

**LEADERSHIP IN LEGAL EDUCATION:  
EVALUATING EXPECTATIONS**

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## **Leadership in Legal Education: Evaluating Expectations**

I am pleased to have this opportunity to speak to leadership in the area of legal education. My team at the Law Society of Upper Canada, the Professional Development and Competence area, has responsibility for developing and implementing programs and resources that address the ongoing competence of lawyers.

One of the key components of professionalism is leadership. In turn, a key component of leadership is progressive thought and, I would suggest, a willingness to acknowledge the need to evolve or change.

With that in mind, I would like to address the potential future state of legal education and the leadership that will be required to get us there. I will make some observations and also put forward a proposal<sup>1</sup>.

### **Licensing Process: Different – Not Really New**

I have recently been involved in the development and implementation of the latest change in the admissions process for call to the bar in Ontario. The development of the new licensing process, which has now entered its second year, was illuminating.

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<sup>1</sup> The opinions and concepts expressed in this discussion are the author's and should not be construed as the point of view of any other individual(s) or organization.

Changes to the model of licensing for lawyers have taken place in relatively small increments almost once per decade since 1957. It was in 1957 that the Law Society entered into discussions with the universities and ultimately reached an understanding that they would undertake to provide the academic portion of legal education. At that time, law schools took on that task and the Law Society maintained control over a period of bar admission including further instruction and articles of clerkship.

Since then, revisions to the learning model have been slow and have met with significant resistance. Over the course of 50 years the revisions have been minor when you consider developments in testing and assurance in other industries and markets. That is not to say that radically different propositions have not been put forward. It only means that nothing profoundly different was ever approved.<sup>2</sup>

Over the course of the deliberations leading up to the approval of the new licensing process and throughout implementation, my team interacted with well over 2000 lawyers who provided input, assisted or were otherwise involved. I heard from a lot of lawyers. I can say one thing for certain: change, or leadership, in legal education can be painful.

We are a profession that prides itself on being at the forefront of social evolution but we often find it particularly difficult to adopt a broader

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<sup>2</sup> The author directs readers to two excellent examples of progressive thought leadership in the application of a legal education, in particular: Report of the Special Committee on Legal Education, 1972, The Law Society of Upper Canada – the “McKinnon Report”; and the Interim Report of the Task Force on the Continuum of Legal Education, April 2002, The Law Society of Upper Canada. In both instances, Convocation of the Law Society rejected extensive changes proposed for regulatory licensing in favour of modified, less ‘radical’, options.

view of the world and its dynamics when the issue affects ‘what it is to be a lawyer’. We are adept at leading change on behalf of others, and arguably less progressive at leading change that will affect our personal professional space.

For almost 50 years, we watched as the profession began to say, and believe, that the components of the pre-licensing process were not supporting each other. The result was an academy steadfastly positioning itself as the provider of knowledge bestowing the ability to ‘think like a lawyer’ and a regulatory authority with the support of the bar, bestowing the ability to ‘practice like a lawyer’.

There is now and has always been an inability for any pre-licensing system to produce candidates who will be fully functioning professionals upon completion of the licensing requirements. I believe we all innately understand that this suggestion is unreasonable.

But even today, if you listen to the commentary coming from various sectors of our profession, you would think that this is exactly the expectation that everyone has of the system. Law schools will hand over their students, who now think like lawyers, to the regulatory authority, who will miraculously take them and mold them to become practising lawyers. This might even work, to a point, if there was sufficient control over and consistency within the process of learning prior to call to the bar. Particularly in the licensing stage, the learning is effectively outsourced. Practising lawyers, acting as instructors and as articling principals, are

valiantly trying to assist the regulator to cram our profession's most valuable notions and skills applications into a very short time frame.

I believe that more change is required in the lawyer learning process. But the most important question to be answered in this ongoing, and perhaps never-ending, debate is not **what** those changes might be, but rather **when in the process** those changes should be made.

### **Why Change?**

I understand the importance of re-evaluating the pre-licensing period of legal education. But I feel strongly that the revisions that have taken place in the last 15 to 20 years have been completed in a vacuum. That is because the changes have been essentially compartmentalized. Changes made only in one area of legal education without significant consideration of how all the parts should fit together in a changing world.

I believe that there is a need to reassess legal education, the entire spectrum of legal education, at this time. That need is a result of the realities that we are facing in Ontario. Let me elaborate.

In the 2008/2009 licensing period, we anticipate that the Law Society could be receiving approximately 1800 applications from candidates who would like to be licensed as lawyers. That is 300 more applications than we will have received for the 2007 licensing period; a 60% increase in applications compared to a decade ago. This is a result of a variety of developments, including increased law school class sizes, an increasing

number of internationally trained candidates coming to Canada, new law schools in Canada and the development of alternative Canadian law programs in foreign jurisdictions. This number will only continue to increase and the impact is enormous.

Consider how we will be managing the expectations of these candidates. One wonders how we are going to respond, as a profession, to this influx. For instance, the most obvious concern to be raised is where they will article.

In a strong economic period, such as the one we are in currently, there are only approximately 1300 articling positions in this province. Although articling opportunities have grown throughout the decades, and even assuming continued strength in the economy, I believe that we have finally reached a point of saturation. Law firm consolidations and other factors appear to be dictating that we are at the end of our ability to take on more articling students.

We currently have a situation where we could potentially have as many as 400 or 500 candidates unable to find articling positions even if the economy remains stable. If the economy slows, the number of articling positions will decrease. As a requirement for entry into the profession this poses a significant challenge that must be addressed with open-minded and creative solutions.

We know this influx of candidates will happen, and we must address it. In my opinion, the historic pre-licensing learning activities that we have

so zealously guarded in both the academy and the regulatory system are not going to work anymore. It's time to re-evaluate the competencies that are truly required for a legal professional to successfully begin to serve and continue serving clients and to remodel our education platforms accordingly.

### **Responding to the Challenge**

The divide that continues to be perceived to exist between initial academic legal training and the early years of practice is a result of uninformed, and therefore, inappropriate expectations. Recent leadership in the academy has successfully resulted in law schools integrating numerous opportunities for candidates to experience the knowledge and skills applications that regulators have indicated are core competencies in support of entry-level practice.

Law schools place more emphasis on skills training; they have adopted a variety of cooperative programming options, and continue to expand practical training past the in-school clinic models. From required pro bono work through to interdisciplinary degrees, the law student who truly wants to succeed has an enormous range of opportunities to explore his or her preferences and career options. Some law schools have also implemented mandatory professional responsibility and ethics courses.

On the other hand, the regulator is still attempting to address the expectations of the profession by doing too much between law school graduation and call to the bar. Quality assurance and the maintenance of the independence of the bar require the regulator to test candidates and prove

they are worthy of entry to the profession. But that mandate also requires that the regulator ensure that competence is maintained throughout the entire professional legal career.

For me, leadership in legal education is the acknowledgement by the profession that law school, an undergraduate program, and regulatory licensing, a point in time assessment only, are a small part of ‘what it is to be a lawyer’. To use an old cliché: this is not the end it is only the beginning.

### **The Next Step in Legal Education**

So allow me to put forward my proposal. For the profession to ensure quality, we must accept that the current model of pre-licensing education is only assuring abilities at one specific point in time. It is after this time, not during this time, that the profession’s reputation is most likely to fall into disrepute and find its way to the front page of the news dailies.

The legal profession will not be able to maintain its independent status and its leadership status unless it addresses the existing post-licensing education gap. Accountants, doctors, financial intermediaries, and any number of other professional services have acknowledged this dilemma and established quality assurance processes. Having personally compiled a comparative analysis of professions in Ontario and Canada, I can confirm that lawyers are woefully behind in the area of post-accreditation training and quality assurance.

In maintaining rather antiquated concepts of the continuum of learning and achievement, we have fallen behind. We spend far too much time tinkering with things that give us a level of comfort, such as the bar admission system, rather than tackling the need to change expectations. Fifty years of essentially doing the same thing is a lot of comfort, but that does not make it a valid expectation.

We can no longer support the manner in which the pre-licensing system is organized because it will become a barrier to entry. Under the current and expected circumstances, in particular the influx of candidates, it cannot be sustained. It is really time to move on.

What I am daring to propose is a revamped system of pre-licensing that allows some of the burden of training to come after the call to the bar. This would be supported by a curriculum-based system of learning that establishes a path of development for new lawyers.

It would provide direction and reinforce those competencies that we know, from experience, are most critical to the successful practice of law and the development of leadership skills. It would allow new lawyers to experience and apply knowledge and skills in real time in their preferred areas of practice. It could encompass a variety of options, from learning sessions with hands-on opportunities to exercise skills through to assurance activities providing the individual lawyer with one-on-one direction on how to make incremental improvements.

Before you ask, this is not about continuing legal education; at least not in the traditional sense of CLE to which we have all become accustomed.

This system of post-call training would require more control over content and delivery which would, in turn, result in continuity and consistency. This consistency would be applied in both the pre-licensing and post-licensing environments which should be viewed as a continuum that builds upon itself.

The Law Society of Upper Canada has already moved toward that consistency by implementing a system of assurance that tests only the competencies required for a new lawyer to be certified as capable at an entry-level. I also believe that law schools have moved toward that consistency as they begin to integrate professional responsibility and ethics as a core requirement for graduation along with the increase in opportunities to exercise skills through various clinic and other models of participation that have already been mentioned.

I believe that we will see the next example of responsible leadership in legal education when the profession acknowledges and accepts that this consistency should also be applied all the way through to a required, or mandatory, system of curriculum-based learning for the immediate post-licensing environment.

Now, let me respond in advance to those who may already be formulating objections to this proposal.

The concept of a mandatory competence-based curriculum of learning for a specified period of time immediately after call to the bar does not, in my respectful submission, take away a lawyer's professional independence. It provides a clear path of development and assistance. In a profession of our size, lawyers should not have to determine this path in isolation. And far too many of our colleagues do remain isolated. We need only look to our dwindling sole and small firm practitioners working in under serviced and vulnerable areas of the Province to see that reality.

I see the benefits of supported learning every day in my role at the Law Society of Upper Canada. In that role I oversee the Practice Audits function. My team visits lawyers and assesses their practices. We provide suggestions for improvement. Lawyers do not have a choice about the matter, it is mandatory, but those who go through the process uniformly have the highest praise for the learning experience and benefits received.

A system of post-call learning will support individuality, promote choice among the bar, provide variety in accomplishing training tasks and achieve the required core competencies in the public interest. It will not make assumptions on behalf of the individual lawyer, that lawyer's practice choices and preferences, or the profession's future developments – all of which are evolving rapidly. It will set our newest colleagues up for success and, in turn, assure the success of our profession – because law is a career path, not a point in time assessment.

Perhaps most importantly, it would take some of the pressure off the learner in the pre-licensing environment, allowing more exploration of options. It will put the onus for directed learning where it should be – post-call, when the lawyer has had sufficient time to determine preferences and is ready to get to work on specific goals and career objectives.

## **Conclusion**

The profession has reached a point where the current process of pre-licensing legal education is no longer going to be able to support the future state. In order to address the changes that we will be facing, it is critical to reconsider all aspects of the continuum of legal learning, not just the pre-licensing environment.

In my opinion, there are no gaps in the pre-licensing learning process – only too much expectation. If there is a gap in the continuum of learning it is the lack of emphasis on post-call learning as the profession experiences exponential growth and change. Given the pressures that the profession is facing, the sooner we address this quality assurance matter in a proactive and leadership-oriented manner, the better.