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Legal Research and Writing as taught in Canadian Law Schools – The Librarian Perspective –

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Paper presented to the Eighteenth Annual BIALL Study Conference held at Aberystwyth in September 1987.

INTRODUCTION

For purposes of my talk today, I have taken the rather broad topic of Legal Education and Libraries – the Canadian Experience, and have narrowed it considerably to include a discussion of how legal research and legal writing are taught in Canadian law schools and how academic law librarians view the current methods being used. This topic is undeniably of great interest to law librarians in Canada, both academic as well as those in law firms, government organizations, and businesses. For some time now, we in the academic libraries have been hearing depressing reports from colleagues working with articling students and beginning lawyers – the fresh product of the law schools. These reports indicate that students coming into work situations where they must be able to perform legal research, lack the necessary skills to do so.

On the other hand, we really don't need to hear the complaints of colleagues in law firms, etc. to know that the situation is pretty desperate. Upper year students constantly come to the Reference Desk asking questions about where to find information when they should know at their stage of the game or they simply circumvent the library altogether and pride themselves in the fact they have never used the library. As we shall see, what legal research courses that *are* offered are often taught by individuals who have little knowledge or little interest in legal methodology and who do not impart to their students the understanding that the library is an integral part of the legal system and that the knowledge of where to look for the answers is often more important than other more substantive areas.

BACKGROUND

For those of you unfamiliar with the Canadian legal

education scene, let me give you a few facts as background to what I am about to say about the current state of the teaching of the fundamental skills of legal research and writing in Canadian law schools.

All Canadian common law LL.B. programmes run for three years except that at Victoria some students can graduate in December of their final year. Students are required to complete six terms of approximately 15 weeks each. All schools prescribe the range of credit hours to be taken per semester, per year and in some instances in aggregate over all three years. The normal range per semester is 14 to 17 hours, but students can take more or less with permission. Per year, the norm is a range of 29 to 32 credit hours.

At present, the six civil law schools, five of which are in Quebec and one in Ottawa, offer a three year degree (LL.L.).

Goals

In a recent report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law, chaired by Harry Arthurs, entitled *Law and Learning*, which I will hereinafter refer to as the Arthurs Report, a conclusion was reached that law schools see as their most important goal, but not the only one, the *training of students for the practice of law*,⁽¹⁾ given the fact that outside Quebec, an average of 70% to 80% of law graduates become practitioners.⁽²⁾

It became clear to me as I read various studies and reports in preparation for writing this paper, that Canadian legal educators and practitioners are unsure of what should be involved in the training of students for the practice of law and for becoming successful lawyers. According to the Arthurs Report, 'there has been no real attempt in Canada (or any successful attempts elsewhere, . . .) to identify the skills and knowledge that characterize the successful lawyer or to measure objectively the correlation between a given educational or training experience and subsequent practice.'⁽³⁾ It is my contention as well as that of most of my colleagues in law schools across Canada that the teaching of legal research and writing is not a primary focus of Canadian legal education and that Canadian law schools have not yet adopted as a primary objective, the goal of graduating students who are competently trained in a wide variety of lawyering skills.

In a study prepared for the Law Society of Upper Canada Bar Admission Course Curriculum Conference May 12th, 1984, students applying for admission to the Bar Admission Course in Ontario were asked to estimate the exposure each had received in their respective law schools to various courses. Of a total of approximately 1,013 students, slightly under half (469) estimated 0 to *some* exposure to legal research (they had attended lectures or seminars and for which they received academic credit).⁽⁴⁾

In a study of graduates of six typical law schools in the United States that varied in selectivity, curricular emphasis and location, respondents were asked what skills or

knowledge they would describe as having the greatest importance for their work. These were:

- the ability to analyse and synthesize law facts
- the ability to be effective in oral communication
- knowledge of statutory law
- the ability to do research
- the ability to counsel clients
- the ability to negotiate
- the ability to draft legal documents⁽⁵⁾

As Baird points out, it is striking that, with the exception of the knowledge of statutory law, none of the substantive areas of knowledge were considered very important.

Obviously, the ability to perform legal research to analyze problems and to communicate effectively both orally and in writing are fundamental skills that allow lawyers to practice competently, the teaching of which is necessary to the fulfillment of the expressed aim of law schools to train students for the practice of law.

Are these skills left underdeveloped at the time the students graduate? What have academic law librarians across Canada to say about the way legal research and writing are being taught and what would they change if they could? These are some of the questions I asked in a questionnaire sent to 22 academic law librarians across the country. A total of 17 responded by September 1987 when this paper was given orally at the annual BIAL Conference. The respondent for Victoria asked that answers be deleted just prior to publication thus making a total of 16.

Although I asked the individual respondents to speak to their respective Deans and members of the faculty if possible, it was really the librarians' point of view regarding the teaching of legal research and writing that I wanted to collect, for it is the library staff of academic as well as private or government libraries who are most often the ones that have to cope with students who have been badly trained or not trained at all in research methodology. This coping we must do, takes hours of extra time and the results are often at best inconsistent and at worst questionable. The questions were worded broadly in order to allow for scope in the answering. Consequently there was some overlapping and some inconsistencies in the way the questions were perceived. I hope I have finally been able to sort out the answers in a way which makes sense.

SUMMARY OF RESPONSES

I. Is a legal research and writing course taught at your law school?

For purposes of reporting the results of the answers to this question as well as to the answers in the remaining questions, I divided the law schools into four categories. Category 1: those teaching a formal course or courses, incorporating Legal Bibliography, Legal Research and elements of Legal Writing. Category 2: those having no formal course per se. Category 3: those teaching legal research and writing as part of a first year substantive law course. Category 4: those teaching legal research and writing as part of a broad Legal Methods course.

Twelve responses indicated schools which fell into Category 1 (Calgary, Dalhousie, Alberta, Université du Québec à Montréal, Ottawa (Common Law Section), Sherbrooke, McGill, York, Windsor, Saskatchewan, Laval, Montréal), one (University of Toronto) fell into Category 2, two into Category 3 (Western and University of British Columbia) and one (Manitoba) in Category 4. Although I included Calgary in Category 1, they in fact offer a 'Workshop' rather than a formal course per se.

The Legal Methods course taught at Manitoba is a clinical course which integrates legal research, legal writing, oral advocacy and civil procedures skills.

Although no formal course per se is offered at one school (University of Toronto), the Reference Librarian works together with the professor in charge of the Working Group on Legal Research Methods and Legal Writing and his or her research assistant in preparing or revising library assignments that first year students must complete during first and second terms.

Two schools (Alberta and University of Toronto) indicated that the Legal Writing component of the course was taught as part of a first year substantive law course.

Most responses indicated that computer-assisted legal research instruction was integrated into the courses as taught.

II. What is the format of this course?

All responses specified several approaches being used. Most listed legal research and writing assignments and exercises which had to be completed by working in the library and classroom lectures given preferably in small sections. Several named memo writing. Two (Calgary and Dalhousie) indicated the use of readings and individual research. One (U.B.C.) stated research orientated toward compulsory moot topics. Two (McGill and Windsor) indicated small tutorials or group discussions. In general, lectures to small groups and library research assignments predominated. Almost all mentioned the inclusion of a hands-on computer assisted legal research instruction component.

III. In what year(s), semester(s) is this course taught?

All but two of the 16 responses indicated that the area was covered formally only in first year. At Montreal, legal research is an optional course taught in second year. At Laval, students must have accumulated 30 credits before they can take a course taught by the Law Librarian. At nine schools (Calgary, University of Toronto, Dalhousie, U.B.C., York, Windsor, Manitoba, Saskatchewan and Laval), first year courses run in both first and second semesters, although in one case (Dalhousie) the formal class is held only in first term. Five of the courses (Université du Québec, Ottawa (Common Law Section), Western, Alberta and McGill) run only in the one semester although in one case (Western) the moot component runs into second term. Several of these five one-semester only responses indicated that the legal writing component of the course ran throughout the entire first year as it was taught as part of a small section substantive course. At one school (Sherbrooke), the

course is taught mainly in the second semester.

At Montréal several separate courses in legal methodology, legal writing and legal research are taught although the legal research is optional.

Although no direct question regarding whether or not a voluntary 'refresher' course was offered to upper year students before graduation, responses indicated that six libraries offered optional refreshers (U.B.C., Calgary, Alberta, York, Windsor and Manitoba). Several mentioned the fact that elective courses which involved legal research and writing were available to upper year students.

The basic problem is obvious immediately – an area as important as legal research being covered primarily in the first year before the students are even remotely aware of the connection between it and their substantive law courses and before they realize its importance as an essential skill. In some cases, the course is not even a mandatory one. Upper year 'refreshers' done by library staff are all voluntary and to my knowledge not as well attended as they should be although those that do attend (at least at Osgoode) pay strict attention and seem genuinely worried about their lack of knowledge in the area. Indications are that at the schools where the course is offered after first year, the students are more 'tuned in' to the necessities of studying legal methodology and get much more out of the course. At Laval, the registration for this upper year optional course is steadily growing.

IV. Who teaches the course? (formal)

Four (University of Toronto, Ottawa (Common Law Section), Alberta and Laval) answers stated that only the librarians actually taught and prepared the materials for the Legal Bibliography and Legal Research components. Two of these (University of Toronto and Alberta) stated as well that the law faculty taught the legal writing components.

Three responses (Université du Québec, U.B.C. and Montréal) specified that only the law faculty taught the course. Of these three, one (U.B.C.) is taught by faculty because the legal research and writing area forms part of a substantive law course. At Western, where the teaching method in this area is the same as at U.B.C., there is, however, some library involvement in the form of lectures and practice work.

One response (Calgary) stated that, although the practice varies from year to year, the faculty directs the course with input from the librarians. In one case (Sherbrooke), teaching assistants teach the course. Teaching assistants and faculty share the job at two schools (McGill and Dalhousie); Legal Writing Fellows (graduates or LL.M. candidates from other schools) teach the course at yet another school (Windsor) and lecturers or young inexperienced practising lawyers perform the function at yet another (York). Two responses (Manitoba and Saskatchewan) indicated that lecturers and faculty work together in this area.

Obviously, this question generated almost as many answers as there were respondents. There is no consistency here nor is there a sense of a unified understanding as to the merits of having people who are experienced in the area of legal research do the teaching.

V. Is the library staff involved in any way?

In 15 cases the library staff was involved in some way, other than in formally teaching the course. This involvement usually amounts to doing library tours and helping the students as they do their library assignments. At one school (University of Toronto) the librarian helps in the preparation of the library exercises, and at another (Manitoba), the librarians compile a legal Research Manual. Two responses (U.B.C. and Calgary) indicated that the librarians give some lectures and two responses stated that the librarians instruct the upper year students who do some of the actual teaching (Dalhousie and Sherbrooke). At one school, the librarian reviews the library assignments. Five answers specified that the librarians do the teaching of the computer-assisted legal research component of the course.

So, it would seem as though the librarians are involved to a greater or lesser extent with the students taking the course, but are not generally formally or directly involved in the teaching of these students.

VI. Are second or third year students involved in any way?

Eight responses indicated that upper year students were involved either as teaching assistants or as compilers of exercises or markers (University of Toronto, Dalhousie, Sherbrooke, Western, Alberta, McGill, Saskatchewan and Windsor). In three cases, the upper year students teach or help teach the computer-assisted legal research component or teach computer techniques. Six answers specified no upper year student involvement (Calgary, U.B.C., Université du Québec, Ottawa (Common Law Section), Laval, Montréal).

In one of the cases (University of Toronto), where upper year students were actively involved in teaching the students, the response expressed a great concern *vis-à-vis* the amount of misinformation which was being imparted by these students particularly with regard to how to make use of the library. I think that the fact that only one response expressed this concern is by no means an accurate reflection of the way most librarians feel about this situation as we will see when we come to the answers to the last question.

VII. Are the students required to take a course or courses which have legal research and writing as a component (upper year writing course)?

Of the 16 responses only five indicated that an actual upper year course was required. (Université du Québec, Manitoba, Laval, Montréal, Saskatchewan). One of these (Manitoba), stated that the students had to take 'perspective courses' which might require a substantial amount of writing. In three other schools, an upper year research paper is a requirement (University of Toronto, Windsor, Alberta). At Windsor, students are required to write a research paper in a course in either second or third year. The paper must be worth 50% or more of the final grade. All students must take a 'perspective course' in second or third year as well. Students can satisfy both requirements in one course. At McGill, all students must take either a course in which a major paper is required or write a term essay for credit, or write an article, note, or

comment that is published or accepted for publication in the *McGill Law Journal*. The remaining seven responses indicated that no upper year writing course was required nor did they mention any paper requirement.

The results here may actually be a reflection of the perception of the question. In fact, according to Donald Clark's background paper for the National Conference on Legal Education held in Winnipeg in 1985, 'In the upper year curricula of the common law schools, there appears to be no universally mandatory requirements directed towards the development of lawyering skills. The vast majority, however, require every student to produce at least one research paper at some point in second or third year' (and that) 'most schools additionally provide the opportunity for individual research projects under faculty supervision.'⁽⁶⁾ He also states that once Manitoba's 1987-88 curriculum takes effect which will call for at least one paper to be written in both second and third year, Osgoode Hall will be the only school without any formal upper year writing requirement.⁽⁷⁾

VIII. Are you satisfied with the way the course is presently being taught?

To this question there were only four unqualified affirmatives (Université du Québec, McGill, Saskatchewan and Windsor). Four responses indicated that there were both good and bad areas. The remaining responses expressed the need for much improvement both in the teaching methodology and in the selection and training of those who do the actual teaching.

IX. Are you satisfied that, when the students leave the school, they have remembered and can make use of the research and writing information they have been taught?

Here, most answers indicated much dissatisfaction in this regard. Although several mentioned the fact that the responses would depend on the level of instruction and the aptitude of the students, most expressed the fact that the majority of students are not prepared to perform legal research when they graduate. Indications are that the students who are most prepared are those who have taken upper year writing courses, or who have undertaken some form of independent research project or have worked as student teaching and/or research assistants to librarians or professors and have therefore been more exposed to legal research techniques.

X. If you were able to make any changes in the way legal research and writing was being taught, what would you change to make the subject more effective? What would librarians do about this situation?

The following were suggested;

- More input from librarians in teaching of legal bibliography and legal research techniques and in preparation of exercises, etc. This input gives the librarians credibility and control.
- Extension of the teaching of legal bibliography, research and writing over the entire three years, each year building on the other.

- More linking of the teaching of legal bibliography and research techniques to the research the students are doing for their substantive course.
- Seminars on legal bibliography and legal research techniques in specific subject areas to students taking these subjects, timed to coincide with writing requirements.
- Integration of CALR techniques.
- Mandatory refresher courses for students about to graduate.
- Students taught in smaller groups.
- Inclusion of component on comparative or foreign legal research.
- Better selection and training of those who teach the subject.
- Elimination of the use of inexperienced lecturers and upper year students and involve librarians more.
- More emphasis on the teaching of the legal process including legal terminology and the legislative and judicial processes.

These were the general opinions expressed. All answers varied to some extent but the main points came across clearly.

One respondent opined that it didn't really matter what the format of the course was - whether a formal legal research course, a broader legal methods course or a subject taught as part of a substantive course - but what *does* seem to matter very much is that (a) the students need the actual practice and experience doing research and writing all the way through law school and (b) the best people to teach this to the students are the librarians because, after all, they are the ones with the most knowledge of legal research methods. But is it true that the format really doesn't matter? It is evident by checking the chart provided that responses for all four categories represented indicate dissatisfaction or some dissatisfaction with the way the course was currently being taught. It is interesting to note that the three unqualified yeses came from Category 1 responses. However, the remaining answers in that Category expressed various degrees of dissatisfaction. The one response from Category 2 was negative as was one response from Category 3. The remaining response from Category 3 and the Category 4 response were ambivalent but both felt that some improvements were necessary.

Almost all the answers in all categories to the question regarding satisfaction with whether or not the graduating students could perform legal research indicated *complete* dissatisfaction. Some uncertainty was expressed in two of the responses in Category 1.

Clearly it doesn't seem to matter too much what the format of the course is except that there is probably a slight edge on the Categories 1 and 4 side.

What *does* matter if anything? Of the more positive responses to questions 9 and 10, three indicated upper year refresher courses were offered by the librarians but there was no seeming correlation here to either who taught the course or how involved the librarians were in the teaching of that course. Where does all this lead?

What does emerge from this seeming muddle from many of the more detailed and analytical responses, is a sense that the courses that exist can be made to work and often already do in some respects. When we turn again to the suggested changes made in response to question 10, we see that no matter how the course is taught there needs to be more librarian involvement in teaching all aspects of legal research techniques not just those involving the computer, and if the instructors *must* be faculty members or lecturers with a law degree, better training and selection of these teachers. There also needs to be more time spent reviewing the framework of the legal system and how it works, compulsory research and writing courses in upper years, preferably incorporating seminars given by librarians on the legal bibliography and research methodology involved in the subject(s) covered, and more linking of what is being taught in the first year legal research and writing course to the research the students are doing for their substantive courses. At Osgoode, we are actively looking into the possibility of a teacher/librarian instructor/co-ordinator who would be funded by the Law School and who would probably have a law degree.

I have no magic solutions to proffer. The idea of a teacher/librarian is an appealing one because it allows the students to take advantage of the best of both worlds - a law faculty member who is presumably sensitive to what must be learned *vis à vis* research and writing skills in conjunction with substantive law courses and a trained librarian with detailed and sophisticated knowledge of the tools of the trade and how they should be used to best advantage. Obviously a librarian already on staff who also happens to have a law degree and who also just happens to have the considerable amount of time necessary to teach and co-ordinate the course would suffice nicely, but I suspect few of us have that luxury. We'll just have to wait and see.

NOTES

1. *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* by the Consultative Group on Research and Education in Law. Ottawa, 1983, p.35. (H. W. Arthurs, Chairman).
2. *Ibid.*, p.34-35.
3. *Ibid.*, p.49.
4. W. H. Charles, 'Objectives of Legal Education' in: *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23rd-26th, 1985*. Montreal: Federation of Law Societies of Canada, 1987, p.193.
5. L. L. Baird, 'A Survey of the Relevance of Legal Training to Law School Graduates' (1978), 29 *Journal of Legal Education*, 274. (Boston College, George Washington, Michigan, New York University, San Francisco and Texas).
6. Donald H. Clark, 'Core vs. Elective Courses - Law School Experience Outside Quebec', in: *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23rd-26th, 1985*, Montreal: Federation of Law Societies of Canada, 1987, p.237.
7. *Ibid.*, p.238.

Category	Years/ Semesters	Who Teaches	Library Staff Involvement	Upper Year Course Requirement	Upper Year Paper Requirement	Satisfied with Teaching Method	Satisfied with Grad. Student Knowledge	Library offers Upper Year Refresher
1. (Separate Legal Research and Writing Course)								
Alberta	1st year, 1st semester	Librarian	Yes Teaches CALR course	No	Yes	Yes (qualified)	Yes/No	Yes
Calgary	(Workshop) 1st year, 1st and 2nd semesters	Faculty directs Librarians give input	Yes, some teaching	No	—	No	No	Yes
Dalhousie	1st year 1st and 2nd semesters	Faculty and Teaching Assistants	Yes — tours and instruction of upper year students who teach	No	—	No	Yes/No	Not indicated
Laval	Upper year students must have 30 credits 1st and 2nd semester (optional)	Law Librarian	No except for Law Librarian	Yes	—	Yes mostly	Yes	Not indicated
McGill	1st year, 1st semester	Faculty and Teaching Assistants	Yes — CALR	Yes (or paper)	Yes (or course)	Yes	No	Not indicated
Montréal	1st year — 1 semester: legal methodology 1st year — 1 semester: legal writing 2nd year — 1 semester: legal research (optional)	Faculty	No	Yes	—	No	No	Not indicated
Saskatchewan	1st year, 1st and 2nd semesters	Faculty Lecturers Senior student assistants	Yes — Tours and CALR	Yes 2nd year	Yes	Yes	—	Not indicated
Sherbrooke	1st year, 2nd semester	Teaching Assistants	Yes — Helps with preparation of Guide — Informal student instructor	No	—	Yes/No	No	Not indicated
Université du Québec à Montréal	1st year 1st semester	Law Faculty	Yes Informal Student Instructor	Yes	—	Yes	No	Not indicated
University of Ottawa (Common Law Section)	1st year, 1st semester	Librarian	Yes Teaches course	No	—	No	No	Not indicated
Windsor	1st year, 1st and 2nd semesters	Legal Writing Fellows	Yes CALR	No	—	Yes	No	Yes
York	1st year, 1st and 2nd semesters	Lecturers Young Lawyers	Yes — Tours CALR Informal student instruction	No	No	No	No	Yes
2. (No Formal Course)								
University of Toronto	1st year 1st and 2nd semesters	Librarian	— Informal student instruction — Librarian guides Research Assistants	No	Yes	No	No	No
3. (Taught as part of Substantive Course)								
U. of British Columbia	1st year 1st and 2nd semesters	Law Faculty	Yes Some lecture Compiles library exercises	No	—	No	No	Yes
U. of Western Ontario	1st year 1st semester	Law Faculty	Yes — lecture and practice work and CALR	No	—	Not completely	No	Not indicated
4. (Taught as part of a broad Legal Methods Course)								
Manitoba	1st year, 1st and 2nd semesters	Law Faculty and Lecturers	Yes — Write Legal Research Manual and teach CALR	Yes	—	Yes/No	No	Yes