

## **Innovation in Legal Education: Ideas for the 21<sup>st</sup> Century**

Notes from a Symposium held at Ryerson University, Toronto, on November 25, 2008<sup>1</sup>

### **Opening Remarks**

*The Honourable Michael Bryant, Ontario Minister of Economic Development*

- Canada is a growing knowledge based economy, yet there have been no new Ontario law schools in the last 40 years
- 50% of population do not know where to turn when faced with legal problems, and only 1 in 10 people pursue lawyers when in legal trouble
- Access to legal system is problematic and needs to be changed
  - Are law faculties taking initiatives to increase access to justice?
- Many lawyers are pricing themselves out of the middle-class market
- Alternative methods must be sought to assist people facing legal challenges (paralegals, legal software, etc)
- Auto industry has addressed the access to justice issue by providing employees with legal insurance (pre-paid)
- Other industries should consider this option
- Law faculties need to do more to address these issues
- Research and development does not seem to be present in the law profession
- Law faculties should include students in the process of innovation, as they are the end users and may provide valuable feedback
- Innovation will change the way legal education and legal service is provided
- We need to “frame and re-frame challenges that face the legal profession”

### **Armchair Chat: How will law schools build society in the 21<sup>st</sup> century?**

*Professor Lorne Sossin, University of Toronto*

- Will law schools continue to grow as the engines of transformation?

---

<sup>1</sup> Preparation of the notes is thanks to the diligent work of Ryerson University students Krishnan Iyer, Joanne Thai, and Ashley Tran, under the supervision of Professor Gil Lan, Department of Law and Business, Ted Rogers School of Management, Ryerson University.

*Dean Mayo Moran, University of Toronto*

- Law schools have changed dramatically since she graduated in 1990, as there are many more community engagement and outreach initiatives
  - Visits to high schools encourage kids to consider law school in their future plans
  - Community outreach clinics help students engage in real life situations, understand law in action, and identify the needs of the community
- These activities enhance the recognition and distinction of law and law school programs

*The Honourable Roy McMurtry*

- Agrees with Mayo Moran
  - Posed challenges from American authors
    - Professor Anthony Cronin from Yale wrote a book about the crisis in the legal profession surrounding the essence of morals and well being of lawyers
    - Despite the potential for material well being, their emotional well being may be at risk as lawyers are often put in a corner and time charging is the rule
    - The legal profession is “in danger of losing its soul”
  - Law school needs to teach students on how to live fulfilled lives, and “live greatly within the law” as stated by Oliver Wendell Holmes to make the practice more humane/ethical
- Pro-bono practices should be continually stressed

*David Lepofsky, human rights advocate*

- Law school can be a font for social transformation but we have not achieved it yet
- Law schools generally do not teach the single most important skill (organizing people around a common agenda) and instead, mainly teach students how to argue cases in the Supreme Court of Canada
  - Most cases do not reach the Supreme Court of Canada and most of the people who need legal services could not afford to go to the SCC
  - Law schools need to also teach the skills needed to go to government and stimulate change.
- Fight for Disability Act to create a new approach to administrative regime
- the capacity is there but there is an untapped resource (students)

*The Honourable Mr. Justice Michael Tulloch*

- while we have a long way to go, he is on the whole very optimistic about the way the law school education curriculum is going, as well as how law schools are addressing diversity issues, and the efforts being made to make law schools and law education relevant to a changing society
- The legal profession is very strategic and trains lawyers to empower their clients, however:

- The legal profession must reflect the society we live in
- Law schools need more than just pro-bono programs, they need to address the demographics of society
- Part of the demographic is at risk of being excluded from the process – we need voices, for the people who have no voices (not just Bay Street clients)
- Legal aid clinics provide an exceptional opportunity for law students to connect with the community and gain greater awareness of the unique challenges they face

*Dean Mayo Moran*

Response to “Pricing out a Whole Group” (Accessibility)

- Tuition fees have faced a significant hike over the recent years, due to limited government funding provided for post secondary education
- Law schools are facing rising costs associated with providing a high quality legal education for their students
- Financial aid programs have changed dramatically with the result that better off law students pay the highest level of tuition while the poorest students pay none. In addition back end debt relief programs which enable students to pursue social justice careers are becoming an important feature of financial aid.
- Law schools need money to maintain law clinics, law journals, and other program enhancements as well as to have an optimal student/teacher ratios

*David Lepofsky*

(Response to Mayo Moran’s Comments on Accessibility)

- Inexcusable increase in law school tuition fees
- law schools are creating a new private tax system via their tuition regimes and that should be the role of government
- The high costs of a legal education can have significant implications, e.g., a low-income single parent may not encourage their child to pursue their ambitions of becoming a lawyer
- We are leaving new law schools graduates with a mortgage, but no house upon graduation, which encourages them to seek out the higher paying jobs (which generally caters to the corporate client market), not poor and middle-income clients
- This affects access to legal services
- Legal education for serving people with disabilities as clients still an issue in 2008
- Law faculties should consider cutting out “frills” like flying in international speakers because although they build prestige, it is not a core function of a legal education and the funds could be better spent
- Law tuition has gone up five fold, but has the service also increased by the same order of magnitude?

*Thought from Judith McCormick:*

Law students are concerned about how a resume that reflects interest in social issues will be perceived by prospective employers. If they pursue more social issues, they feel it could be a potential impediment to their future law career

*Roy McMurtry:*

Great progress has been made over the years; we didn't have an Ontario justice network until 6-7 years ago

- A decade ago, law firms did not have any structured pro bono programs
- However, more work needs to be done as middle is increasingly deprived of access of justice

*Michael Tulloch*

- Increase in costs of legal education shuts out large part of the demographic, and that creates barriers to civil justice.
- Increasing numbers of self representations in court

*Dean Ian Holloway*

- Tuition costs less than a Dodge Caravan with less depreciation. The real barrier is the articling requirement, which controls the number of lawyers per year
- 75-80% of positions are within a 5 mile radius of Toronto's financial district

*Closing Remarks*

*Mayo Moran:* When you look at law schools today, they are vastly more diverse and look more like the actual Canadian demographic than they used to.

*Roy McMurtry:* He is an optimist- huge challenges are ahead but we have made meaningful progress and we should take encouragement from this fact.

## **Panel Discussion: New Developments in Licensing and Accreditation**

*John Hunter, Chair, Federation of Law Societies Task Force*

- Law societies as regulators; regulation of the law practitioners is a statutorily authorized activity
- Law societies perceive a need to articulate the academic requirements for entry to the licensing process
- Law schools provide both an academic and professional education
- There should not be dilution of educational requirements but rather enhance them with other skills

- The last changes to the academic requirements for entry to the bar admission process were made in 1969 when the Law Society of Upper Canada revised its 1957 requirements
- There have been applications for new law schools in recent years from a number of universities (there hasn't been a new law school in Canada since 1980)
- Trying to sort out issues such as how to decide which international degrees are equivalent to a Canadian one. This is significant because the numbers of internationally educated students have increased significantly and we need to have a "fair, impartial, objective, transparent" system in place so that those students know what is required if they wish to practice in Canada
- Deans have appointed a working group to work with the Federation Task Force
- Instead of listing courses, as was done in 1957 and 1969, perhaps we should list competencies instead (this was not a very popular option with the Law Schools because it is seen as restricting the flexibility to design the law schools as they see fit)
- The three elements of legal education are knowledge, skill and values; only knowledge is taught well currently
- Should be less emphasis on what courses you took and where, and more on what one can do – greater integration of practical and theoretical
- Current legislation in effect, the Fair Access to Regulated Professions Act

*Vern Krishna, Chair of the Law Society of Upper Canada Licensing and Accreditation Task Force*

- What a difference a generation makes: when he went to law school in 1970, he was the only person of colour
- Legislation mandates that students need an approved law degree, either domestic or foreign (it used to be a lot easier because in the past you only had to come from a certain country, like Britain)
- Approximately 75-80% of foreign trained lawyers come to Ontario and surrounding suburbs to practice
- There is no other jurisdiction that has had development like Ontario
- We need to attempt to build a bridge from "gown to town" because the current thinking of the gown is "stay away from our side- we are happy to be isolated in our creativity and innovation"
- We need to reconcile the two approved degrees
- Also, "if regulators put up a gate, we need a gatekeeper...who is it going to be?" (In reference to describing competencies that lawyers need)
- 4 stepping stones to becoming a lawyer: degree, skills, articling (which removes the school's need for vocational training) and the licensing requirement
- British will tell you that the LL.B destroys the mind- barristers prefer to teach people themselves
- Ontario introduced the 24/24 Post-call Rule (getting re-tested and re-trained within the first 24 months of licensing)
- There isn't this large a gap between "town and gown" in other professions, such as accounting, engineering and medicine

- Only the legal profession seems to have this debate- it is by nature a highly intellectual profession
- Access to legal services is a complex issue- the emergence of more law schools and graduates can increase the number of lawyers and perhaps address this problem

*Diana Miles, Director of Professional Development and Competence, Law Society of Upper Canada*

- Law society is required to confirm the entry-level competence of new lawyers and the continuing competence of those lawyers after their call to the bar to ensure that the public is protected
- Globalization in the market place requires us to look at what other countries are doing with respect to the licensing of their professionals and how they are doing it – internationally trained candidates are seeking entry into the Ontario legal profession and expect to have their qualifications assessed fairly and transparently
- Cannot ignore developments in other jurisdictions
- The new licensing system was implemented in 2006. It was developed with input from over 2000 lawyers who assisted the Society to assess and analyze all of the assessable competencies. A full consensus was reached on all aspects of the assessments process and its component parts and the competencies continue to be reviewed regularly to ensure that they reflect the evolving profession
- The validated competencies formed the basis for all reference materials and test questions in the licensing examinations and other activities
- Candidate is assessed using objective, measurable, transparent, and defensible standards

*Professor Harry Arthurs, Osgoode Hall Law School, York University*

- Because we do not know what lawyers do or what they know, it is impossible to specify the key “competencies” that they must possess.
- An extensive US literature shows that there is very little common core of knowledge within the profession, since they serve different clientele and work in different sectors/environments. We need to know more research about Canada, but the Federation of Canadian Law Societies has provided no factual or theoretical justification of the competencies it is proposing to require.
- Lawyers have both tacit and explicit knowledge. Oddly the Task Force says nothing about the latter, even though it is clearly key to explaining why some lawyers are so successful.
- Apparently the Task Force members have consulted their own experience. But they are in no position to evaluate it.
- Even if they were, why would we want tomorrow’s lawyers to reproduce the knowledge base of today’s, when we know that society will change and practice will change?

## **Panel Discussion: What can we learn from the experience south of the border?**

*Professor Kinvin Wroth, Vermont Law School*

Discussion divided into two topics: Law school accreditation “south of the border”; and The impact of multinational practice on US legal education

#### **Law school accreditation “south of the border”:**

- In the US, Separation of Powers means that the Judiciary regulates the admission and conduct of lawyers; Federalism means that the details vary among the 50 states. In general, committees of lawyers, ultimately under the authority of each state’s Supreme Court, carry out the regulation.
- The American Bar Association (ABA) is a nationwide, voluntary, trade organization of lawyers. It has no regulatory or licensing power, but through its influence most states have adopted ABA model rules and other initiatives in areas like professional conduct, judicial conduct, access to justice, bar admission, and legal education.
- All US jurisdictions recognize graduation from an ABA-approved (*i.e.*, accredited) law school as satisfying the professional education requirement for admission to the bar.
- The ABA approval process is based on determination of a law school’s compliance with an elaborate series of Standards adopted and revised from time to time by the ABA.
- In contrast to current ideas about possible Canadian accreditation standards, the ABA’s Standards deal in a very general way with curriculum, mandating only a few requirements, like opportunities for clinical and *pro bono* experience and instruction in professional responsibility. The remaining standards address institutional issues like adequacy of physical plant and budget, faculty and library quality, and governance.
- Changes in the Standards reflect a slow but steady response to changing conditions and other influences—*e.g.*, distance learning, Carnegie Report, outcome assessment.
- The Association of American Law Schools (AALS), US legal education’s learned society, has requirements that member schools must meet that speak more generally of “core values” but also do not prescribe curriculum.
- The need for acceptance in 50 states makes adoption of standards that closely prescribe curriculum virtually impossible. Some curricular uniformity is imposed, however, by the need for students to qualify for bar admission through a uniform examination required by nearly all states.

#### **The impact of multinational practice on US legal education:**

- The real authority on this subject is Professor Laurel Terry of Penn State-Dickinson Law School. Her articles and exhaustive web site are listed in the bibliography attached to my outline.
- Historically, international legal education has been both an academic tourism opportunity for US law faculty and students and a source of revenue from foreign students seeking a US degree.
- As Mort Sahl (not Yogi Berra) said, “The future lies ahead.”
- Now, the impact of new European professional standards, the effect of the Bologna process on legal education in European universities, concerns about barriers raised by NAFTA and other international trade agreements, aggressive marketing by foreign law schools at home and

abroad all suggest that the opportunity may be turning into a threat—of both increased competition and the need to change comfortable academic ways.

- In measured response, the ABA has incorporated provisions for multi-jurisdictional practice and foreign legal consultants into its professional conduct rules and has established a task force to study international issues, including the request of the US Conference of Chief Justices for development of a process for accreditation of foreign law schools.
- The AALS has seen a steady increase in the number and activities of its sections focused on international and comparative law and recently took the lead in establishing the International Association of Law Schools.
- Without waiting for accreditation standards to catch up, US law schools are expanding their international and comparative law curricula and engaging in a variety of intensive foreign study and dual degree program with foreign law schools.
- These initiatives reflect a combination of faculty interests and response to market and practice changes, suggesting this message from law schools to accreditors: “Leave us alone”—suggesting that the ultimate response has to come from the academy, not the profession.

*Professor Douglas Ferguson, University of Western Ontario*

- Discussed the results of The Carnegie Report
- This is an opportune time to discuss changes to legal education in light of the abolition of the Bar Course and the recent attempt to abolish articling, which provides uneven training (many students are stuck in a corner to do memos with minimal contact with clients)
- We need more emphasis on service learning and social justice; we as a profession need to be leaders in the community
- Not enough emphasis on moral concerns, and social aspects, which gives students the impression that it is not important
- Many law faculties think theory courses are more important than ethics courses which may explain the lack of standards for the content taught
- Why don't we do what the medical profession has done, with significant amounts of time spent in clinical work?
- We teach students to think like lawyers via the case method but social needs and moral justice do not get enough attention
- The transition to practice is hampered by the little direct training in professional practice that students receive while in school
- Students need to opportunity to learn about, reflect on and practice the responsibilities of legal professionals
- Changes so far in the US have been additive, not integrative
- Curriculum in most law schools lack purpose
- Examples of integrative learning include CUNY (simulated work and theory), NYU (pass/fail courses, legal tasks in process), Yale (reduced number of first year courses from five to four to add a clinical component), Southwestern (added mandatory electives)

- If law schools in Canada adopt an integrative approach to education, will this result in abolition of articling?

*Professor David Chavkin, American University Washington College of Law*

- Adults learn best through experiential learning
- Through experiential learning, with opportunities for guided reflection, students can develop the skills and values required of effective and responsible lawyers
- Legal clinics provide the best context for this type of learning
- Teaching students to think like lawyers is not enough A lot of damage is done to students starting first year (including high levels of anxiety, depression, paranoia, and addictive behaviours) which continue after graduation
- Law schools need to teach in a more integrative method (teach distinct classes together) because that is the way that the law is practiced

## **Panel Discussion: New Frontiers in Legal Learning**

*Professor Carissima Mathen, University of New Brunswick*

- One of the co-authors of “Counting Outsiders” published in 2008 OHLJ
- The impetus was perceived declining enrolment in feminist courses- is this linked to changes in law school? Eventually the authors expanded the project’s scope to all forms of “outsider pedagogy”
- The study found a general decline in enrolment in feminist courses; but an overall increase in enrolment in other kinds of outsider courses
- Overall, student interest in taking these courses declined from first year to third year.
- There were interesting correlations between students’ backgrounds and interests (e.g., LGBT students tend to take courses related to sexuality), however there was no correlation between race and interest in these courses (other than for Aboriginal students)

Reasons students gave for having little or no interest in such courses included a belief that such courses are linked to few job opportunities; job market pressures; and a belief that such courses would not provide useful skills. However, students who indicated an interest in such courses thought that they would provide useful legal skills.

*Professor Annie Rochette, University of Quebec at Montreal*

- Her research discovered that professors are unimaginative in their teaching methods
- At least half of the professors surveyed reported using lecture-style teaching for 50% of class time
- Most common evaluation methods are sit down midterms and exams (which may be due to university administration)
- What skill sets and perspectives do lawyers need tomorrow?

- Numerous innovations are underway in legal education, including clinical legal education, the use of theatre techniques and simulation
- A few avenues for future legal pedagogy include problem-based learning, cooperative learning and the use of learning portfolios

*Ian Holloway, University of Western Ontario*

- Need to deal with tomorrow, not today
- What skills do lawyers need for tomorrow?
- No law school in Canada has taken into account the changing global environment