

mittee to follow a series of steps in the process of identifying 'Requirements for Call'. The first step was to circulate a set of draft pre-call requirements and seek feedback through validation, consultation, and approvals; then to revise the draft requirements. The next step was to decide when and where each requirement was expected to be learned — i.e., before or at law school, through articling, PLT or after call to the Bar. The report then asked that the effects of the new requirements, on both pre-call and post-call educational activities be identified. The last step was to plan and implement the required changes.

A consultation document was circulated to lawyers, law schools, professional legal trainers and other interested parties for comment. Comments were incorporated and the Benchers adopted a new 'Statement of Pre-Call Requirements, identifying the knowledge, skills and qualities that lawyers should possess on call to the Bar. In 1997 the author consulted across Canada to determine which requirements should be included in PLT. The final report titled, 'The Content of Professional Legal Training' incorporates the suggestions from the consultation and will form the foundation for the remaining steps in the process. This article describes which of the requirements should be learned during PLT.

*Lawyers' functions* — During PLT, applicants to the Bar should learn about the functions of lawyers and specifically about problem solving and helping clients plan and avoid disputes.

*General knowledge and basic skills* — Applicants should learn most general knowledge and basic skills well before attending PLT. This includes such things as reading and writing. Applicants lacking in these skills should seek outside remedial help before PLT.

*Legal knowledge* — Applicants should come to PLT with an understanding of legal systems, legal theory, framework substantive knowledge and framework procedural knowledge. If the Law

Society expects applicants to know more substantive and procedural law than is actually learned during law school, it will attempt to identify and inform students about what they need to know. This knowledge will not be included directly in PLT but will be learned outside classroom time and examined separately.

*Lawyering skills* — Applicants should learn necessary lawyering skills during PLT and be able to demonstrate ability in those skills before being called to the Bar. Because it is difficult to learn all of the necessary skills during PLT, criteria will be used to select skills and decide at which level skills will be taught. Some thought will also be given to providing applicants with written materials to enable them to self-learn some of the basics of skills. Ideally, classroom time should be devoted to demonstrating skills, practising skills and receiving feedback. It is recognised that many applicants enter PLT with some training in skills. Therefore, as more is learned about the skills that applicants possess, consideration will be given to developing pre-assessments, which will allow applicants with an appropriate level of skill to skip certain aspects of PLT.

*Law practice skills* — Applicants should learn necessary law practice skills in PLT. This includes an understanding of the business of law practice and extends to the practical realities of day-to-day practice and specifically law office systems. Because it is not possible to learn all law practice skills during PLT, criteria will be used to select the specific skills and the level at which they will be taught.

*Professional attitude* — Although applicants possess certain professional attitudes before they begin PLT, because of the importance of attitudes to the practice of law, applicants should continue to learn about this during PLT. Ethical training should be in the context of transactions and include identifying and solving different types of ethical dilemmas.

*Personal characteristics* — Applicants should possess personal characteristics that are important to the practice of law (e.g. empathy and honesty). Although there is some question about where and how these characteristics can be learned, students should continue to learn about their importance and application to practice during PLT.

These specific requirements will form the foundation document describing the content of PLT in British Columbia. They will be reviewed periodically to ensure that they meet the changing needs of applicants, the Law Society, the legal profession and the resources dedicated to PLT.

**Firming up the framework: untangling the web of confusion over competency development in entry-level lawyers**

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National and international surveys conducted by employer groups, professional associations, universities and other educational organisations are generally united in their findings that today's graduates are inadequately prepared for the world of work. More often than not, research suggests that a 'well-rounded' graduate (i.e. a graduate able to demonstrate a range of generic skills) is valued at the commencement of employment as much as, if not more than, a 'technically competent' graduate (i.e. one with an extensive knowledge base and specific work-related skills).

While employers' views are widely known, there is generally much less awareness of the views of students and graduates on this issue. In the field of practical legal education, there has been much talk about the importance of 'competency' for professional practice. Unless all those involved in legal education know precisely what a course or program aims to develop, unrealistic expectations of the learning outcomes will result. Often, there are serious mismatches between the expectations of competency

development held by students, legal educators, graduates and employers. These would be minimised if it were recognised that competency development occurs at different stages of professional development over time and does not automatically occur as a result of having completed a university degree.

The authors attempt to clarify the terminology used in the competency debate in the area of practical legal education. To inform their understanding they asked a small cohort of Queensland University of Technology (QUT) Legal Practice Course (LPC) graduates what they felt their university had done, or should have done, to prepare them better for work as practising lawyers, and conversely, what they felt about their employers' expectations of them as new employees. Data gathered from a set of ten structured questions answered by graduates in hour long interviews built directly on data from interviews with the same graduates two years earlier, reflecting their views with the benefit of hindsight.

Since the beginning of the debate concerning legal competencies, there has been a disturbing trend away from the higher level cognitive aspects of competency towards an emphasis on a mix of higher and lower (technical) aspects. This is the result of a continuing failure to come to grips with the terminology of the debate and its implications. In adopting an 'integrated' approach to competency, the authors developed a conceptual framework in which the three terms, 'competencies', 'skills' and 'attributes', exist side by side, rather than in an hierarchical relationship, but evolve at quite different *stages* in the legal practitioner's development. This aspect of competency development is often overlooked by the profession as is the *relativity* between *levels* of competence. Documentation produced by professional bodies seems to settle instead for prescribed minimum standards of competence which can limit expectations. The authors argue that competency can only be arrived at after extensive practice of the skills on which it is based and

the application of the particular attributes possessed by the individual.

After explaining their concepts of competencies, the graduates outlined their development through the processes and timeframes which had structured the LPC. They felt that the curriculum of the LPC was sufficiently broad to introduce them to an adequate range of matters which became a sound foundation for practice when they entered the workforce. They indicated that the step-by-step process of learning by doing within a timeframe had developed in them both a practical and professional approach. However, they felt that there was room for improvement in the way in which the course actually contributed to their competency development, especially in preparing them for the pressures they were likely to face in practice. They felt that towards the end of the course students should be presented with more impromptu oral problems which have to be solved quickly, rather than with written problems requiring written solutions, in order to encourage them to draw, not simply on their legal knowledge, but also on their life experience.

In terms of the specific competencies necessary for the practice of law, definitions tend to talk in terms of what lawyers must be able to *do*, rather than explore the nature of competence itself and the associated values a lawyer must have in order to qualify as a competent practitioner. This is nowhere more evident than in the competencies prescribed for entry-level lawyers when a major mismatch occurs between the expectations of graduates and their employers. Whereas the development of higher order competencies at pre-entry level is emphasised by legal educators in undergraduate law schools, the possession of lower order technical competencies is more valued by the legal profession. This mismatch between the aims and expectations of the two contexts, university and the legal profession, suggests that the notion of competence sits uncomfortably with concepts of excellence and Total Quality Management or continuous im-

provement, which have been a recent preoccupation of the legal profession. Students of legal practice courses experience difficulties in changing direction away from the higher order competencies emphasised in undergraduate law courses to the more skills-based technical competencies required by the profession. Practical legal educators must be mindful of developing both higher and lower order skills concurrently.

The graduates were asked whether they felt it was the individual's responsibility to develop competencies or whether responsibility lay with the course. They were unanimous that it was their own, but that the supportive foundation needed to be there to facilitate development of competencies. They said that the course had prepared them for the range of legal matters they might encounter in practice, but not for the different kinds of employers they would experience, ranging from those who expected complete self-direction from new employees, to those who were apprehensive in their expectations of new graduates and restricted their responsibilities. The graduates felt that there was little the course could do to prepare them for these eventualities.

When they had started working, the issue of dealing with difficult clients had been a major problem for all of the graduates, but each of them had resolved it in their own ways. All graduates indicated that their competencies had only developed over time, through attending courses and training sessions, observation and practice, and mentoring. They had not possessed them at entry to the profession and had been disadvantaged by their employers' expectations of them in the initial stages of their professional practice.

It is clear that there is still widespread confusion over the terminology commonly used in the competency debate, particularly in the legal profession itself. The profession has come a long way in articulating the skills that are basic to lawyering and in defining what

higher and lower order skills are, but it has not yet arrived at a 'coherent or articulated theory' of competence. The authors believe that the most appropriate context for the development for this kind of theory is within the domain of practical professional legal education, provided its development is grounded in precise scholarly activity. It is not enough, therefore, for practical legal education courses to focus on the achievement of prescribed minimum standards of competencies. To achieve excellence rather than mere competencies, courses should concentrate on equipping students with learning to learn skills which can be transferred from university to different learning contexts.

The authors conclude that it is only when practitioners can construct their own theory of practice based on their consistent performance of the skills necessary to carry out their work that they can be called competent. To qualify as competent a lawyer must display a consistent level of 'learned and practised skills', preferably at a high, rather than a base level. A competent lawyer will integrate holistically his or her knowledge of law with an ability to practice that law.

**Gatekeeper or friendly guide? The role of the legal skills tutor**  
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Is there an irreconcilable conflict between certification and education? Professional legal skills courses are usually expected to do two things: first, train students to become autonomous professionals, equipped with the skills needed to cope with the challenges of practice; and, secondly, to decide which students are fit to practise, and which have to be refused entry to the profession. Teachers can feel that they are subjected to a stressful conflict of roles. Are they friendly guides whose main purpose is to provide students with a sympathetic learning environment? Or are they gatekeepers to the promised land of prac-

tice, with a stern duty to uphold the standards of the profession?

Although there is a substantial overlap between them, 'certification' and 'assessment' are not synonymous terms. Assessment can take a number of forms, and can be used for a number of purposes. The crucial distinction is between 'summative' and 'formative' assessment. Summative assessment is the judgment as to whether the student has the skills and knowledge necessary to become a lawyer. It plays a policing function on behalf of the profession and, ultimately, the public. Its effect is to cast the teacher in the role of judge in endorsing the student's competence, rather than as a partner in the learning process. It is, however, summative assessment which provides the most obvious incentive for learning on the vocational course. In a climate when competition for places in the profession is fierce, and students pay an ever increasing price in terms of accumulated debt for their legal training, it is not surprising that certification to practise comes to overshadow all other motivations for students.

The power to motivate, direct and focus is the strength of summative assessment, but is also the feature which causes problems. These problems are present in any professional course, but are particularly acute in the context of the criterion-referenced approach which holds sway in legal training. Amongst the problems, student preoccupation with certification leads to an 'assessment culture'. For teaching staff there is a tendency in summative assessment to specify minute aspects of behaviour, which are easier to verify than the more difficult areas of judgment. In addition, the search for the level playing field which summative assessment necessitates can lead to a narrowing of focus (for example, a tendency, on interviewing for solicitors, to concentrate on the initial client interview) and a departure from realism (for instance, videotaping the final certification performance in or-

der to ensure an absence of interventions). Summative assessment has difficulty in dealing with a subject like ethics, having no way to test whether the values underlying apparently ethical behaviour have been internalised. Similarly, the summative assessment of skills may distort the relationship between skills and knowledge. Product is emphasised at the expense of process. Finally, concentration on summative assessment can lead to the development of 'assessment dependent' students and hinder the development of the 'reflective practitioner'.

The central idea of the 'reflective practitioner' is that professional knowledge develops through critical reflection on experience. Central to the concept is the acquisition of transferable skills. If the embryonic practitioner has merely acquired facility in the performance of a limited list of tasks, the chances of being able to internalise the lessons from practice are greatly reduced. The development of the reflective practitioner, able to grow professionally as he or she makes use of transferable skills in the context of deeply held values and a store of learning, is perhaps the fundamental aspiration of professional legal education. It opens up the prospect of lifelong learning, adapting to ever-changing circumstances. It is central to the notion of a professional, rather than just a vocational, qualification.

The problem is that certification, particularly with regard to skills, places its natural emphasis upon the student's *current* standard of performance. The concept of the reflective practitioner is concerned more with the student's future capability. The apparent contradiction has led to the development of a variety of perspectives with regard to the education and assessment methods used in legal training. They have the common aim of promoting a concern with education rather than certification, the acquisition of transferable skills and (as a long-term goal) the production of the reflective practitioner.