

CANADIAN BAR ADMISSIONS

by John M. Law

INTRODUCTION

Historically, Canadian legal education has consisted of two stages: an academic stage at a university law school followed by a vocational stage designed to “bridge the gap” between academic study and law practice. Central to the latter is a period “in articles,” a sort of apprenticeship of 10 to 12 months’ duration during which the law graduate works for and under the supervision of an experienced legal practitioner. However, to address concerns about the variable quality of the articling experience as a means of preparation for general law practice, Canada’s provincial law societies have established formal bar admission programs. These programs are designed to augment the applicants’ articling experiences and to provide a certain standard of preparation for practice. While at one time these programs focused on instruction in jurisdiction-specific substantive and procedural law in core practice areas, over the last 20 years there has been a greater emphasis on the development of practice skills and attitudes. Finally, the practical stage culminates in a bar examination, of varying content and structure, which has not, except for the members of some minority groups, proven to be a major obstacle to practice, as typically only one to two percent of students fail the test.

Over the last four years, law societies in the provinces of British Columbia, Ontario, and Alberta (the latter as part of a regional consortium with Saskatchewan and Manitoba) have conducted major reviews of the vocational stage of legal education. As a result, the structure and content of bar admission programs and examinations have been refined or reformed to better measure and assess the entry-level



JOHN M. LAW is a professor of law at the University of Alberta. His teaching and scholarly interests include administrative law, legal history, the legal profession, and professional responsibility. Before joining the University of Alberta, he practiced with an Edmonton law firm, acted as board counsel and director of licensing with the Alberta Liquor Control Board, and served as associate director and executive director of the

Legal Education Society of Alberta. Law has been an associate dean and has twice served as a member of the Board of Trustees of the Law School Admission Council. He has been also a member of several Law Society committees and was the executive director of the Canadian Institute for the Administration of Justice. Currently, he is a member of the University of Alberta’s Board of Governors.

competence of persons seeking admission to practice in these jurisdictions. The purpose of this essay is to briefly outline these developments.

NEW DIRECTIONS

It must be stated at the outset that the reforms have not affected the general structure and nature of articling, which remains intact as a central element in each province’s integrated admissions or licensing process. These processes are designed to ensure that newly admitted lawyers are competent and fit to begin the practice of law as measured by the demonstrated possession of legal knowledge, lawyering and law practice skills, professional attitudes, experience in the practice of law, and good character. Despite its imperfections, articling continues to be seen as a sound means for the application of legal knowledge in a practice setting, the acquisition and enhancement of practice knowledge and skills, and the development of a sense of professionalism. To better ensure that articling meets these goals, the law societies have committed themselves to greater monitoring and regulation of the articling process and to

greater provision of educational support in the areas of practice skills development, examination preparation, professional and personal development, and instruction in the substantive and procedural law associated with core areas of general practice. While these educational supports will be delivered in a variety of ways, increasing use will be made of electronic formats.

Continuing a trend which began more than 20 years ago in British Columbia, with the advent of the Professional Legal Training Course (PLTC) directed towards the development of practice skills, the most significant changes have concerned the structure and content of formal bar admission programs in order to rationally and systematically address the issue of entry-level competence. Increasingly, traditional bar admission programs, which focused on instruction in jurisdiction-specific substantive and procedural law, were perceived to be inadequate in light of competency profiles developed by the various law societies, which defined competence in terms beyond simply the possession of legal knowledge to include practice skills, abilities, and professional attitudes and judgment. Moreover, the traditional programs seemed to be too parochial in a time of greater lawyer mobility under the National Protocol on Transfer and Mobility.

British Columbia has recently refined its ten-week program with greater emphasis on the development of lawyering skills such as legal research, problem solving, advocacy, writing, drafting, interviewing, and advising in the context of core practice areas. Using a small-group format, these skills will be developed through exercises and assignments which will be critically assessed by a small cadre of full-time instructors who are senior lawyers with practice and teaching experience. Significantly less attention

will be paid to instruction in substantive and procedural law, as it is expected that students will have learned these subjects during the course of their university education. The program will be offered three times a year.

Ontario decided to radically overhaul its formal bar admission program in 2003, with implementation set for 2006. The new program represents a significant shift in focus to a skills-based licensing and education program that is more in keeping with the responsibilities of the law society as a public interest regulator and the needs of the profession in the 21st century. After graduation from law school but before commencement of the ten-month articling period, students will be required to participate in a five-week skills development and professional responsibility program which will provide more than double the previous amount of skills instruction. The purpose of the program is to ensure that newly licensed lawyers possess problem-solving skills and are able to effectively and ethically function in terms of legal research and writing, client contact, management of transactions, court applications, and dispute settlement processes. Like that of British Columbia, the course is designed to allow students to learn, practice, and improve those skills that have been identified, after extensive consultation with experienced practitioners, as critical entry-level competencies.

The program will be delivered using a problem-based learning method in which approximately 1,400 students, divided up into small firms of no more than six members each, will handle a number of model files derived from client matters typically encountered in early general practice. Experienced practitioners will serve as facilitators and coaches to each of the "firms" and will provide critical feedback on assignments and formal assessments.

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