

Modern Legal Education: Towards Practice-Ready Attitudes, Attributes and Professionalism

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Legal education today is undergoing unprecedented changes across Canada and around the world amidst an ever-emerging global digital economy. Law societies, national federations, and bar associations are examining curriculum and skills-sets required to prepare lawyers for modern practice; many recommending new approaches to the delivery of legal education and introducing core competency profiles for admission to practice law. Legal knowledge, expertise, and professional skills are under immense scrutiny focusing on what law schools should provide and what law associations expect of their members. Some jurisdictions are exploring alternative pathways to licensing post-law school at a time when competition amongst students for legal positions remains intense.

The purpose of this article is to provide a brief synopsis as to how I see the future of legal education, exploring the aim and focus of a modern law school. I argue that legal education needs reform with an eye to preparing students for practice by developing appropriate research skills and providing clinical opportunities in which students can apply their knowledge. Teaching reform and innovation needs to focus on balancing subject content knowledge with an emphasis on clinical learning opportunities and practice-based experiences supervised by practising lawyers and judges.

I. “FIT FOR PURPOSE”

It goes without saying that modern legal education must be “fit for purpose”. It must prepare students for the practice of law. Whilst it is often

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argued that the study of law as a discipline, in and of itself, is an excellent training for other career choices, it is also so that most students entering the field of law today do so because they intend to practice law. Hence, the starting point of their educational journey is to prepare students for contemporary legal practice. Within their program, they will acquire a wide range of knowledge and skills that could be transferrable to other fields of employment but overall, the focus must be to adequately prepare students for careers in the law.

II. WHAT'S IN AN EDUCATION?

A law degree is more than simply a collection of courses and extra-curricular experiences. The degree should include a balance of subject knowledge, legal expertise, and skills-based experiential learning opportunities. It must develop an understanding of the overarching legal system and how to approach and apply legal principles within existing legal infrastructure. Courses must be presented with successive difficulty and complexity over the duration of the period of the law degree. It must expose students to a wide range of research informed subject specializations, including doctrinal, black-letter law courses, whilst allowing students to apply their growing knowledge within a practical, hands-on manner, through practical courses, internships and clinical practice.

Indeed, such an approach is consistent with Bloom's taxonomy¹ which effectively divides learning objectives into three central domains: (1) Cognitive, knowledge-based objectives; (2) Skills, where students develop skill-sets required for applying the subject materials; and (3) Affective objectives, or what might be deemed attitudinal objectives, whereby students reach conclusions and formulate their individual attitudes within the domain. Specifically, the Taxonomy presents a "cognitive hierarchy" of learning outcomes whereby students are able to operate at the following six levels: Remember; Understand; Apply; Analyze; Evaluate; and Create.

- (1) "Remember" information, such as cases and statutes;
- (2) "Understand" concepts, meaning that students can explain the ideas beyond simply memorizing legal facts and retaining tested information;

¹ Benjamin Bloom et al, *Taxonomy of Education Objectives: The Classification of Educational Goals*, Handbook 1: Cognitive Domain (New York: David McKay Company, 1956).

- (3) “Apply” knowledge, whereby they are able to consider implications of the law at a deeper and more complex level;
- (4) “Analyze” information, wherein they understand relationships, weighing and comparing considerations as well as applying their knowledge in a critical manner; in other words, questioning the law;
- (5) “Evaluate”, where they go beyond the analysis and present evidence that develops and supports their evaluation; building a case based on their developing professional opinion wherein they understand and make judgements and weigh the validity of their conclusions; and
- (6) “Create”, where they present an original and unique perspective, integrating their knowledge and understanding of the materials based on solid evidence and apply the law in a creative, decisive manner demonstrating evolved legal research skills and advanced writing techniques in presenting their legal arguments.

In my view, this taxonomy calls for an appropriate mix of content-based subjects intertwined with clinical experiences.

III. MODERN LEGAL EDUCATION: ACADEMICALLY SOUND AND PRACTICE-BASED

Discussions surrounding the nature and focus of legal education debate whether tradition curriculum and conventional pedagogical approaches are the most effective methods of preparing students for modern legal practice; or whether it is best achieved through experiential learning opportunities. The university experience exposes students to a body of knowledge and expertise formally taught by academic lawyers. By their very nature, universities are research-intensive institutions that encourage and reward research and scholarship. Over the years, law schools have struggled between two schools of thought regarding doctrinal, black-letter, legal analysis. How should legal education be delivered? In recent years, many schools have moved to that of a scientific approach, whereby research is at the center of the faculty and practice-based courses are viewed as add-on electives, at best, or absent in many cases. Clinical experiences are valued but removed from the overall direction within a research-focused environment. This development is in part due to the fact that law schools are faculties within universities and universities tend to be research-focused in order to foster

their reputation and to gain international recognition. I do not see that it has to be one or the other. A well-rounded legal education can have both.

Research is a process applying formulae and methodologies. In the pure and natural sciences, for example, it is about discovery by hypothesizing and experimentation, to explain how systems operate and function, often focusing on closed-systems analysis. In social science, it is to understand social relationships and how to shape and guide them for improvement and efficiencies, focusing more on opened-systems analysis. We must bear in mind that law is artificially constructed, that it is usually set by legislatures and influenced by people which is different from understanding scientific systems. That said, even within law itself, lawyering skills are fundamentally different from those required of academic lawyers who are mainly interested in the philosophy of law or jurisprudential perspectives. Academic lawyers are concerned with research regarding how law underpins our social world in order to and shape and guide society through the enforcement of rules and regulations. For practising lawyers, legal research is a process of application. Lawyers must learn to identify, understand, and apply legal principles within real-life cases. Both approaches are meaningful in different ways, and both are relevant. However, law students and lawyers must be concerned with applying the law within a practical sphere. Indeed, I would argue that we have a positive duty to prepare lawyers in this manner. Additionally, research can be balanced with clinical learning in that academic lawyers may actually engage in applied research whereby their research is grounded in the day-to-day application of law at the grass-roots level.

IV. A POSITIVE DUTY FOR PRACTICE-READY ATTITUDES & ATTRIBUTES

Clients and courts have standards they expect from legal counsel. Lawyers have a duty of care to their clients. Given that a fundamental component of legal training is attending law school, I would argue there is positive duty for legal education to provide a sound foundation in preparing students for practice. Now that is not to say that law schools must produce lawyers, *per se*, but they should move students towards being practice-ready, providing them with sound and appropriate research skills and instilling in them professional attitudes and attributes required within the profession. Indeed, there are increasing cases on setting standards required by lawyers.

In a case decided by the Supreme Court of Canada, *Central & Eastern Trust Co. v. Rafuse*,² the respondent solicitors were found to have acted negligently in relation to the requirement of professional competence regarding reasonable knowledge of the applicable or relevant law. The main question on appeal from the Nova Scotia Court of Appeal was “whether a solicitor is liable to a client in tort as well as in contract for the damage caused by a failure to meet the requisite standard of care in the performance of the services for which the solicitor has been retained”.³ The appeal was allowed, highlighting that a solicitor “is required to bring reasonable care, skill and knowledge to the performance of the professional service which he has undertaken”.⁴ The Supreme Court stated that a solicitor is:

not required to know all the law applicable to the performance of a particular legal service...but he must have a sufficient knowledge of the fundamental issues or principles of law applicable to the particular work he has undertaken to enable him to perceive the need to ascertain the law on relevant points.⁵

Moreover, the Court noted that, “[a]n attorney is expected to possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.”⁶

We see from this case that lawyers must have adequate knowledge of the law, which places a responsibility on law schools to educate students with relevant content but more specifically to train and equip them with appropriate research skills in order for them to identify and apply the

² *Central Trust Co v Rafuse*, [1986] 2 SCR 147, 31 DLR (4th) 481 at 524 [*Rafuse*].

³ *Ibid* at para 1.

⁴ *Ibid* at para 58.

⁵ *Ibid* at para 59. Note as well at para 60:

While the solicitor's duty of care has generally been stated...in the context of contractual liability as arising as an implied term of the contract or retainer, the same duty arises as a matter of common law from the relationship of proximity created by the retainer. In the absence of special terms in the contract determining the nature and scope of the duty of care in a particular case, the duties of care in contract and in tort are the same.

⁶ *Ibid* at para 59: The Court highlighted that the duty in respect of knowledge is stated in *7 Am Jur 2d*, Attorneys at Law §200, in a passage that was quoted by Jones J.A. in the Appeal Division.

relevant or applicable law. Whilst the Court does not set an absolute test, in that they are not specifically required to know “all the law applicable to the performance of a particular legal service”, they must however “have a sufficient knowledge of the fundamental issues or principles of law applicable to the particular work” which invariably comes from due diligence in case preparation whilst employing standard research techniques.⁷

In the case of *Lougheed Enterprises Ltd. v. Armbruster*,⁸ the Court of Appeal for British Columbia ruled that, “counsel has a duty to be aware of all cases in point decided within the judicial hierarchy of British Columbia ... and to refer the court to any on which the case might turn”.⁹ The court noted that, “[i]t is not the same as the duty to one's client to be persuasive which often requires counsel to produce authorities outside the hierarchy of British Columbia”.¹⁰ In this regard the Court provided the following guidance for lawyers: “We do not expect counsel to search out unreported cases, although if counsel knows of an unreported case in point, he must bring it to the court's attention.”¹¹

The Court clarified that the term "on point" does not mean “cases whose resemblance to the case at bar is in the facts”, but it means “cases which decide a point of law”.¹² In summary, we see that counsel “cannot discharge” his or her duty and that “ignorance is no excuse”.¹³

In *World Wide Treasure Adventures Inc. v. Trivia Games Inc.*,¹⁴ the Supreme Court of British Columbia ruled that counsel had been negligent in the performance of his duty, and awarded solicitor-client costs against counsel personally. Following the standard required of solicitors in the performance

⁷ *Ibid* at para 59.

⁸ *Lougheed Enterprises Ltd v Armbruster*, [1992] 2 WWR 657, 63 BCLR (2d) 316, 1992 CanLII 1742 (BCCA) at [*Lougheed*].

⁹ *Ibid*, 1992 CanLII 1742 (BCCA) at 14.

¹⁰ *Ibid*, at 14-15.

¹¹ *Ibid*, at 15.

¹² *Ibid*.

¹³ *Ibid*: “Counsel cannot discharge his duty by not bothering to determine whether there is a relevant authority. In this context, ignorance is no excuse.”

¹⁴ *World Wide Treasure Adventures Inc v Trivia Games Inc*, 16 BCLR (2d) 135, 1987 CanLII 2629 (BC SC) [*World Wide Treasure*].

of their duties to their clients described by Mr. Justice Le Dain in *Rafuse*,¹⁵ Gibbs J. found that “the conduct of the plaintiff’s solicitors in this case fell far short of the reasonable care, skill and knowledge which the plaintiff was entitled to expect” and that the legal principles applicable to the case “ought” to have been part of “the working knowledge of a competent counsel in this jurisdiction”.¹⁶ Moreover, if these legal principles “are not, then any counsel contemplating an injunction application ought to be able to perceive the need to research the law before preparing the material to be filed”.¹⁷ If a case is “not as well known”, then “a moderate amount of research would quickly have brought it to light, and that research should have been undertaken as part of the preparation”.¹⁸

This again, highlights the requirement to present and apply the relevant laws and legal principles, but more so to acquire competence in legal research techniques in order to identify relevant laws and to apply appropriate legal principles.¹⁹ Given these cases, I would argue that law schools have a positive obligation to develop legal research skills appropriate for legal practice within the profession. Inextricably linked to developing

¹⁵ *Rafuse*, *supra* note 2 at 524.

¹⁶ *World Wide Treasure*, *supra* note 14 at 13.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ See also the case of *Green v. Law Society of Manitoba* (2014 MBQB 249), regarding continued professional development whereby Sidney Green refused to update his legal education. Mr. Green was called to the Bar in 1955 and was a practising lawyer and member of The Law Society of Manitoba for over 60 years. He did not comply with the Law Society’s mandatory rules requiring all practising lawyers to complete 12 hours of continuing professional development (CPD) a year, failing to report any CPD activities for 2012 or 2013. The Law Society consequently notified him that he would be suspended from practising law if he did not comply with the rules within 60 days. Mr. Green challenged the validity of certain provisions of the Rules of The Law Society of Manitoba with respect to CPD, by applying for declaratory relief. The application judge dismissed Green’s application, concluding that the impugned rules were within the Law Society’s legislative mandate. The Court of Appeal dismissed the appeal as did the Supreme Court of Canada, in a 5-2 decision. The Court confirmed the broad rule making authority of the Law Society regarding the maintenance of educational standards for practicing lawyers. This includes the authority to mandate a continuing professional development scheme, as well as to enforce the scheme’s standards with an administrative suspension. Law schools should also prepare students to embrace life-long professional learning to be able to keep up with new developments in law after they are finished law school.

such skills is practice-based experience in applying them within professional settings which is best attained by working with lawyers in the field. This allows students to focus on honing their research skills whilst developing expertise by applying the law, as well as developing legal skill-sets in understanding the practice of law within clinical practice-based settings through internships.

V. FORWARD THINKING AND STRATEGIC PLANNING

Faculties of law must be prepared to meet the requirements of legal education through strategic planning in order to provide a stimulating and engaging legal curriculum and a challenging and relevant program of study. This must be properly delivered and indeed tested appropriately. To be relevant within today's context, law students seek an education that prepares them for professional legal practice. The curriculum should address not only doctrinal and procedural law, but also encourage critical thinking and engagement with larger legal, societal and ethical issues. Law schools need to commit to excellence in teaching that is practice-based and research-informed and to ensure students have access to opportunities with working professionals including both those in practice and the judiciary.

Such an approach will assist with post-graduation placement as well as maintain a competitive advantage for students and meet newly emerging accreditation standards. Deliberate reform and renewal of the curriculum (course content), delivery (pedagogy), and methods of assessment (evaluation) are required with a particular focus on clinical learning opportunities and practice-based internships. With the integration of more experiential learning into the curriculum, students receive mentorship within professional environments and are better equipped to serve their profession from their early days of practice. At present, students may volunteer with pro bono opportunities or earn academic credit for working at legal help centres and various law clinics as well as complete internships with established firms and other partners.

Such experiences should not be extra-curricular activities or merely on the periphery of the overall law school experience. They are vital aspects of professional career development and should be a central pillar of the law school program. Importantly, these experiences are essential foundations of legal education. Indeed, such opportunities should not simply be available to students, but they should have the option to have internships and clinical

experiences as a central feature of their legal education, and a foundation of the course offerings, particularly in the upper years. Law schools must commit to offering students access to an exceptional legal education that goes beyond subject content and includes unique experiential learning opportunities whereby they have the occasion to receive instruction from a wide range of legal practitioners who invariably enrich their education and especially their professional and ethical understandings.

VI. A BENEFIT, NOT A BURDEN

Internships and clinical experiences may seem burdensome to law schools, but they provide truly beneficial learning opportunities. In clinical capacities, students assume leadership roles and learn to apply the law whilst developing vital skills that prepare them for practice but also encourages legal research, analysis and writing. The significance to law students is evident. Clinical opportunities provide direct benefit through internships, externships, clinics, pro bono work, etc. Needless to say, although law students are the primary beneficiaries of such educational experiences, the impact of their participation resonates indirectly to the public-at-large through developing more skilled professionals. Students unquestionably benefit from taking courses from and mentoring with a wide range of practitioners from whom they would not otherwise receive instruction. Clinical programs provide service to the public, such as in the case of Legal Aid and other legal help centres. Not-for-profit organizations receive assistance through pro bono programs, and small enterprises are served by business law clinics. Needless to say, all of society effectively benefits as students remain committed to volunteering and enter the legal profession with a wider understanding of professional practice, as well as acquiring a more developed understanding of societal needs as seen through their clinical experiences which would not be possible without law schools making this a central component of their respective programs.

VII. EDUCATIONAL SKILLS DIVERSIFICATION: BEHAVING LIKE A LAWYER

Decades ago legal training moved away from the traditional apprentice-model, on-the-job training, so to speak. It may have been in part to assist in assuring that students were equipped with sufficient research and analytical

skills that was thought to be best achieved through academic inquiry within a university setting. It was to build their broader knowledge base as well as to ensure students were analytical in their focus, as it was thought that law as a subject should move towards an academic discipline. Students should develop their intellectual curiosity. That said, there is no evidence to suggest that apprentice-styled training does not achieve this, particularly within today's environment. It was merely a move to bring legal education into an academic setting to receive a university degree in the same manner in which other professions such as medicine and dentistry were moving. Moreover, students today are in a fundamentally different position. They typically have a four year degree wherein they have had sufficient exposure to knowledge-based subjects and acquiring study skills.

Law admissions are highly competitive, admitting a small select group of tried and tested academically-capable students. In law school, students need to readjust the focus, which is usually an intense experience with a steep learning curve, but particularly by the end of first year, they need to begin developing skill-sets appropriate to the legal profession. Diversifying the student experience from standard information-driven courses to that of practice-based opportunities is an important transition that is necessary for moving them from thinking as a student to behaving like a lawyer. This makes ever-increasing sense where questions of "employability" are at the forefront of students' minds (and those of their parents) in undertaking the time, commitment and expense involved to training as a lawyer.

VIII. DEVELOPING LEGAL PROFESSIONALS AND FOSTERING PROFESSIONALISM

Professional legal instructors add immeasurably to the quality and breadth of law programs directly contributing to excellence in legal education and to producing legal professionals who are able to demonstrate high levels of practice-ready skills upon their call to the bar.

In a changing and complicated world of social media, there are many "blurred lines" between privacy and freedom of expression where the importance of private life raises questions regarding the appropriate balance between what is public information and what remains within one's private sphere. Modeling appropriate behavior is the starting point and nobody is better equipped to deliver this than lawyers and judges working in the profession itself.

Students today need to apprentice and develop a record of competence and reliability in exercising sound judgment, as demonstrated in regular contact with the profession, and continually undergoing professional development on a range of issues, from identifying conflicts of interest and personal bias, to effective workload management, as well as the identification of relevant legal issues, to coping with the stresses and realities of practice.

There is no question that students need to have a solid foundation of legal knowledge, as well as analytical and research skills, and be able to apply legal information to new facts best achieved through clinical experiences. Students need experiences such as Judge Shadowing, whereby they spend time shadowing court judges at various levels of the judiciary. They would benefit from intensive clinical experience in law and procedure, and participating in mock trials and sentencing exercises, as well as advocacy, mootings and negotiations. Legal aid clinics provide students with hands-on understandings of legal challenges. Experience of this nature with lawyers and judges invariably deepens their understanding of law and societal issues, exposing them to a full range of criminal and civil matters at the grass-roots level. They witness justice at ground-zero, being involved in hearings, trials, interviews on a range of matters and experiencing the case management process first-hand.

IX. CURRICULAR COMPLEMENTARY: A TRIANGULATION OF TEACHING, RESEARCH, AND PRACTICE

It is true that teaching is at the heart of the modern university, of which research is an integral component of informing students of relevant theories. Nonetheless, this must be balanced in a complementary manner with practice-based learning opportunities allowing students to apply their knowledge and expertise within practical settings aligned to their career development. Law courses are largely designed to expose students to analytical, empirical, theoretical or normative perspectives on law that complements and enriches the doctrinal analysis. That said, a modern curriculum must go beyond this and provide links to the legal profession. This is essential to achieving excellence in teaching innovation and vital to enhancing and complementing research outputs. The triangulation of Teaching, Research, and Practice is at the heart of my vision for a modern legal education, with students at the front and centre of this focus gaining

enhanced learning and clinical opportunities. Faculties of law need to be innovative and creative leaders in legal education, capitalizing on faculty passion for teaching and dedication to research along with interactions with practising professionals in the field. There is no question that law schools benefit from the overwhelming support and commitment from the broader legal profession, which enriches the educational experiences of students.

X. QUIET CONFIDENCE

I see the students at the heart of a modern law school. Students are dedicated to their studies and a successful legal career. Schools must foster student aspirations and enhance their dedication to success and achievement. They must prepare students for careers in the legal profession whilst encouraging them to be independent thinkers with a range of knowledge and skills to build a successful career. Accordingly, law schools must offer appropriate opportunities to develop career goals and acquire the confidence to make the transition from law school to legal practice.

Newly-trained lawyers must approach the law with confidence, built on appropriate legal knowledge and sound professional skills. They should evaluate the legal process from an informed, critical perspective, which comes from practice-based, research-informed, teaching excellence, and innovation. This is best achieved in conjunction with experiential learning and contact with the profession. Knowledge delivery has to come from the highest quality professors who are leaders in their respective fields both nationally and internationally. Experience has to come from legal professionals. Professionalism has to be modelled to create confident lawyers dedicated to their professional oath. They must “think like a lawyer” to “act like a lawyer” and be quietly confident in their legal education to “be a lawyer”.

XI. CONCLUSION

The world of legal practice has evolved over the years with much of this change originating from the growth of the administrative state alongside global economic enlargement in parallel with a complex regulatory environment resulting in massive changes in society and within the legal profession itself. Today, students of law question the relevance of legal education in terms of their employment prospects and career options. To

that end, many feel that being “Practice-Ready” is the way forward. Within their legal education, students must acquire relevant content knowledge and subject expertise, as well as develop appropriate skills to apply these legal concepts within the context of modern legal practice, whilst demonstrating the highest levels of professionalism. They require proficiency in fact finding and investigation; interviewing techniques; extensive legal research, analysis and writing skills in reaching sound and valid conclusions; as well as acquiring persuasive negotiation and oral and written advocacy skills.

A modern law school must meet these challenges and provide students with a relevant educational experience through appropriate programming. At present, law students seek an education that prepares them for professional legal practice. A modern curriculum should focus not only doctrinal and procedural law, but also encourage critical thinking and engagement with practising professionals. It must provide excellence in teaching that is practice-based and research-informed, and ensures students have access to clinical experiences. Students must learn from practitioners who understand the challenges of modern legal practice in an increasingly global digital service industry where they acquire the necessary knowledge within law school curriculum as well as gain solid practical skills, from academics, lawyers and judges alike. Modern legal education must assist students to acquire relevant attitudes and attributes of a lawyer, moving them towards being “Practice-Ready” professionals.

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