finishes and not 6 months after the articling period is completed. In some cases articling clerks are faced with the problem of having to renegotiate, or default on, their student loans. This presents an even greater financial strain for the articling clerk. The reality of the situation undermines the concept of equal opportunity to become a lawyer as access to the profession becomes more of a privilege for the wealthy than a right for all. Perhaps this point is oversimplified but the reality of the situation exists for many.

The provincial government's view reflects the opinion that the relationship between the principal and the articling clerk is one of a tutorial nature as the principal provides a learning environment and a course of

¹Cited from a letter to the writer, dated March 28th, 1983; from the Administration of the *Minimum Wage Act*.

study and instruction for the articling clerk. While the relationship between the articling clerk and the principal is one of learning and instruction, it is also an economic relationship; as the articling clerk, during the learning period, performs a number of tasks and assignments which are of significant benefit to the principal. If the principal wanted these tasks performed, he would have to hire someone to assist him and hiring any person other than an articling clerk would require him to pay the minimum wage. Can it not be said that most employees who while performing their tasks are in a learning environment regardless of their field be it motor mechanics, law, sales or finance? If the fundamental objective is learning, then it is essential that a financial environment is provided whereby the individual is not preoccupied with major financial burdens, and can devote his total concentration to the study of law. The request is not for an extravagant level of earnings but a basic wage recognized by legislation as the minimum necessary to function in society.

By providing the articling clerk with a minimum wage it would seem likely that the learning environment would be enhanced as the principal would take greater effort in getting return on his investment from the articling clerk; and the clerk would benefit from this increased attention and commitment. Furthermore, by ensuring a minimum wage, the profile of all lawyers will be enhanced as this acknowledgement of the realities of the articling clerk will only enhance the respect for the legal fraternity. The days of below standard pay where the learning environment consists of daily registry office work must be reconsidered if the quality of lawyers in the province is to be increased.

The argument that increasing the wages of articling clerks would limit the number of articling clerks is often raised in defense of the status quo. However this argument is inconsistent with the economic reality of the services the articling clerk provides; and that an articling clerk is like any good investment that appreciates greatly over time. The value of the articling clerk is beginning to be recognized by the Barristers' Society. In June of 1983 the Council of the Barristers' Society passed a recommendation that all lawyers should pay their articling clerks a base rate of \$140.00 per week. This recommendation was a major step forward, however it is not a mandatory regulation and many lawyers continue to pay substandard wages to articling clerks. It is hoped in the future that common sense will prevail and that articling clerks will be deemed employees under the *Minimum Wage Act* R.S.N.B. c. M-13; and also, that mandatory regulations ensuring a minimum wage will be passed by the Council of the Barristers' Society. All will benefit from these changes.

ROBERT L. RIDEOUT*

*B.A., 1976 (Dalhousie), LL.B., 1983 (U.N.B.). Mr. Rideout was the U.N.B. Law School representative when the recommendation on a base rate of pay was passed by the Bar Society.