

## LEGAL EDUCATION

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Ottawa

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*Chief Justice Dickson's theme is that the primary goal of legal education should be to train for the legal profession people who are honest, compassionate, knowledgeable about the law, and committed to the role of law and justice in our democratic society. He discusses this goal as it applies to pre-law training, law schools, articling and continuing legal education. He is in favour of a broad pre-law education, and recommends that law schools provide an education in a broad sense, not just professional training. He calls upon the profession to make articling a rewarding experience for all young members of the profession. He is complimentary about recent developments in the field of continuing education. The Chief Justice encourages formal instruction in legal ethics and the teaching of fundamental legal skills, particularly in the areas of negotiating and advocacy. He concludes by expressing the wish that all members of the profession will become aware of, and utilize, the benefits that flow from having two distinct legal systems in Canada.*

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*La thèse du Juge en chef Dickson est que le but premier de la formation juridique devrait être de former des juristes honnêtes, compatissants, bien versés en droit et conscients de leurs responsabilités vis à vis du rôle du droit et de la justice dans notre société démocratique. Il examine sous cet aspect la formation qui précède les études de droit, les facultés de droit, les stages et la formation permanente. En faveur d'une formation générale comme préparation aux études de droit, il recommande aussi que les facultés de droit offrent, en plus d'une formation professionnelle, un enseignement général. Il en appelle aux avocats pour faire du stage une expérience enrichissante pour tous les nouveaux membres de la profession et fait l'éloge des développements récents dans le domaine de la formation permanente. Il encourage enfin l'enseignement de cours structurés sur l'éthique de droit et sur les techniques juridiques fondamentales, dont l'art de négocier et de plaider. En conclusion il exprime le souhait que tous les membres de la profession se rendent compte de l'avantage que leur offre, au Canada, la coexistence de deux régimes de droit distincts et qu'ils en profitent.*

### Introduction

There are, of course, many conferences for university professors, practicing lawyers and judges each year. Most of them have a substantive theme focussing on some particular area of law—for example, the many confer-

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ences on the Charter of Rights and Freedoms<sup>1</sup> held across the country during the last two years. But it is legal education which is the foundation of the entire legal system and profession. It is, accordingly, entirely appropriate to have a major national conference devoted to this topic.

In a sense, this conference is the second of two significant national developments for legal education in Canada during the last two years. The first event was the publication of the major study, entitled *Law and Learning*, sponsored by the Social Sciences and Humanities Research Council of Canada.<sup>2</sup> In that book and at this conference there has been thoughtful and creative thinking about the modern role of law schools and the relationship between them and the wider communities of the university, the legal profession and society as a whole.

Ce qui fait la force de cette conférence est notamment le fait qu'elle réunit un bon nombre de personnes et d'institutions. L'enseignement du droit ne se limite pas à quelque chose que les professeurs enseignent et que les étudiants reçoivent. Il ne fait pas de doute que les professeurs de droit et leurs étudiants sont les principales composantes du système d'enseignement du droit au Canada. Cependant, il existe d'autres éléments importants, savoir les universités, les avocats, les institutions de recherche importantes comme les commissions de réforme du droit, les organismes privés qui consacrent souvent temps et argent à l'étude du système juridique, et les gouvernements. Tous ces groupes sont à la fois créateurs et consommateurs d'enseignement de droit; il est donc bon que cette conférence donne à de si nombreux représentants de ces groupes l'occasion de réfléchir et de s'entretenir sur l'orientation future de l'enseignement du droit au Canada.

Frequently, when I deliver a speech my topic is the Supreme Court of Canada, or perhaps judicial administration in Canada, or even some area of substantive law (for example, recently, the Charter). Tonight I want to deliver a different speech. I want to talk about legal education. I admit at the start that I am not as knowledgeable about, nor as experienced in, this field as almost all of you. But I am, like you, interested in and deeply committed to the improvement of legal education in Canada and, therefore, I want to speak candidly on this topic. Before beginning, however, I want to say, simply and sincerely, that I do not presume to tell any of you how to run your law schools, your universities, your law societies or your continuing legal education programs.

It seems to me that any discussion of legal education in the 1980's must start with the question: what is the goal of legal education? My answer to that question relates to people. The primary goal of legal

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<sup>1</sup> Constitution Act, 1982, Part I.

<sup>2</sup> (1983).

education should be to train for the legal profession people who are, first, honest; second, compassionate; third, knowledgeable about the law; and fourth, committed to the role of law and justice in our democratic society. Every component of legal education —pre-law training, law schools, articling, bar admission courses and continuing legal education programs— should be directed towards identifying and developing people with these four characteristics.

What, then, are the implications of this goal for each of the components of legal education? Let me offer my views about those implications for four of those components—pre-law training, law school education, articling programs, continuing legal education programs.

### I. *Formation préalable*

J'imagine que la première question est de savoir s'il devrait y avoir une formation préalable. Il est vrai, bien entendu, que, dans certains pays, un diplôme de droit est un diplôme de premier cycle. Personnellement, je ne suis pas en faveur d'un tel système. Je crois que la personne qui entreprend des études de droit doit être mûre et, ce qui est plus important, une personne qui a reçu une bonne formation générale. L'étudiant qui a reçu une bonne formation universitaire générale où l'accent a été mis notamment sur une bonne appréciation des contextes historiques et sur l'aptitude à former des idées claires et à communiquer efficacement par écrit ou oralement est un étudiant qui a tout ce qu'il faut pour entreprendre des études en droit et pour devenir, en fin de compte, avocat.

### II. *Law Schools*

On the subject of law schools, I want to make five observations.

First, law schools should provide an education in a broad sense, not just professional training. I am concerned about creating a dichotomy, perhaps false, between something good called "education" and something somewhat pejoratively labelled "training". It seems to me that a truly good education must speak to the practical application of the things learned and that, similarly, good professional training must be firmly grounded in broad historical and conceptual principles. Nevertheless, I use the dichotomy as a shorthand method for saying that law schools must not just be training grounds where students learn the skills and rules that they will apply on a daily basis once they are in practice.

One of the consequences of regarding the role of law schools in a broad sense is that law schools should admit people who may not intend to practise in traditional ways. A legal education is a superb education for non-lawyers. Accordingly, persons who intend to be business persons, journalists, secondary school teachers, public administrators and human rights activists, to name a few, may well want to receive a legal education before embarking upon those careers. The legal profession and law schools

should be proud of the fact that many such people value highly a legal education. They should encourage such people and make an effort to allow them to receive the benefits of a legal education. They should also, in conjunction with the legal profession, try to make knowledge of the law increasingly accessible to members of the public who do not want to pursue full-time legal studies.

Secondly, I want to say a few words about the gatekeepers to legal education, namely those involved in the admissions process. Those who fulfil this role are, in a real sense, the gatekeepers of the legal profession. Ultimately, the ethos of the profession is determined by the selection process at the law schools. In order to ensure that our legal system continues to fulfil its important role in Canadian society, it is necessary that the best candidates be chosen for admission to law schools. By "best" I mean more than just the most academically qualified. I also mean young people who exhibit other qualities such as compassion, unselfish service to their community and idealism.

Furthermore, it is incumbent upon those involved in the admission process to ensure equality of admissions. For a long time, law, like other professions, was a male profession. In the last decade great strides have been taken to overcome this problem. A large number of women have been admitted to Canadian law schools, have performed superbly there, and are now embarking upon successful legal careers which will, inevitably, lead them to the pinnacles of the practicing and judicial branches of the profession. Now, it seems to me, we must devote our energies to ensuring that there is a high degree of sensitivity in our admissions programs to those from different ethnic and economic backgrounds. Canada is a country which prides itself on adherence to the ideal of equality of opportunity. If that ideal is to be realized in our profession then law schools, and ultimately the legal profession, must be alert to the need to encourage people from minority groups and people from difficult economic circumstances to join our profession.

In that vein, I want to say a special word to and about Canada's native population. I know that in recent years several law schools, and the profession as a whole, have made sincere efforts to encourage more Canadian native people to embark upon a legal career. The pre-law course for native people at the University of Saskatchewan and the special admissions programs at most Canadian law schools come to mind. I applaud them. But there are still problems, in law schools and in the profession. I know that many native people have real problems once they get to law school and, if they succeed there, once they begin the early years of their practice. Quite simply, there is a need to translate the good intentions that we all have and the good start that many of you have made into better results. I call, therefore, on the university, the bar and the judiciary to be diligent and imaginative in seeking out ways to involve more actively Canadian native people in the important work of our profession.

Thirdly, I want to mention the importance of an interdisciplinary focus in legal education. I know that there is already something of this focus in most Canadian law schools. There are, for-example, combined degree programs which permit many students to take courses and receive degrees in law and such other disciplines as business and public administration. These programs are, without question, highly desirable. But I have something additional in mind. We all know that most law school curricula deal with roughly the same substantive subjects—contracts, property, torts, criminal law and the like. Furthermore, at least traditionally, these courses have been taught very much from the legal perspective. None of this should be criticized. But, it seems to me, something needs to be added to this traditional mix. I believe that law students, *while in law school*, need to be made more sensitive to the valuable contributions of philosophers, economists, historians, scientists and social scientists.

If I sound here as if I am echoing the Law and Learning Report, I can only say that I found that theme of the report to be totally persuasive. It is clear that law schools must be closely integrated parts of the broad university community. Just as law has important perspectives and values to contribute to other disciplines, so those other disciplines have a great deal to contribute to legal education and the legal profession.

Fourthly, it is essential that law schools, and indeed the entire legal profession, devote a great amount of attention and energy to studying and understanding some of the deep social problems of our time—problems of poverty, inequality, the environment. If the legal profession as a whole is to help solve some of the seemingly intractable difficulties faced by the poor, our native people, other minorities, new immigrants and others then, it seems to me, the process must start in Canadian law schools. If young law students are made aware of problems faced by these people then, one would hope, they would devote some of their time and energy towards the solution of these problems after they have entered the profession.

Finally, on this point, I want to underline the role of the law school, especially its faculty, as initiators of important legal research. I find increasingly, and I know that my colleagues share this view, that I am drawn to the scholarly writing of Canadian law professors when I am studying a legal problem or a case that is before me. We are a long way from the remark attributed to Justice Holmes, who is alleged to have said: "I don't mind when the lads on the Law Review say I'm wrong. What I object to is when they say I'm right." The writing of Canadian legal scholars is, if I may say so, very good. It is also extremely valuable to both the practicing bar and the judiciary. I want to encourage Canadian law professors to continue their scholarly research and writing. I can assure them that good legal scholarship plays an important role in shaping the legal principles that evolve through the legislative and judicial processes.

### III. *The Articling System*

I know that historically the articling system that has existed in Canada has been one of the mainstays of legal education and the legal profession. This is still true today. The profession as a whole has always demonstrated, and still demonstrates, a collective responsibility and generosity towards those students who want to embark upon a legal career. Accordingly, in times of financial restraint, I think that it is laudable that most law firms in the country still regard it as a fundamental trust to accept and, in a very real sense, educate young members of the profession. But I know that there are problems with the present articling system, problems of inconsistency and uncertainties. My sincere wish is that the legal profession will address those problems with a view to making the articling experience rewarding to all young members of the profession.

Je voudrais aussi mentionner une catégorie particulière de stage qui soulève mon enthousiasme. Depuis un certain nombre d'années déjà, la Cour suprême du Canada accueille certains des meilleurs étudiants des écoles de droit du Canada, qui viennent y travailler comme clerks. Je sais que plusieurs autres tribunaux canadiens offrent des postes semblables. À mon avis, ces programmes ont une valeur incommensurable à la fois pour les juges et pour les étudiants. L'enseignement qu'on en tire est vraiment dans les deux sens: les juges ont l'avantage de prendre contact avec de jeunes esprits enthousiastes et de sang neuf et les clerks, quant à eux, profitent d'une expérience unique avec les membres de la magistrature.

### IV. *Continuing Legal Education*

I turn now to make a few comments about continuing legal education programs. Again, my comments are in the nature of compliments. It seems to me that in the last decade there has been a remarkable and highly beneficial growth in both the quantity and quality of continuing legal education programs throughout Canada. For many years the legal profession was compared unfavourably (and rightly so) with the medical profession in this area. But now I think an unfavourable comparison would be misplaced. There are now, throughout Canada, superb continuing legal education programs for the bar. More importantly, it is now clear that most members of the profession are taking advantage of these programs; they now understand the need to update their legal knowledge and improve their legal skills on a regular basis.

In a similar vein, it might interest you to know that continuing legal education programs are now central to the life of the judiciary. Let me give you a few examples. First, we have an extensive seminar program for newly appointed members of the federal judiciary. I imagine that several members of this audience have been either participants or professors at those seminars. Secondly, the Canadian Judicial Council sponsors a regular and intensive summer seminar program which is attended by

approximately seventy-five Superior Court judges each year. I know that similar seminar programs are mounted in many provinces for provincially appointed judges. Thirdly, the judiciary tries to devise special seminar programs as needs dictate. A recent example of a seminar in this category would be the series of weekend sessions held in most provinces to introduce Superior Court judges to the problems of section 15 of the Charter. Finally, I want to mention the Canadian Judicial Centre Project. This Centre, we hope, will be a major research institute devoted to the study of a broad range of substantive and institutional issues of concern to the judiciary. The project will be under the initial direction of Mr. Justice William Stevenson of the Alberta Court of Appeal. Mr. Justice Stevenson's primary responsibility will be to undertake a study of needs and resources with a view to the establishment of a national education centre available to all Canadian courts. I would ask all members of this audience to cooperate with Mr. Justice Stevenson as he embarks upon this most important project.

#### V. *General Points*

That completes the remarks that I want to make separately about pre-law training, law schools, articling and continuing legal education. I would like to conclude by making some general points—three to be precise—that cut across all four of these branches of legal education.

First, I know that law schools, bar admission courses and continuing legal education programs are devoting an increasing amount of time to the teaching of fundamental legal skills, particularly in the areas of negotiating and advocacy. I want to say how very important these skills are to virtually all members of this profession. Accordingly, I hope that this component of Canadian legal education will continue and, indeed, be expanded.

Secondly, I hope that every Canadian law student and young lawyer has the opportunity to address, in a formal way, some of the ethical issues which regularly arise in legal practice. This is a subject addressed admirably by Mr. Justice Matas at the opening of this conference. I simply want to endorse what he said. Legal ethics has traditionally been a subject dealt with in an informal way in the law office, usually on an *ad hoc* basis between principal and articulated clerk or between senior lawyer and junior lawyer in the context of an immediate problem. That is not enough. Legal ethics is a subject worthy of serious and formal consideration by all lawyers before they embark on their legal careers. Accordingly, it should be addressed in the curricula of law schools or bar admission courses—preferably both.

Thirdly, one of the truly great and inspiring realities of this country is the shared relationship between English and French speaking Canadians. That relationship, so manifest in the political and social discourse of

the country, has also had a deep and creative impact on the Canadian legal system. We are fortunate in Canada to have two great legal systems, the common law and the civil law. It is essential, in my opinion, for law students and lawyers to become aware of the principles and institutions of both legal systems. Accordingly, I hope that Canadian law schools and the Canadian legal profession will actively strive to identify and develop means to promote a better understanding of our two legal systems. In that vein, I note the superb summer exchange program mounted in recent years by the law faculties at Dalhousie and Sherbrooke. Programs like that are immensely valuable and should be encouraged and imitated. I would hope that the legal profession and the judiciary would have the wisdom to establish similar programs.

The quality of the legal profession in Canada relates directly to the quality of Canadian legal education. On the whole, I believe that Canadian legal education—in the law schools, bar admission courses, articling system and continuing legal education programs—is excellent. I also believe that it is improving. My hope is that we will be sufficiently creative and committed to devise future improvements. If that happens, not only will there be benefits to the legal educators among you; of equal importance, the benefits will accrue to the entire legal profession and indeed the nation of which we are so proud.