

aspirations, rather than minimum instructional competences. Whilst such self-assessment is vital for any self respecting law school, it does not address the issue of minimum instructional competence, which the inspection teams should be investigating. The justification, on the basis of cost, of the substitution of aspirational fulfilment for a minimum instructional competence investigation is not well founded and must be questionable. An inspection by the accreditation team may be unnecessary if the minimum instructional competence standard were used. In the end, is it terribly meaningful in terms of accreditation to ask a school if it is fulfilling its own aspirations? As aspirations are extremely arbitrary, the whole accreditation process as it stands is an invitation to arbitrariness and far from the consumer protection role that accreditation should provide. The aspiration fulfilment enquiry method should be purged from the accreditation process.

INDIVIDUAL SUBJECTS/AREAS OF LAW

The study of law in Canadian management education: pedagogical goals

P Bowal

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Business, like other forms of social interaction, requires a system of order to ensure a fair, predictable and efficient marketplace for buyers, sellers, firms, workers, regulators, borrowers, lenders and others. The legal consequences of

business decisions are important to the success of a business. Strangely enough, anecdotal evidence suggests that the teaching of law in management courses is in decline in Canada, despite the importance of law in business as reinforced during the 1980s, the glut of mergers, acquisitions and take-overs, demands for a level playing field and the rise in the importance of management and of intellectual property. However, several highly-publicised legal events in the last decade demonstrate that business schools should today be strengthening their business law curriculum.

The first goal of a business law course is to inform students what the law and the legal system is, as well as its sources, and to introduce the institutions of law. The second pedagogical goal is to develop proficiency in written and oral communication skills. Clear and persuasive speaking and writing are indispensable to modern business interactions. The third goal of a business law course is to afford the student some skills in taking the law and principles studied and successfully applying them in every day business contexts, while at the same time instilling a sense of when and how to consult a lawyer. It should not attempt to prepare students for complex legal problems.

The study of law will assist in the refinement of skills required for success in business. For instance, gathering relevant information, asking the right questions, identifying alternatives and exercising judgement will be facilitated by business law. In law there are often no obviously right or wrong answers, so a relentless

emphasis is placed on reasoning and analysis. Correct answers are those that are well reasoned. Such open reasoning is useful to business people in areas such as policy development, ethics, communication and negotiation.

Many legal frameworks, especially those in business, rely on voluntary compliance with laws, due to the difficulty and sometimes impossibility of policing those within the purview of the regulation. Business law may have the effect of motivating responsible corporate citizenship, as it is often only conscience that separates compliance from illegal behaviour. Such illegal behaviour will usually not be uncovered and so the conscience must be strong. Business law courses can go some way toward showing that business and accepted morality are not mutually exclusive. Economic efficiency will usually be the justification for immoral corporate decisions. Business law courses provide an unequalled forum to explore the ethical issues in the business environment.

The teaching of commercial alternative dispute resolution: problems and opportunities

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The author's motives for teaching a course on commercial alternative dispute resolution stem from his time as a practitioner. The ADR movement challenges the traditional role of the lawyer as a concerned advocate fighting to enforce the rights of the aggrieved client by means of a transformation into a dispute manager. Courses on ADR assist in dispelling the myth that most

disputes are resolved in the courts, which myth is created by the focus in law schools on litigation. However, at present there has not been sufficient research into and analysis of ADR. Its theoretical analysis does not appear to have been of concern to mainstream legal philosophers.

Teaching ADR causes students to confront perspectives unlike those met in black letter law subjects. The aim of the course in question was to compare the alternatives to litigation which are available to the commercial community. The course was taught in 13 two-hour seminars, in which students were asked to compare the strengths and weaknesses of the various dispute resolution methods.

An objective of the course was to provide students with an appreciation of the practical skills involved with the application of various ADR processes, particularly negotiation, arbitration and mediation. Unfortunately, due to the large class size and limited time, it was not possible to provide simulation exercises. Such skills may be developed in other professional courses, tailored to specific ends.

A wide variety of seminar leaders was chosen, with seven of the 13 sessions being lead by external speakers. Readings were prescribed for each seminar. Speakers were not constrained as to approach or methodology but were asked to address at least one of the perspectives in the readings. Students were asked to concentrate on the question of mediator neutrality and to consider whether such neutrality was a myth.

Assessment was broken down into two components: a practical exercise worth 30% of the grade, and a research paper making up the remaining 70%. The practical component involved the screening of a video which depicts the interaction of two lawyers in a case with the students acting as the mediator. There are eight scenarios. The students must write about the crucial issues and present practical solutions for two or more of the scenarios.

Whilst students were pleased overall with the course and enjoyed it, their principal problems were that the class size was too big, there were not enough teaching hours and the assessment regime was too inflexible, especially with respect to deadlines for submitting work. The challenges for the future are to offer a course that links theory and practice in an accessible manner.

Making company law more practical and more theoretical - curriculum design

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5 Aust J Corp L 2, 1995, pp 281-294

More practical and more theoretical is a phrase that sums up the calls which are now being made concerning the direction of legal education. The subject of company law is primarily concerned with introducing students to the Corporations Law and companies in general. The author intends, rather than to provide a new general outline for the course, to question how some of the key topics in company law might be dealt with.

The challenges and problems associated with teaching company law include the growth in the size and complexity of the legislation, the volume of other materials, such as cases, administrative policies, law reform proposals, texts and articles, and the fact that many students, lacking a background in commerce or business, have difficulty in identifying with the subject matter.

The content of company law could be made more practical by exposing students to the practical contexts in which the law operates through the use of problem-based learning, where students are presented with the problems that would commonly be encountered by company law practitioners. The problem-based or result-oriented emphasis in the design of the company law curriculum contrasts with the academic or conceptual/ analytical approach intended to provide a conceptual framework which can be used to organise the subject as a whole. The author includes sample problem situations for a problem-based curriculum. An academic approach to company law will only instil an understanding at the conceptual level. However, when the principles of the law have been eroded by statutory provisions, the conceptual learning is called into question. A problem-based approach, on the other hand, is limited and specific. Many of the problem-based questions cut across several of the discrete topic areas. This may leave students without a clear structure for organising the course, for which purpose a brief overview of the course may assist.

Making the course more theoretical is more difficult, due to