Globalizing Approaches to Legal Education and Training: Canada to Japan

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INTRODUCTION

Japan has recently revolutionized its system of legal education. In June 2001, the Justice System Reform Council of the Government of Japan made recommendations to the Prime Minister for wide-ranging reforms. The “most important” component of these reforms was the creation of “graduate schools of law”—law schools—that have become “the central institution for the training of the legal profession”. In April 2004, 68 law schools opened across Japan.

As part of this ongoing reform project—which in turn is part of the more general, ongoing, collaborative phenomenon of the

* University of Alberta, Faculty of Law, tfarrow@law.ualberta.ca. I am grateful for funding from the Japan Federation of Bar Associations and from Niigata University, Graduate School of Law. Special thanks go to members of the Japan Federation of Bar Associations’ Research Office for Judicial Reform and the Office for Legal Education, and to the faculty and staff at Niigata University, including Dean Takeshi Yamashita, Professor Kazuya Honma, and in particular Professor Yuki Yotsuya, for their kind invitation to visit, and warm hospitality in Tokyo and Niigata during my October-November 2004 research visit to Japan.

5 Japan Federation of Bar Associations, Report (Tokyo: Japan Federation of Bar Associations, 2004) at 14 [“JFBA Report”].

6 Ibid.
globalization of law, legal process and legal education— I was invited to Japan to give three lectures to members of the Japanese bar and academy in November 2004 on the subject of Canadian approaches to legal process and legal education. In particular, I was asked to address and comment on specific and diverse questions related to: (1) the Canadian law school (LL.B.) system; (2) the bar admission process in Canada; (3) teaching legal ethics in Canada; (4) teaching advocacy in Canada; (5) teaching dispute resolution in Canadian law schools; and (6) clinical legal education in Canadian law schools.

This article is designed to provide a summary of those topics, lectures and follow-up discussions. In terms of my approach, the six main parts of this article correspond to the six issues identified above. In terms of my research methodology, to facilitate further international thinking on the issues discussed in this article, I have endeavored—where possible—to use and include publicly available and easily accessible research sources, including numerous internet-based materials.


8 The Canadian bar admission process was of particular interest to my Japanese hosts, and as such, formed a significant part of the discussion during the lectures (and this article).
I. THE CANADIAN LAW SCHOOL SYSTEM

1. INTRODUCTION

Similar to the new Japanese model, legal education in Canada primarily occurs at law schools—faculties of law—attached to universities across the country. Although the Canadian law degree is technically an undergraduate level degree (typically labeled an LL.B.), law school students spend at least 2-3 years in a primary undergraduate program of their choosing before entering law school:

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9 There are 22 law schools in Canada, including both common law and civil law programs. For a listing of these law schools, see e.g. “Canadian Law Schools”, online: <http://www.canadalawschools.ca/list_e.html>. Compare this to the United States, where there are approximately 190 American Bar Association (“ABA”) accredited law schools. See ABA, “ABA-Approved Law Schools”, online: <http://www.abanet.org/legaled/approvedlawschools/approved.html>.

10 The University of Toronto, Faculty of Law—following most American law schools—is now labeling its primary law degree a J.D. Another relatively recent variation to the traditional Canadian LL.B. approach is the joint LL.B.-J.D. degree programs offered by several Canadian and U.S. law school partnership arrangements. Examples include the University of Windsor (in partnership with Detroit Mercy College of Law), the University of Ottawa (in partnership with both Michigan State University and American University), and most recently at Osgoode Hall Law School (in partnership with New York University School of Law). See e.g. Beppi Crosariol, “Toronto, N.Y. law schools team up” The Globe and Mail (25 January 2005), online: Osgoode Hall Law School homepage<http://osgoode.yorku.ca/media2.nsf/83303ffe5af03ed585256ae6005379c9/fe34b6bba3d64f3a85256f9600723de8!OpenDocument>.

It is important to note that, because the focus of this part of this article is on Canada’s approach to its primary law degree (LL.B. or J.D.), I do not discuss here the important issue of graduate studies at Canadian law schools. For a recent discussion of graduate legal studies in Canada, see e.g. Sanjeev Anand, "Canadian Graduate Legal Education: Past, Present and Future" (2004) 27 Dal. LJ.55.
and most students will in fact complete a first degree. One of the strengths of this "second degree" approach, particularly given that there are typically no prerequisite course requirements for entering law school, is that the academic background and experiential make-up of a typical first year law class is relatively diverse. I see no change coming on the horizon to this generalist approach. And if there were one, I would actively work to discourage it. The academic diversity of the students entering our law schools is a real asset, both in terms of adding value to the richness of class discussion as well as to the overall strength and depth of an institution’s scholarly output.

In addition to there being no formal course prerequisites, there is also no formal “entrance exam” to law school. To be admitted, prospective students must demonstrate a high degree of academic promise in their primary undergraduate studies (based on their undergraduate transcripts). However, in lieu of a formal entrance exam, students must also perform well on the Law School Admission Test (“LSAT”), which is typically used by Canadian law schools as an admission requirement based on its value as a tool to predict a given student’s potential “success in law school”. While I am not overly supportive of relying so heavily on a standardized test (different schools put different amounts of emphasis on the LSAT), I realize there is significant research supporting its predictive value.

2. PURPOSE OF LAW SCHOOLS

The basic purpose of North American law schools is the education of their students, as bolstered by their commitment to

11 For example a B.A. or B.Sc.
13 This sentiment can be seen in a recent letter to Harvard Law School alumni, in which Dean Elena Kagan stated that Harvard’s “core mission” is “training students”. Elena Kagan, Harvard Law School alumni letter (1 December 2004) at 3 [archived with author] [“Harvard Alumni Letter”].
the development of legal scholarship and the advancement of the law. For example, as Harvard Law School’s Dean Elena Kagan recently stated, “Harvard Law School’s commitment to rigorous and exciting legal training is intimately connected to the School’s commitment to pathbreaking scholarship.” Put simply, although very conscious of their role in educating future members of the legal profession, law schools do not see themselves as legal trade schools. Rather, law schools endeavour to provide a broad legal education that is in large part, although certainly not exclusively, theoretical. That education, it is hoped, will afford students the necessary tools and knowledge to participate in a meaningful way in the progressive development of the full range of relationships and institutions—including the legal profession—that make up our modern democratic societies. As a result, the responsibility for ensuring that


16 For example, the University of Saskatchewan’s College of Law identifies, but does not require, students to take courses that are recommended by the Saskatchewan Bar. See University of Saskatchewan, College of Law, “Second and Third Year Requirements”, online:<http://www.usask.ca/law/current/requirements_upperyears.php>.

17 A defining element of this position is the relatively wide academic freedom enjoyed by North American law schools and legal academics.

18 See e.g. the topics discussed infra in Parts III-VI.

19 For example, the University of Toronto’s Faculty of Law prides itself on the fact that its 6000 alumni “can be found in Canada and around the world, making valuable contributions to society in private practice,
law students are adequately trained in the day-to-day skills and practicalities of lawyering is seen to rest ultimately on the shoulders of the bar, not the academy.

In my view, this division of responsibilities is healthy and should be maintained. It continues to be the source of an historically-based tension between the bar and the academy with respect to the division of tasks and responsibilities in the education of future lawyers. A full discussion of that relationship and tension is beyond the scope of this article. However, I will say that, while I am certainly familiar with the pedagogical benefits of marrying theory with practice (much of my teaching balances these two important pillars of legal education), pinning the law school curriculum directly to the practical requirements of the bar would visit a disservice both on non-lawyers and lawyers alike. A law degree does and should lead to many doors beyond simply that of the courthouse.

academia, the judiciary, business and the public sector.” Ron Daniels, “Dean’s Welcome”, Faculty of Law, University of Toronto, online<http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/1/0/0/0&contentId=18>.

20 For a recent discussion of the history of North American legal education and its relationship to the bar, see e.g. David S. Clark, “American Legal Education: Yesterday and Today” (2003) 10 Int’l J. Legal Prof. 93.

Further, even within the profession, it has long been recognized that there are diverse paths and opportunities from which to choose.\textsuperscript{22} To prepare people for those broad law and non-law career opportunities and responsibilities, we need to teach and research beyond the focused demands of the practice. Otherwise, we would provide an impoverished foundation upon which so many vital societal relationships and arrangements are based.

Further, even for future lawyers and jurists, a broad, theoretically based program of study will, at the end of the day, provide members of the legal profession with a wider range of tools to deal not only with the nuts and bolts of client needs, but also with the underlying demands of policy creation and law reform in the context of our vibrant democratic, rights-based societies.

As a result, I see a continued and (in our modern law-based societies) growing need for law schools that provide a rich, multifaceted course of study, which in turn—although grounded in the context of the legal profession—provides students with the tools to engage in a broad range of law and non-law careers after graduation. Maintaining this modern vision of a broad-based approach to law schools also makes meaningful space for a focused, profession-specific bar admission course ("BAC").\textsuperscript{23}

3. BASIC FORMAT

The basic law degree is premised on a three-year course-based program of study. While there is some variation across Canada, particularly in Quebec, legal education in all jurisdictions is relatively uniform.\textsuperscript{24} The first year is typically made up of a series of required substantive law courses—contracts, torts, property, criminal, constitutional, etc.—together with some form of procedural

\textsuperscript{22} See \textit{e.g.} Louis D. Brandeis, "The Opportunity in the Law" (1905) 39 Am. L. Rev. 555.
\textsuperscript{23} Discussed \textit{infra} Part II.
\textsuperscript{24} There is also a significant degree of similarity in format between Canadian LL.B. programs and American J.D. programs.
component.\textsuperscript{25} The second and third years typically include some required courses.\textsuperscript{26} They also provide students with an opportunity to take a number of optional courses, enabling them to develop particular interests and areas of expertise. Typically included in these upper year course offerings is some form of training in ethics, advocacy, dispute resolution and clinical education.\textsuperscript{27} The ratio of theory to practice (in terms of course offerings) varies from school to school. Some law schools pride themselves on maintaining a strong separation from the practice of law. Others have a more practical orientation, embracing the lawyering aspects of legal education. My own view, not unlike the views of former Chief Justice Dickson, is that a healthy balance is required.\textsuperscript{28}

Evaluation at Canadian law schools is done at the individual course level. The format of a given course’s evaluation is usually some combination of essay-writing and/or final examination, often combined with some requirement for class participation. There is no general final examination—other than individual course examinations—at the end of law school.\textsuperscript{29} On successful completion of all law

\textsuperscript{25}For example, I am currently teaching—as a visiting professor—the “Legal Process” course at the University of Toronto, Faculty of Law. That course, offered in the first term of first year, provides students with an introduction to legal theory, civil procedure and professional responsibility. See University of Toronto, Faculty of Law, “First Year Syllabus and Academic Handbook” (2004-2005) at 8, online<http://www.law.utoronto.ca/documents/JD/syl04_firstyear.pdf>.

\textsuperscript{26}Different schools have different requirements. Typical required courses (although not required at all law schools) include evidence, conflicts of laws, jurisprudence, etc.

\textsuperscript{27}These course offerings—which are typically optional—are discussed further in this article, infra at Parts III-VI.

\textsuperscript{28}See “Conference on Legal Education”, supra note 17 and surrounding text.

\textsuperscript{29}Canadian jurists would view an examination process after law school (but before the BAC) as redundant. I recognize, however—based on discussions at my 2004 lectures in Tokyo—that this lack of post-law school, pre-BAC general examination is controversial in the eyes of Japanese jurists.
school course requirements, students are awarded a law degree. They then become eligible, if they so choose, to enroll in a provincial BAC, the next step on the path to becoming a lawyer in Canada.

II. THE BAR ADMISSION PROCESS IN CANADA

1. INTRODUCTION

The regulation of lawyers and the legal profession in Canada is generally a provincial (as opposed to a federal) matter. A lawyer must be a member of a provincial law society in order to practice law in that province. And like in Japan, the legal profession in Canada is a self-regulating profession. Therefore, the provinces and territories in Canada have separate law societies, each of which is responsible for regulating lawyers and the legal profession within their specific jurisdiction.

As part of that system of regulation, each law society maintains a BAC. According to the FLSC, “[a] ll Law Societies have a process which will allow students, lawyers [transferring from a different province] and foreign applicants to become members of their Law Society.” For Canadian students, the typical admission requirement is a law degree from a Canadian law school. While there is no formal entrance examination between law school and the BAC, there is typically a requirement that students demonstrate

30 See “JFBA Report”, supra note 1 at 16.
32 For a general discussion, see Federation of Law Societies of Canada ("FLSC"), "Law Societies: General", online: <http://www.flsc.ca/en/lawSocieties/general.asp>.
33 FLSC, "Law Societies: Continuing Legal Education (CLE) and Bar Admission Course (BAC) Links", online: <http://www.flsc.ca/en/lawSocieties/cleLinks.asp>.
34 See e.g. Saskatchewan Legal Education Society Inc. ("SKLESI"). "Canadian Centre for Professional Legal Education: Registration
that they are of good character and reputation.\footnote{See e.g. Law Society of Alberta ("LSA"), "Articling Info: Student-at-Law", online: <http://www.lawso cietyalberta.com/articling/studentAtLaw.cfm>.
35 See also \textit{supra} note 25 and surrounding text.}

\section{2. PURPOSE OF BAC}

As mentioned earlier,\footnote{See \textit{supra} Part I. 2.} the basic purpose of law school is education: to expose law students to a broad range of legal concepts and tools, regardless of their law or non-law career aspirations. The purpose of the BAC is (and should be) much more practical in orientation. Specifically, the BAC typically has three primary purposes.

(a) \textbf{BRIDGE THE "GAP"}

Because the broad, theoretical approach of law schools differs from the more practical-oriented life of a typical practicing lawyer, a "gap" exists between law school and life at the bar. One of the roles of the BAC, therefore, is to bridge that gap. According to the Professional Legal Training Course ("PLTC") materials of the Law Society of British Columbia ("LSBC"), the PLTC is "frequently described as 'bridging the gap' between law school and practice."\footnote{LSBC, PLTC, "About PLTC: Goal and Philosophy", online: <http://www.lawso ciety.bc.ca/pltc/frame_pltc_about.html>.
37 See \textit{supra} note 25 and surrounding text.} Similarly—at the opposite side of the country—the Nova Scotia Barristers' Society ("NSBS") states that its BAC "acts as a bridge between law school and practice."\footnote{NSBC, "Bar Admission Course", online: <http://www.nsbs.ns.ca/barcourse.html>.
38 See \textit{supra} note 25 and surrounding text.}

(b) \textbf{PROVIDE PRACTICAL TOOLS}

The second main purpose of the BAC is the method by which
this gap is bridged. Specifically, the BAC provides students with the knowledge and skills necessary to become practicing lawyers in our modern, sophisticated law-based societies. According to the PLTC, 

"[w] hile law school educates students on legal concepts, PLTC teaches students about the practice of law. And just as law school teaches students how to spot problems; PLTC teaches students how to solve those problems." 39 Further, PLTC states that: "[a] t PLTC students learn to become professionals. The course is designed and taught by lawyers who have many years of practice experience. Students learn through files and transactions that replicate as closely as possible what the students will do in articles and practice."

One of the differences between law school and the BAC is that the BAC is primarily designed to encourage students to draw on knowledge from numerous theoretical sources and to apply them — specifically through the lens of practical skills-based thinking—in an effort not only to analyze legal issues, but to solve client problems. According to the NSBS, "[t] he Bar examination is the first time that most [students]...will be asked to integrate everything [they]...have learned in law school and put it to the test in solving hypothetical clients' problems." 41

(c) PROTECT THE PUBLIC

In my view, the most important aspect (and distinguishing feature) of the BAC is its public protection role. As discussed above, 42 while law school is primarily designed to educate the students, the BAC is primarily designed to ensure adequate competency in order to protect future clients and the general public. This responsibility is shouldered by the bar because of the autonomy

40 Ibid.
41 NSBS, “Bar Admission Course: Frequently Asked Questions [‘Why do I have to write the Bar examination…?’]”, online: <http://www.nsbs.ns.ca/bacfaq.html >.
42 See supra Part I. 2.
it enjoys as a self-regulating profession.

This purpose is clearly stated, for example, by the NSBS:

"The[BAC]...assists the Barristers’ Society’s mandate to protect the public interest through monitoring and enforcing standards for the education, professional responsibility and competence of its members... The [Bar] examination is not designed primarily to test information, memory or experience. Its purpose is to assist the Society in its mandate to protect the public."43

Similarly, the Law Society of Upper Canada ("LSUC") (the law society that governs lawyers practicing in Ontario) provides the following mandate statement in its 2004 BAC materials:

The [LSUC] ...exists to govern the legal profession in the public interest by:

- ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct;

- upholding the independence, integrity and honour of the legal profession; and

- for the purpose of advancing the cause of justice and the rule of law.44

This public protection role of the BAC is further made clear by the fact that, as long as their future members are competent, Canadian law societies are not typically interested in limiting the number of students who can become practicing lawyers. For example, according to the LPTC, the pass rate of its BAC examination is approximately 82-90%.45 Further, according to the

45 LSBC, PLTC, “Frequently Asked Questions ['What is the pass rate on
NSBS, the purpose of the BAC examination is “not to limit the number of lawyers admitted to the practice.” As such, according to the NSBS, “[w]ith proper preparation each [student]...can pass the examination.”

3. BAR ADMISSION FORMAT

The format of the various provincial bar admission programs is generally specific to each jurisdiction. However, in principle, bar admission programs in Canada are composed of two primary phases: articling and the BAC (including the BAC examination).

(a) ARTICLING

In essence, the articling phase is an internship-type program that requires future lawyers to “article” under the supervision of a practicing member of the profession for a period of approximately 10-12 months. Students can article under the supervision of most

assessments and examinations?’ ]”, online: <http://www.lawsociety.bc.ca/pltc/frame_pltc_faq.html>.
46 NSBS, “Bar Admission Course: Bar Examination, Purpose of Examination”, online: <http://www.nsbs.ns.ca/barexam.html>.
47 NSBS, “Bar Admission Course: Frequently Asked Questions [‘Why do I have to write the Bar examination...?’]”, online: <http://www.nsbs.ns.ca/bacfaq.html>.
48 Because of the varied format and content of the different provincial BAC programs, a detailed discussion of the format and content of each BAC is beyond the scope of this article. For more detailed descriptions of the various provincial BAC programs, reference should be made to the individual provincial law society materials (which are typically available online). For a useful starting point, see the general description and links provided by the FLSC. See FLSC, “Law Societies: Continuing Legal Education (CLE) and Bar Admission Course (BAC) Links”, online: <http://www.flsc.ca/en/lawSocieties/cleLinks.asp>.
49 See e.g. LSUC, “For Students: About the Ontario Bar Admission Course, About the Course, Course Structure”, online: <http://education.lsuc.on.ca/pd/pdCourseStructure.jsp>.
types of practicing lawyers, including lawyers working in the areas of civil, criminal, family, clinic-based and government law, etc. Many students choose to article with a firm, thereby getting exposed to several different lawyers and areas of practice. Selected students can, alternatively, apply to article ("clerk") under the supervision of a judge instead of articling for a practicing lawyer. Compensation for articling ranges significantly from sector to sector and jurisdiction to jurisdiction.

The purpose of the articling process is primarily three-fold.

(i) ON-THE-JOB TRAINING

Articling gives students on-the-job training. This training often includes legal research and writing, drafting, some low-level tribunal and court appearances, attending at client meetings, etc., all of which depend on the nature of the practice of the supervising lawyer under (or firm in) which a student spends his or her articling year. In Ontario, for example, the Rules of Professional Conduct state that supervising lawyers are to provide articling students ("students-at-law") with "meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession." 

50 For an example of a leading Canadian firm’s articling program, see Torys LLP, “Our Student Program”, online: <http://www.torys.com/students/toronto-career.asp>.

51 See e.g. the Ontario Court of Appeal’s “Clerkship Program”, online: <http://www.ontariocourts.on.ca/court_of_appeal/brochure/articling.htm>. For a useful description of the clerkship program, see University of Saskatchewan, College of Law, “Clerkships”, online: <http://www.usask.ca/law/current/careers/clerkships.php>.

52 The large Toronto firms typically pay the highest articling salaries in Canada, which are currently (approximately) $62,000 per year (plus benefits). My source for this salary figure is the director of legal recruitment at a large Canadian law firm.

53 LSUC, Rules of Professional Conduct (2000, as amended), R.5.02 ("Students"), online: <http://www.lsuc.on.ca/services/contents/rule5.jsp>.
Having articled in Ontario, I can say with first hand knowledge and confidence that the opportunity to spend a meaningful period of time in the context of on-the-job training provides young lawyers with extremely valuable practical and professional tools. In essence, students-at-law are directly engaged in practical lawyer-type work. Perhaps the most valuable part of the experience, in addition to the practical skills observed and obtained, is the professionalism that is instilled during this articling period. It is here where the ethical demands of the profession really come to life, perhaps for the first time in a young lawyer’s career.

One of the concerns raised by members of the Japanese bar during my lectures in Japan was the question of the supervision of students-at-law. Put simply, how can we trust students to “practice law” when they are not yet members of the profession. The simple answer is that they do not “practice law”. While supervision is certainly a concern, regardless of the area of law or type of work, all tasks performed by articling students are (directly or indirectly) supervised by a lawyer.54 Provincial bar codes provide clear guidelines regarding what articling students can and cannot do during their articling year. At no time are they considered to be practicing law as lawyers.55 And having been in the position of both an articling student and subsequently as a “principal” (a practicing lawyer responsible for the articles of a student-at-law), I can report, again with first hand knowledge, that the system, in general, works very well.

54 See e.g. LSUC, Rules of Professional Conduct (2000, as amended), R5.02 (“Students”), online: <http://www.lsuc.on.ca/services/contents/rule5.jsp>. For the approach of a particular law firm, see e.g. Torys LLP, “Our Student Program”, online: <http://www.torys.com/students/toronto-career.asp>.

(ii) LABOUR AND RECRUITING

Articling also provides firms and future employing lawyers with two specific benefits. First, students provide labour for the firm or lawyer for which they are working. While much of this work is done at a relatively low level, it is work that is done and that is typically recoverable through bills to clients.\(^{56}\) Second, the articling year provides a lawyer or firm with the opportunity to work with a student-over a number of months and typically in the context of a number of legal situations-with a view to the potential hiring of that student. An exception to this benefit is obviously attached to students who clerk with a judge for their articling year: there is no prospect of being “hired back” as a judge.

(iii) PROTECT PUBLIC INTEREST

Finally, the articling process—and in particular its practical skills-based training and professional mentoring opportunities—assists with the broad mandate of law societies, through their bar admission programs, to protect the public interest.\(^{57}\)

(b) BAC

(i) BAC CONTENT

While the content of the various bar admission programs varies from province to province, there are, in principle, significant commonalities between the programs. First, the BAC is typically designed to ensure that a student has attained adequate knowledge “of the substantive law and current practice and procedures of the

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56 For example, the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, Tariff A, Part I—Costs Grid, currently contemplate costs for students-at-law at $60 or $90 per hour (depending on the indemnification scale). See Government of Ontario, e-Laws, online: <http://www.e-laws.gov.on.ca/DBLaws/Regs/English/900194b_e.htm>. Actual hourly rates that are billed to clients for the work done by articling students are often much higher (anecdotally up to $250 per hour). My source for this information is a practicing lawyer in Toronto who is familiar with current billing rates.

57 See generally supra Part II. 2 (c).
areas of law that are likely to be encountered in the early years of a general practice." These areas of law variously include, for example, commercial, company, family, real estate, estates, etc. While much of this information is learned at law school, in order to ensure adequate knowledge by all future lawyers (in the spirit of protecting the public), BAC programs have traditionally covered the essential elements of these core areas again at the BAC level.

Second, the BAC is designed to ensure an adequate skill base, again in the spirit of preparing students-at-law for the client demands they are likely to face in the first years of practice. These skills typically include advocacy, writing, research, interviewing, and negotiation.

Third, the BAC is designed to ensure that students receive training about appropriate levels of professionalism. This includes both legal ethics as well as the more practical skills of basic practice management, including office and practice organization and

58 SKLESI, “Saskatchewan CPLED [Canadian Centre for Professional Legal Education] Program: Competency Profile, Legal Knowledge” at n.1, online: <http://www.sklesi.org/page29.html>.
60 Discussed further, infra note 59 and surrounding text.
accounting.62

(ii) BAC FORMAT

The format of the BAC typically varies from province to province. The BAC format is also something that is currently the subject of ongoing review and debate in and between the various provincial law societies. However, notwithstanding current variations, there are essentially three formats of BAC programs in Canada.

First, there is what I call the traditional format. The traditional format provides students with instruction on basic substantive, skills-based and professional issues63 in the context of a traditional classroom-based learning environment. Classes are typically taught by members of the local practicing bar and/or full-time instructors (who are also typically members of the local bar). Supplementing the classroom sessions are skills-based demonstrations, practice advocacy sessions, mock trials/motions, negotiations, etc. Finally, to ensure competency in the required core substantive areas, students must pass the BAC examinations. British Columbia's PLTC program is an example of this traditional approach.64 The current Ontario approach is also an example of this traditional approach.65

Second, there is a modified version of the traditional method. This modified approach continues to provide classroom-based skills instruction. However, rather than providing classroom-based


63 See supra Part II 3 (b) (i).

64 See e.g. LSBC, PLTC, “About PLTC”, online: <http://www.lawsociety.bc.ca/pltc/frame_pltc_about.html>.

substantive lectures, the modified approach simply requires students-at-law successfully to complete licensing examinations covering the basic substantive knowledge required for a typical junior lawyer in practice. Versions of this modified approach include Nova Scotia’s BAC program and the revised (2006) Ontario approach. Nova Scotia’s BAC covers the skills-based topics in a 7-week classroom-based instructional session (with evaluation), together with a 2-day real estate seminar. In terms of the substantive topics, they are covered by way of summary materials that are provided to the students and that are tested through a 12-question, 2-day comprehensive bar examination.\(^6\) Ontario—after the 2005 BAC—will phase out its traditional BAC approach.\(^7\) Replacing it will be a 2006 BAC that will include a 4-week skills and professional responsibility program, followed—after the typical 10-month articling term\(^8\)—two licensing examinations.\(^9\)

Third, there is the collaborative BAC program recently adopted in 2004 by Alberta, Saskatchewan and Manitoba. The BAC in these 3 provinces—administered by CPLED\(^0\)—is a “new regional professional licensing program that blends new and traditional forms of pre-call [to the bar] education”.\(^1\) This collaborative BAC approach still requires students to demonstrate competency and understanding in basic skills-based and substantive knowledge areas. Also similar to the traditional and modified approaches, the collaborative CPLED program provides students with some classroom-based learning.

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\(^{66}\) NSBS, “Bar Admission Course”, online: <http://www.nsbs.ns.ca/barcourse.html>.

\(^{67}\) See supra note 61 and surrounding text.

\(^{68}\) Discussed supra Part II. 3 (a).

\(^{69}\) For a summary of the 2006 Ontario approach, see Diana Miles, LSUC Director, Professional Development and Competence, “2005 Bar Admission Course” (14 September 2004), online: <http://education.lsuc.on.ca/Assets/PDF/pd/memImpactOfNewBACFor2006.pdf>.

\(^{70}\) See supra note 54.

\(^{71}\) Legal Education Society of Alberta (“LESA”), “CPLED Program”, online: <http://www.lesta.org/>.
However, in addition to the classroom sessions, the majority of the BAC program is provided through online education facilities.\textsuperscript{72}

The benefits of this new collaborative CPLED approach are essentially threefold. First, it allows for efficiencies in terms of course creation, administration and evaluation. Further, to the extent that traditional classroom-based knowledge delivery approaches are replaced by online mechanisms, cost savings opportunities are realized.\textsuperscript{73} Second, given the massive size of the combined three provinces’ geographical area, online tools make the delivery of the BAC to students located in remote areas more efficient and cost-effective, both for the law societies and for the students. Third, and perhaps most important, the CPLED program is the first step toward fostering the further mobility of students and future lawyers among the various participating regional law societies. According to SKLESI, the CPLED program “is a building block in the Western Canada Law Society’s mobility initiative.”\textsuperscript{74} Further, because lawyer mobility is a principle that is being developed and increasingly accommodated by law societies across Canada,\textsuperscript{75} the CPLED program

\textsuperscript{72} See \textit{e.g.}, the Law Society of Manitoba (“LSM”), “2004-2005 Manitoba CPLED Program”, online: <http://www.lawsociety.mb.ca/cpled_students.htm>. Anecdotally, I understand that there is some dissatisfaction among students about the new CPLED BAC program, at least in Alberta. However, it is likely that this dissatisfaction stems more from “growing pains” (the system is in its infancy) than from fundamental course design or structure.

\textsuperscript{73} For a recent general discussion of online course delivery (at law schools, not at the BAC), see Andrea L. Johnson, “Reconciling Copyright Ownership Policies for Faculty-Authors in Distance Education” (2004) 33 J.L. & Educ.431.

\textsuperscript{74} SKLESI, “Saskatchewan CPLED Program”, online: <http://www.sklesi.org/page29.html>.

\textsuperscript{75} The various provincial law societies are currently collaborating on the issue of the national mobility of lawyers. This collaboration is being conducted primarily in the form of a National Mobility Agreement (“NMA”). The NMA provides rules that ease restrictions concerning both the temporary and permanent mobility of lawyers practicing in
is perhaps the first step of a broader collaborative effort to establish a nationally-based BAC program or set of programs in the future.

In my view, the modern reform initiatives (see, for example, the 2006 Ontario approach together with the Western CPLED initiatives) are steps in the right direction. It strikes me as a waste of time and resources to cover—in the context of in-class lectures—substantive courses, most of which students have typically already taken at law school. At the same time, however, in order to allow for a broad, choice-based curriculum at law school, some comfort must be provided to the public that future members of the profession are indeed competent in the basic substantive areas of law as well as being exposed to necessary practical and ethical skills training. For this reason, it seems to me that the combination of a self-directed study approach to the substantive elements of the BAC (using web-based teaching technology and testing by final licensing examinations), a modest “in-class” skills and ethics-based component, together with the articling process, strikes the appropriate balance for an ideal BAC.76

Further—particularly in the Canadian context where each province still regulates its own profession—it seems to me that we have reached a point in the development of society and the practice of law that we should seriously be considering a uniform Canadian BAC. In this sense, I am extremely supportive of the CPLED initiative. For many reasons—federalism and globalization, efficiency, uniformity and consistency, client demands, mobility, etc.—consolidating our approach to the BAC makes eminent sense. I see the CPLED approach, combined with the FLSC NMA initiative,77 as

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76 See e.g. Nova Scotia’s current BAC and the 2006 Ontario approach, supra notes 62-65 and surrounding text.
77 See supra note 71.
steps in this direction.

(iii) COST OF BAC

The cost of the various BAC programs ranges significantly from jurisdiction to jurisdiction. Currently, for example, the cost of the LPTC in British Columbia is approximately $2,500. The cost of Manitoba’s 2004 CPLED program is approximately $1,100. The cost of the 2005 Ontario BAC will be approximately $4,500. Some firms, although certainly not all, cover these fees as part of a student-at-law’s articling salary package.

III. TEACHING LEGAL ETHICS IN CANADA

Legal ethics was traditionally a topic that was taught, if at all, at the bar. More recently, following the significant development of academic and policy-based interest in legal ethics and professional responsibility in the United States over the recent decades, legal ethics has become an important and growing area of teaching and scholarship in Canada. Today, legal ethics is formally covered at three levels in Canada: at law schools, the BAC, and in practice (at continuing legal education ("CLE") courses and in-house at law firms).

78 LSBC, PLTC, “Frequently Asked Questions ['What are the fees?']”, online: <http://www.lawsociety.bc.ca/pltc/frame_pltc_faq.html>.
81 Discussed supra note 48.
82 This interest has in turn influenced current curriculum initiatives at law schools. As Harvard Law School Dean Elena Kagan recently stated, Harvard Law School is currently looking at how it “can make thinking about legal ethics a serious part of the law school program from the first year onward...” “Harvard Alumni Letter”, supra note 9 at 3.
1. LAW SCHOOLS

All Canadian law schools, except one, have stand-alone courses in legal ethics and/or the profession.\textsuperscript{83} Of these courses, 4 are mandatory.\textsuperscript{84} The approach and content of these courses varies dramatically from school to school and from professor to professor. Some approaches stay fairly close to a review of various ethical code-based obligations and responsibilities. Others provide a much broader approach, considering a wide-range of issues and challenges facing today’s legal profession.\textsuperscript{85}

Further, while courses on legal ethics are often taught by practitioners, there is a growing interest in teaching and research in the area among full-time academics.\textsuperscript{86} Finally, while legal ethics is typically taught in the context of stand-alone courses, there is some support for moving to a more pervasive instructional approach.\textsuperscript{87}

\begin{footnotesize}
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\item \textsuperscript{84} \textit{Ibid.}
\item \textsuperscript{85} See e.g. Trevor C.W. Farrow, “Professional Responsibility”, online: <http://www.law.ualberta.ca/courses/farrow/prof_resp/index.htm>.
\item \textsuperscript{86} “Future Strategies and Implementation Report”, \textit{supra} note 79 at 9.
\item \textsuperscript{87} While the term “pervasive” — in the context of pedagogical approaches — is now widely used, my use of the term, and concept, continues to be influenced by Deborah Rhode’s pervasive approach in the area of professional responsibility. See e.g. “Reviewing Globalization”, supra note 3 at 179, n.66 and surrounding text, as influenced by Deborah L. Rhode, \textit{Ethics By the Pervasive Method}, 2d ed. (New York: Aspen Publishers, 1998). See also “Future Strategies and Implementation Report”, \textit{supra} note 79 at 10.
\end{itemize}
\end{footnotesize}
Courses in civil procedure\textsuperscript{88} and legal process,\textsuperscript{89} for example, provide obvious opportunities for this kind of pervasive approach. Law school clinical courses also provide excellent opportunities for integrating professional training into “real life” client-based settings.\textsuperscript{90}

While these recent initiatives are promising, I am of the view that law schools still do far too little in the area of legal ethics and the profession. All law schools should have a mandatory course in ethics and the profession. Further, instructors should be encouraged to explore ethical issues that arise pervasively in the context of all procedural and substantive law school courses. In the spirit of exploring the depths and opportunities of our legal world, more thought—in terms of teaching and scholarship—should be focused on ethics, the current state of the profession and its potential futures.

2. BAC

As discussed above,\textsuperscript{91} professional responsibility is an integral part of the BAC, particularly given the BAC’s basic purpose of protecting the public. Although different jurisdictions approach the

\textsuperscript{88} See \textit{e.g.} Trevor C.W. Farrow, “Civil Procedure”, online: <http://www.law.ualberta.ca/courses/farrow/civ_pro/index.htm>. See further the Civil Procedure course that I am teaching this academic year as a visiting professor at Osgoode Hall Law School, York University, Osgoode Hall Law School, “First Year Description: Civil Procedure”, online: <http://www.osgoode.yorku.ca/firstyearprog.htm>.

\textsuperscript{89} See \textit{e.g.} the Legal Process course that I am teaching this academic year as a visiting professor at the University of Toronto, Faculty of Law, “First Year Syllabus and Academic Handbook 2004-2005: Procedures, Policies, Rules, Regulations”, online: <http://www.law.utoronto.ca/documents/JD/syl04_firstyear.pdf> at 8.

\textsuperscript{90} See further \textit{infra} Part VI. For a recent discussion of professional education in the context of clinical course offerings, see Melissa L. Breger \textit{et al.}, “Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges” (2003) 55 S.C.L. Rev. 303 at 307-315.

\textsuperscript{91} \textit{Supra} Part II.3 (b) (i).
topic in different ways, through various combinations of in-class, pervasive and examination-based approaches, all BAC programs address themselves to the issue of professional responsibility. Further, while the teaching component of the BAC provides an opportunity to explore the ethical demands of the profession, articling is perhaps where most energy should be placed in terms of exposing students-at-law to the practical requirements of professionalism.

3. CLE AND LAW FIRMS

Because professional responsibility is seen as an ongoing matter, not a skill that is acquired in a one-time fashion, there is an increasing move to continue to educate lawyers in ethical issues at all levels throughout their career. These opportunities occur in several places, including in CLE courses and at law firm in-house educational and mentoring programs. These opportunities should continue and be expanded. Further, meaningful credit should be given—internally at law firms—to the work done by senior lawyers in mentoring their junior colleagues. In this sense, I fully agree with


93 See supra note 49 and surrounding text.

94 See e.g. “Future Strategies and Implementation Report”, supra note 79 at 17.

95 See e.g. LSM, “Continuing Legal Education: Ethics”, online: <http://www.lawsociety.mb.ca/shopping/shopdisplayproducts.asp?id=7&cat=Ethics>.

96 See “Future Strategies and Implementation Report”, supra note 79 at 17. Further, for an example of this in-house commitment, see e.g. Torys LLP, “Our Student Program”, online: <http://www.torys.com/students/toronto-career.asp>.
the Ontario Chief Justice’s Advisory Committee on Professionalism that the teaching of ethics should occur “over the course of a lawyer’s career.”

IV. TEACHING ADVOCACY IN CANADA

Like professional responsibility, advocacy was traditionally a topic that was taught, if at all, at the bar. Today, advocacy is taught—in varying degrees—at three levels in Canada: at law schools, the BAC, and in practice (at CLE courses and in-house at law firms).

1. LAW SCHOOLS

Law schools have offered various courses over the years that provide students with a basic introduction to advocacy. First, students now typically cannot graduate from law school without having done at least one mandatory mooting exercise. Second, law schools typically provide a number of optional courses focusing on oral (and written) advocacy, including, for example, advocacy, alternative dispute resolution, and techniques in negotiation. Third, advocacy issues also often come up—pervasively—in courses such as civil procedure, criminal procedure, professional responsibility, and clinical courses. Finally, there is a growing participation in competitive moot programs that are offered by most law schools (both internally and in connection with national and international

98 For an example of the kind of advocacy training that students receive at law school, see Trevor C.W. Farrow, “Perspectives on Oral Advocacy”, online: <http://www.law.ualberta.ca/courses/farrow/oral_advocacy.htm> (this is a lecture that I give to first year students in the context of their mandatory mooting exercise).
99 See e.g. the University of Alberta, Faculty of Law, “Faculty of Law Course Descriptions 2004-05”, online: <http://www.law.ualberta.ca/students/Course_Descriptions/index.htm>.
moot competitions).^{100}

Notwithstanding these offerings and opportunities, it is not expected that students will graduate from law schools having attained a sophisticated level of proficiency in the art of oral or written advocacy. These skills—while increasingly offered at law schools—are still largely seen as skills that will be developed during a student’s articling term and during his or her initial years of practice.

2. BAC

Advocacy training is typically a part of BAC programs in Canada. Again, however, it is not expected that students will be expert advocates after completing the BAC. Rather, the advocacy component of the various BAC programs—including contested motions and/or mock trials, etc.—is designed to ensure a minimum level of competency, knowledge and awareness of typical advocacy issues that will likely face a young lawyer in his or her first years of practice.^{101}

3. CLE AND LAW FIRMS

After law school and the BAC, advocacy training opportunities continue to be widely available and encouraged during the career of a lawyer. These opportunities occur in several places, including in

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100 See e.g. the University of Alberta, Faculty of Law, “Current Students – Moot Court Competitions”, online: <http://www.law.ualberta.ca/students/student_moot.htm>.

CLE courses and at law firm in-house educational programs. There is also no shortage of useful bar journal commentary focused on written and oral advocacy from senior members of both the bench and the bar.

4. TRAINING FOR JURY ADVOCACY

Because Japan is introducing a jury-like system ("Saiban-in system") into its justice system, I was asked briefly to comment in this article on the training of lawyers in Canada with respect to our jury system.

In theory, juries are available in various criminal and civil proceedings in Canada. However, in practice, while jury trials are relatively common in criminal proceedings (particularly when the

102 See e.g. LSM, “Continuing Legal Education: Litigation”, online: <http://www.lawsociety.mb.ca/shopping/shopdisplayproducts.asp?id=13&cat=Litigation>.
103 See e.g. Torys LLP, “Our Student Program”, online: <http://www.torys.com/students/toronto-career.asp>.
Crown attorney—the lawyer representing the state—proceeds by way of indictment), the “vast majority” of Canadian civil actions are tried by judges sitting alone\(^{106}\) (unlike in the United States, where trial by jury in civil matters is much more common). As such, there is currently little opportunity for law students and students-at-law formally to train for jury work. Advocacy training for jury trials is therefore left, primarily, to the bar (“on-the-job” training) and to some CLE programs.\(^{107}\) As one Ontario Crown Attorney recently related to me,

I can safely say that one really has to just do it and the more of them [jury trials] one does, the less...stressed one is about [them]...It’s all well and good to do a mock trial in front of a “jury” in a course, but it sure ain’t the same as the real thing. The other thing I’d say about the training aspect of it is that I probably learned as much from watching bits and pieces of real jury trials that my colleagues were conducting prior to my first one as I had in the course.\(^{108}\)

Given that there does not seem to be a significant move to change our approach to the use of juries in either civil or criminal proceedings, I do not see a meaningful change on the horizon

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\(^{108}\) Private e-mail correspondence with an Ontario Crown Attorney (December 2004) [archived with author].
regarding jury advocacy training in Canada. If anywhere, it would likely be with the training of Crown attorneys and at the criminal bar where improvements to our current approaches would be made.

V. TEACHING DISPUTE RESOLUTION IN CANADIAN LAW SCHOOLS

Negotiation, mediation and other ADR processes, as I have commented elsewhere, are not new dispute resolution techniques. They have been used in the context of various disputes for centuries. However, the modern ADR movement—as an established alternative to public civil justice options—is a comparatively new development. Japan, like Canada and other developed modern judicial systems, is also continuing to develop ADR mechanisms.

Given the relative youth of the modern ADR movement, the

111 See e.g. “JFBA Report”, supra note 1 at 26.
teaching of ADR at law schools is also comparatively undeveloped. In essence, however, there are three main approaches to the teaching of dispute resolution in Canada. First, some law faculties—including, for example, the University of Victoria and the University of British Columbia—provide extensive educational opportunities in dispute resolution through dedicated research and teaching centres, which are supported by specific law school courses. Second, two Canadian law schools—Saskatchewan and Ottawa—provide students with innovative, pervasive approaches to dispute resolution training. The pervasive, integrated approach to dispute resolution teaching was largely pioneered at the University of Missouri-Columbia, School of Law. Third, the remaining Canadian law schools provide students with a range of traditional, course-based dispute resolution courses. As I have recently completed a significant review and analysis of these current (and proposed future) approaches to the teaching of dispute resolution in Canada (and abroad), I refer the reader to that study for my observations and views on these programs and the topic of teaching dispute resolution generally.¹¹²

VI. CLINICAL LEGAL EDUCATION IN CANADIAN LAW SCHOOLS

1. BASIC FORMAT

Many law schools in Canada have a clinical program.¹¹³


¹¹³ See e.g. Student Legal Services of Edmonton (“SLS”), online: <http://www.slsedmonton.com/home.html> (affiliated with the University of Alberta, Faculty of Law), Parkdale Community Legal Services (“Parkdale”), online: <http://www.parkdalelegal.org/> (affiliated with York University, Osgoode Hall Law School), Downtown Legal Services
However, most of these clinics, while directly affiliated with a law school, are physically located at separate premises (often in communities in which the majority of their clients live or work). They are staffed typically by full-time administrators and at least one full time lawyer. There is also a faculty member of the affiliated law school who liaises with the students and staff of the clinic, and who is often responsible for the course work that gets done by students in connection with their clinical experience (often in the form of a research paper, etc.). Some of the faculty members do actual legal work/supervision, although not always. In this sense, clinics are seen as stand alone legal operations, with lawyers, staff and clients, but which at the same time get the majority of their labour done by volunteer students from the affiliated law schools. For example, according to Parkdale’s materials,

Parkdale is both a teaching clinic and a community clinic. We provide legal services and at the same time deliver Osgoode Hall Law School’s Intensive Programme in Poverty Law. Our

(“DLS”), online: <http://www.dls.utoronto.ca/> (affiliated with the University of Toronto, Faculty of Law), Dalhousie Legal Aid Service (“DLAS”), online: <http://as01.ucis.dal.ca/law/law_4128.html> (affiliated with Dalhousie University, Dalhousie Law School).

114 Parkdale, for example, provides students with a full-time, full credit placement for part of their law school career. Course credit is based on a weekly seminar and final paper. According to Parkdale’s materials: “Each term, twenty law students at Osgoode Hall Law School are selected for a full-time, full credit placement at the legal clinic as part of the Intensive Programme in Poverty Law. Under the supervision of clinical staff, students engage in both case work and community legal work. The academic component consists of a weekly seminar and a thirty-page paper.” Parkdale, “Our Osgoode Connection: The Parkdale Intensive Programme in Poverty Law”, online: <http://www.parkdalelegal.org/Osgoode.htm>. For a general description of Osgoode Hall Law School’s clinical education program, see York University, Osgoode Hall Law School, “Clinical Education: 2003-2004”, online: <http://www.osgoode.yorku.ca/pdf/clinicaled.pdf>.
law students are the primary caseworkers, conducting client interviews, negotiating, and preparing and arguing before courts and tribunals. They also take part in law reform and community development projects.\(^{115}\)

2. TYPICAL AREAS OF LEGAL WORK

Clinics typically focus their efforts on criminal and civil casework that involves poverty or low income issues. For example, according to the SLS materials,

Our Criminal Law Office handles Summary Conviction Criminal Offenses such as theft, common assault and impaired driving as well as driving offences...Our Civil Law Office offers assistance in dealing with matters such as Tenant Landlord disputes, Contracts, WCB/AISH/CPP/EI hearings, and civil referrals...\(^{116}\)

In comparison, Parkdale focuses its efforts on poverty issues:

Since 1971, Parkdale...has delivered poverty law services to low-income residents of Parkdale [in Toronto]...Recently, we have expanded our catchment area to include the west end [Toronto] neighbourhood of Swansea. We cover a wide variety of subject areas, including social assistance, workers’ rights, tenants’ rights, immigration and refugee claims, mental health law, and domestic violence issues.\(^{117}\)

Other law schools—most notably the University of Toronto, Faculty of Law—have several clinics dealing with special area legal

\(^{115}\) Parkdale, “Serving our Community...”, online: <http://www.parkdalelegal.org/>.


\(^{117}\) Parkdale, “Serving our Community...”, online: <http://www.parkdalelegal.org/>.
services. Toronto’s clinics provide services in the areas of poverty law, international human rights, workers’ injuries, issues specifically related to Spanish speaking peoples, and survivors of domestic violence. These various clinics allow for a broad range of legal services to be delivered, while at the same time providing students with a wide range of clinical experiences to choose from.

3. PRIMARY BENEFITS

Generally, clinical legal education has become a standard and vital part of the North American law school curriculum and experience. The benefits of these clinical programs flow both ways. In terms of the communities they service, the benefits are obvious. Suzanne J. Schmitz recently commented—in the context of U.S. clinical-based programs—that law schools “can significantly contribute to improving the public’s access to the justice system” enabling “more people to experience justice.” Without these clinic initiatives, it is generally understood—under our current legal funding regimes—that many of the clinics’ clients would not have access to any legal advice or services whatsoever.

118 University of Toronto, Faculty of Law, “Clinics and Public Interest Programs”, online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/0/0/0&contentId=861&type=webpages>.
119 University of Toronto, Faculty of Law, “The Faculty of Law’s Five Legal Clinics”, online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/0/0/0&contentId=369#legal_clinics>.
122 For a recent collection of comments on this issue, see The Civil
law students can provide legal information and assistance to individuals who otherwise would be unable to obtain assistance with legal problems.” ¹²³ In addition to direct legal services, clinics also engage in law reform initiatives and public legal education designed to work to the benefit of their clients and society as a whole. For example, again according to SLS, “Our mission is to enable University of Alberta law students to provide free legal information and assistance to the low income community in Edmonton and to contribute to legal reform and legal education efforts as they impact on poverty law issues.” ¹²⁴

There are equally important benefits for the students and the law schools. As Schmitz has further commented, faculty members and students involved in clinical programs, together with faculties generally as institutions, “have gained perhaps as much as they have contributed”. ¹²⁵ There is no doubt that many students who participate in a clinic program find it to be the “best thing [they]... ever did at law school” ¹²⁶ There are several reasons for this positive feedback, stemming from the basic benefits of the clinical experience. First, clinical programs provide excellent “hands-on” practical training for law students. For example, according to the University of Toronto’s Advocates for Injured Workers (“AIW”) clinical program, “AIW [] is a unique student clinic dedicated to providing high quality legal services to injured workers. AIW is an exciting way for U of T students to ‘cut their teeth’ in litigation and an excellent

¹²⁴ Ibid.
¹²⁶ Parkdale, “Our Osgoode Connection”, online: <http://www.parkdalelegal.org/Osgoode.htm>. See also University of Toronto, Faculty of Law, “Downtown Legal Services: ‘DLS intern Ian Andres’ ” (student testimonial), online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/1/1/0&contentId=370&cType=webpages>.
opportunity for them to enhance their legal education by working with administrative law hands on."\textsuperscript{127}

Second, in addition to the service providing and skills development elements of clinical programs, one of the main benefits of these programs is the exposure they provide to students to individuals and groups in low income and other disadvantaged situations. Quite frankly, to the extent that law schools play a role in social policy awareness and development, clinics are a key element to that project. As the DLS materials suggest, "The clinical experience allows students to develop new insight into the social reality of law and legal institutions, to explore ethical issues, and to acquire crucial professional skills."\textsuperscript{128}

Third, to the extent that students and faculty members take advantage of the connections, clinics provide institutions with a wonderful opportunity to participate in the realities of law and law reform—often in empirical, policy-based and interdisciplinary fashions—in ways that are not typically present in other doctrinal areas of legal education. While some of this kind of work is being done, more should be done.

4. POTENTIAL CONCERNS

While there may be others,\textsuperscript{129} two specific concerns were

\textsuperscript{127} University of Toronto, Faculty of Law, “Advocates for Injured Workers”, online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/1/0/0&contentId=371>.

\textsuperscript{128} University of Toronto, Faculty of Law, “Downtown Legal Services”, online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/0/0/0&contentId=370>.

\textsuperscript{129} Like professional responsibility, dispute resolution, advocacy, etc., clinics are viewed as “practice-oriented” programs that tend to have a high profile among students, and a relatively low profile among many full-time faculty members. As with other practice-oriented areas, some academics see clinical education as being better left to the bar, not the academy. Again we see the theory-practice debate/divide rearing its head in the context of clinical education. For a general comment on this theory-
raised during my lectures in Japan regarding clinical education that I address here. The first relates to how students are supervised in terms of the "legal work" they do. The second relates to the purpose of articling in a system that already allows for hands-on training in the form of clinics at law schools.

With respect to the first concern—that students are providing legal services without being actually called to the bar—the technical answer is that students are at no time providing unsupervised legal services. As with the work of articling students, law students at clinics are conducting work that is formally received, delegated, monitored, and ultimately resolved by a staff lawyer. Provincial professional codes of conduct require that at no time is a student acting as a lawyer. For example, Ontario's Rules of Professional Conduct provide that, in the context of non-lawyers (including law students): "a lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated." This professional obligation is also further bolstered by the approach and founding philosophy of the various law school clinical programs. For example, according to the "belief statement" of SLS, "We believe that law students must not attempt to do legal work that should be done by a lawyer." All relevant work is therefore the ultimate responsibility of a clinic's supervising staff lawyer.

However, notwithstanding these ethical obligations and principles, there is no doubt that students perform a significant amount of work that looks like legal services. For example,

practice debate/divide, see "Reflections", supra note 116 at 118 (and passim).
130 See discussion supra notes 50-51 and surrounding text.
131 LSUC, Rules of Professional Conduct (2000, as amended), R.5.01 (2) ("Direct Supervision Required"), online: <http://www.lsuc.on.ca/services/contents/rule5.jsp>. See further the related commentary to R.5.01, ibid.
according to DLS, "Every year, approximately 130 students participate in the operation of this clinic, as volunteers, credit students, shift leaders, and members of the executive board. Students are supervised by staff lawyers, but are fully responsible for individual files and appear regularly before courts and administrative tribunals on behalf of their clients." These opportunities and responsibilities are seen as the primary elements to a clinical program's practical benefit. As such, there is certainly some merit to the concern that students may be doing work that is "over their head". However, to the extent that there is an answer to this concern, it lies in the opinion that, to the extent that such a problem exists, it is mitigated by both the formal safeguards in place through professional obligations and the substantive benefits that clients receive (who would otherwise not have access to any legal services).

The second concern relates to the potential overlap of clinical and articling experiences. The first, procedural response to this concern is that while the articling process is mandatory for students seeking to become members of a provincial bar, clinical courses are typically optional. As such, not all students-at-law will have participated in a law school clinical program. And on the other side of the coin, to the extent that not all law students go on to enroll in the BAC, those that do not will at least have had the opportunity to participate — through a clinical program — in the hands on work of a lawyer.

Further, while in theory there can be overlap, most articling experiences are within civil firms, criminal and family practices, and judicial clerkships, etc. There are comparatively few clinical places available for students-at-law. As such, the reality is that the focus of

133 University of Toronto, Faculty of Law, "Downtown Legal Services", online: <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/1/1/0&contentId=370&cType=webpages>.
134 Anecdotally, the formal professional safeguards put in place through provincial codes of professional conduct have generally worked well in terms of keeping both supervising lawyers and students in-line with their professional and student obligations.
the work that gets done by law students at law school clinics and
the work that gets done by students-at-law during their articles is
typically very different.

Notwithstanding these arguments, however, there is admittedly
some overlap in terms of the practical skills development that
students receive in clinical programs and during the articling phase
of the BAC. For example, the skills that students are exposed to at
the University of Toronto clinical program include “legal advice,
settlement negotiations, representation at hearings or trials, and the
drafting of legal documents, all under the supervision of lawyers.”135
Some of these same skills are also the focus of a student-at-law’s
articling program.136 However, it is generally accepted that the
unique substantive focus of most law school clinics—typically poverty
and low income representation—makes any skills-based overlap more
formal than real. And in any event, to the extent that students do
repeat some of the skills-based experiences in both law school and in
articles, it is thought to be a good thing in terms of the ultimate
career skills-development for future lawyers. As such, at the end of
the day, the clinical experience and the articling experience are seen
to be two distinct features of a student’s potential overall path to
the bar.

CONCLUSION

Law has been comparatively slow, in my view, to join modern
trends of globalization. With notable exceptions (including, for
example, its increasing roles in developing and regulating
international human rights and trade regimes over the past 50 years),
this has largely been a result of law’s predominantly

135 University of Toronto, Faculty of Law, “Community Legal Clinics and
Clinical Education Programs”, online: <http://www.law.utoronto.ca/visitors
_content.asp?itemPath=5/12/1/0/0&contentId=369&cType=webpages>.
136 See e.g. Torys LLP, “Our Student Program”, online: <http://www.
torys.com/students/toronto-career.asp>.
jurisdiction-specific nature. While commerce and finance are becoming increasingly interconnected, law—and in particular the administration of civil justice—continues primarily to be developed and governed nationally by local or national legislatures, bar associations and court systems.\(^{137}\)

Having said that, we are obviously continuing to witness the expansion of law’s reach—from an international perspective—in areas of human rights, trade, environmental regulation, development, etc. And to the extent that international norms and approaches continue to develop, collaborative efforts such as the research visit and discussions forming the basis of this article should be welcomed and encouraged. Given the continued realities of social, cultural and political differences around the world, we are certainly not at the stage where various national laws and approaches to education, training and more generally to the administration of justice can be harmonized. Nor, perhaps, should we ever be (although that is a discussion for another day). But we certainly are at the stage where we can increasingly learn from one another about what works, what does not work, and what should be done in terms of domestic legal education and training.

To the extent that Japan’s new law school system has moved Japan toward a more North American approach to legal education and training, I hope that this article will help provide some insight into both the benefits and drawbacks of our Canadian approach to legal education and professional training. In return, I anticipate that we will look back at Japan’s new system and the choices it makes in a dialectical effort further to understand and improve our own approach to legal education and the profession.

\(^{137}\) For a recent discussion of globalization and the law in the context of the Asian Pacific legal communities, see *e.g.* Steven C. Nelson, “Globalization and the Legal Profession in the Asia-Pacific Region” *IPBA Journal* 35 (September 2004) 7.