


In Alberta, students will undertake the five-month course in conjunction with their articles. Like the other jurisdictions, the course content is based upon a competency profile which requires the newly admitted lawyer to demonstrate competency in four areas: lawyering skills, practice management, ethics and professionalism, and legal knowledge. Because the primary focus in the course is on the development of skills and attitudes, students will be expected to either possess the requisite legal knowledge in core areas of practice, or acquire it using the resource materials provided. The development and assessment of lawyering skills will take place in eight learning modules, seven of which are common across the consortium and one of which is jurisdiction specific. The major innovation concerns the delivery of the course—five of the modules will be interactive and delivered online. Students will become members of a virtual “law firm” and in that setting will deal with a variety of clients who will present common but increasingly complex problems. The remaining modules will address advocacy, negotiations, and interviewing and advising, and will be delivered using a face-to-face format. This new program is designed to offer students greater flexibility in meeting the program requirements and less time away from the offices where they will be articling.

In all of the jurisdictions, students will be formally evaluated on the basis of assessments of their skills conducted by program instructors. Students in British Columbia and Ontario are also required to successfully pass bar examinations. British Columbia will require students to pass two three-hour qualification examinations that test their knowledge of substantive and procedural law in eight core areas of legal practice. Ontario will also utilize two licensing examinations, each of seven hours’ duration and consisting of 250 multiple-choice questions. The

questions will be based on detailed competency profiles, in both litigation and non-litigation contexts, developed after extensive consultation with a diverse range of practice experts. Blueprints have been drawn up around these entry-level competencies to systematically guide the content, structure, context, and scoring of the examinations.

## CONCLUSION

With the changes described above, the vocational stage of Canadian legal education continues to move away from the traditional focus on the acquisition of legal knowledge to a skills-based model concerned with what the nascent lawyer can do with the acquired knowledge. The instructors will be charged with assessing the applicants’ abilities to apply their knowledge in a skilled, effective, and ethical manner to problems arising in a workplace setting. While it is too early to tell, surely this system will provide a better way to develop and assess the competence of new lawyers, a task which, arguably, lies at the heart of the profession’s overarching obligation to serve the public interest. 

## TRAINING AND LICENSING LAWYERS IN ENGLAND AND WALES

*by Nigel Duncan*

This essay will present the current lawyer training and licensing regimes operating in England and Wales in order to explore the lessons which might be considered by those responsible for the same tasks in the U.S. It will focus on those aspects that are seen as crucial for the preparation of effective, ethical lawyers and explore the methods which have proven

to be most effective. Of particular interest may be the way in which ethical competence is assessed through the use of simulations and how validity and reliability are established in the assessment of skills (such as client counseling).

## TWO TRACKS OF PRACTICE

In England and Wales the legal profession is divided into two branches: solicitors, who are the first contact for clients and undertake most types of transactional work, and barristers, who are specialist advocates. Both branches of the profession retain responsibility for the training and accreditation of their lawyers, and the methods used share important common characteristics. In each branch there are academic, vocational, and real-experience stages.

## THREE STAGES OF PREPARATION

The academic stage for both branches constitutes an undergraduate law degree or, for a significant minority of students, a degree in another subject followed by an intensive one-year course covering “the foundations of legal knowledge.”<sup>1</sup> The vocational stage involves a one-year course—the Legal Practice Course (LPC) for solicitors and the Bar Vocational Course (BVC) for barristers—which focuses on the skills and knowledge required for that particular type of practice. The final stage—a training contract for solicitors and pupillage for barristers—is supervised work in a law firm or a barrister’s chambers.<sup>2</sup>

Although there are differences between the training provided for the two branches of the legal profession, the underlying principles are the same. In particular, what is regarded as crucial is largely common to both. For example, during the vocational stage, the LPC includes courses in a number of core practice areas, three electives, and the study of the skills of Advocacy, Interviewing and Advising,



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Writing and Drafting, and Practical Legal Research. The BVC focuses on Evidence, Procedure, and Remedies, two electives, and the skills of Case Analysis, Legal Research, Advocacy, Conference Skills, Negotiation, Opinion Writing, and Drafting. The integration of learning new areas of law with the skills of practising in those areas is common to both. This integration is accomplished by working with realistic exercises in a simulated clinical setting. Students get practice and receive feedback on their developing skills in analysing cases, researching the law, and applying their research conclusions to various tasks in the interests of their clients.

While the real-experience stage is informed by a common approach, there are some differences. On the barrister track, pupillage is one year, during the second half of which pupil barristers may take on their own cases. The training contract for solicitors lasts for two years and trainees typically have four six-month “seats” in which to gain diverse

experience within their employing law firm. These differences between the two branches flow from the different natures of the work and the organisational structures of the professions. However, the requirement to gain real experience under supervision is seen as essential for both branches.

## ASSESSMENT DURING THE STAGES

The academic stage is assessed like other undergraduate degrees, usually by a mixture of coursework and final closed-book examinations. Assessment on the vocational courses is often more varied and practice focused; I shall present some concrete examples of the assessment tools below. Assessment of the real-experience stage is done by the supervisor and generally constitutes a broad judgment of readiness for practice.

The essential elements of these programs include learning the substantive law, training in the skills required to apply that law, and gaining practice experience through supervised work on real cases. None of these elements would be regarded by those responsible for assessing practice readiness as dispensable. The BVC has been a required step for barristers since 1989; the LPC has been required since 1993. In 1998 the Bar published a volume called *GOOD PRACTICE IN PUPILLAGE* to set standards for the experience stage for barristers. A re-evaluation of the solicitor apprenticeship is currently underway to ensure that trainees undergo a thorough assessment of their readiness for practice at the end of the entire process.<sup>3</sup>

A number of developments designed to improve the quality of student learning are currently taking place in England and Wales. The emphasis is on developing a more reflective learning practice, both to improve the quality of learning and to encourage a more integrated approach, which will be a founda-

tion for continued professional development once in practice.<sup>4</sup> Clinical programs, including the increased use of live-client clinics, are becoming more common at the undergraduate stage, and are widely used at the vocational stage.<sup>5</sup> These programs are most commonly taken on by students as voluntary additional activities, although they are sometimes an assessed part of the course.<sup>6</sup>

Of crucial importance for protection of the public is the lawyer's ability to practise in an ethical manner. Legal educators in the U.S. already recognize this essential concern and require all J.D. students to undertake a course in professional responsibility. While many of these courses are widely criticised as mere formalistic instruction on the Codes,<sup>7</sup> there are significant exceptions, mostly using clinical techniques to explore the conflicts and grey areas left by the Codes. Although some undergraduate courses in the U.K. address legal ethics, U.K. legal education mainly deals with these issues at the vocational stage. The BVC uses simulated clinical situations to require students to respond to ethical dilemmas encountered in those situations. Students are encouraged to go beyond narrow readings of the Code contained in the manual with which they are provided<sup>8</sup> and learn and are assessed through writing and role-playing tasks into which ethical dilemmas have been embedded. The approach is described below in the context of client counseling, but similar methods are used in Advocacy, Negotiation, Drafting, and Opinion Writing.

Two elements of this technique are particularly significant. Students are required to act ethically, not merely to proclaim what they would do. Moreover, they encounter these kinds of dilemmas in a supportive context before facing the pressures of real legal practice.<sup>9</sup>

Assessment of any of the requirements of competent lawyering, to be effective, must be consonant with the program of learning, reliable, and valid. This necessity requires the design and implementation of assessment tools that reflect the activities students have been using to learn, that reliably produce the same grades for students performing at the same level, and that reflect what students will need to do once in practice.<sup>10</sup> I shall illustrate an attempt to achieve all three with the Conference Skills (client counseling) course in the BVC taught at my own institution.

### CLIENT COUNSELING ASSESSMENT

Students are provided with a theoretical base in the form of a course manual<sup>11</sup> and develop their skills through role-playing in a series of realistic exercises designed to address progressively the demands of effective client interaction. Those students playing clients are given instructions so as to require the students playing counsel to address, for example, ethical issues. The assessment of these role-playing exercises is done via videorecording, using actors to portray the clients. This method provides consonance with the learning process and a high degree of validity, as the situations are designed to achieve realism.

Reliability is more difficult to achieve. Our approach is to bring the assessment team together to observe recorded conferences and mark according to detailed criteria.<sup>12</sup> The team members all assess the student performance and then discuss the marks given under each criterion. The use of weighted criteria helps to achieve a degree of objectivity and the discussion both identifies the issues which arise and achieves a common approach to the standard to be applied. Once all student work has been graded, statistical moderation is carried out,<sup>13</sup> and grades are reviewed where significant deviations are identified.

All failed grades are double-marked and finally a sample of assessed student work is sent to an external examiner<sup>14</sup> for checking.

### BENEFITS OF THE ASSESSMENT PROCESS

This method produces a valid and reliable assessment of students' readiness to turn to the third stage of their training: working on real cases under supervision in a real law office where they encounter real clients. This progressive approach ensures that students learn their skills in a controlled environment once they have mastered substantive law, that they are assessed as competent before they encounter real clients, and that they gain real experience under supervision before they take responsibility for their own cases. Clients are protected from exposure to lawyers who have not undergone this developmental experience and been assessed as having some minimal mastery of practice.

Many of the characteristics of these programs are widely available in American law schools. The U.S. offerings of clinical courses in law school, for example, far exceed those in the U.K. However, as long as it remains impossible to guarantee that newly qualified lawyers have experienced (in simulation or in reality) communication with a client or advocacy within a courtroom, there must be doubt about their competence to practise and their readiness to meet the inevitable ethical demands of practice. The U.K. approach is not appropriate for transfer to the U.S. situation.<sup>15</sup> However, its key components—valid and reliable assessments of practice skills and supervised introduction to the realities of practice—should, in this author's view, be a required element of the accreditation of every lawyer. 📄

### ENDNOTES

1. Public Law, including Constitutional Law, Administrative

- Law, and Human Rights; Law of the European Union; Criminal Law; Obligations, including Contract, Restitution and Tort; Property Law; and Equity and the Law of Trusts. In addition students must be trained in legal research and achieve a number of general transferable skills.
2. A full description of these various stages and courses is provided in N. Duncan, *Gatekeepers Training Hurdles: the Training and Accreditation of Lawyers in England and Wales*, 20 GA. ST. U. L. REV. 911 (2004) (available online at: <http://law.gsu.edu/ccunningham/Professionalism/Index.htm>, under "Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam," (last visited October 6, 2005)).
  3. The Training Framework Review. A variety of documents explaining the development of these ideas may be seen at [http://www.lawsociety.org.uk/newsandevents/news/view\\_newsarticle.law?NEWSID=231708](http://www.lawsociety.org.uk/newsandevents/news/view_newsarticle.law?NEWSID=231708) (last visited October 6, 2005) by following the links displayed there.
  4. At my own institution, the Inns of Court School of Law, students keep a Professional Development File containing a structured reflective journal and evidence of their engagement with course and voluntary activities. This file is regularly reviewed by members of the faculty.
  5. Those available at my own institution can be seen at [http://www.city.ac.uk/icsl/current\\_students/pro\\_bono/index.html](http://www.city.ac.uk/icsl/current_students/pro_bono/index.html).
  6. Details of the first example of this may be seen in N. Duncan, *On Your Feet in the Industrial Tribunal: A Live Clinic Course for a Referral Profession*, 14 J. PROF. LEGAL EDUC. 169 (1996). For the most developed example in the UK go to <http://northumbria.ac.uk/sd/academic/law/slo/?view=Standard> (last visited October 6, 2005).
  7. See R. Granfield, *The Politics of Decontextualised Knowledge: Bringing Context into Ethics Instruction in Law School*, in ETHICAL CHALLENGES TO LEGAL EDUCATION AND CONDUCT (K. Economides ed., Hart, Oxford 1998).
  8. See N. Duncan, *The Letter and Spirit of the Code*, in PROFESSIONAL CONDUCT (Burgess, ed., Oxford University Press 2005).
  9. The pressures of the marketplace for legal services may be inimical to the highest standards of professional conduct. Students need to be introduced to working with the Codes before entering practice, and even before entering a learning environment controlled by practitioners. See Auerbach's comments on the effects of litigation on ethical behavior in JUSTICE WITHOUT LAW? vii (Oxford 1983). Although the students' learning experiences encourage a more sophisticated approach, the formal assessment (whether their responses to dilemmas are correct or not) is based on compliance with the Codes.
  10. Readers may wish to contrast this with the approach on the current U.S. bar examination, on which reliability may be high but, because the assessment is restricted to paper and pen tests, validity is harder to achieve.
  11. CONFERENCE SKILLS (Soanes ed., Oxford University Press 2005).
  12. These criteria are laid out in Duncan, *supra* note 2.
  13. Given the large number of candidates, each assessor grades a sufficiently large number of performances for a statistical analysis of his or her grades to have validity. We therefore examine when an individual assessor's grades depart radically from the bell curve of the overall student performance in that assessment. This picks up (in particular) those new to assessing who might be overgenerous or overcritical, or who are too reluctant to use the full range of marks available (a common problem throughout higher education). A team of senior faculty decides whether adjustments to marks are required.
  14. External examiners are experienced practitioners or academic lawyers with practice experience.
  15. Such a structural change, with an undergraduate law degree replacing the U.S. bachelor's degree plus J.D. structure, would not address the central problems with the current U.S. licensing system and if proposed would more likely act as an obstacle to more effective changes.

## LOOKING TOWARD FUTURE BAR EXAMINATIONS: THE STANDARDIZED CLIENT?

by Lawrence M. Grosberg

Nearly everyone who has anything to do with bar examinations acknowledges that our current typical exam does not test all of the skills and knowledge necessary to competent lawyering. It does not assess, for example, whether a future lawyer can counsel a client. It does not evaluate the ability to do legal research, particularly electronic legal research. It certainly does not assess how a fledgling lawyer might examine a witness either before or at a trial. There are many justifications that are offered for these examination shortcomings. The cost of innovative testing technologies is extremely high. Fairness and objectivity are demanding to meet in any licensing examination that is taken by thousands of applicants. Reliability (i.e., consistency of the assessments) and validity (i.e., accuracy in measuring the targeted skills or knowledge) are critical criteria to be satisfied by any standardized test, and those criteria require