THE POLITICS OF LEGAL EDUCATION

By GRAHAM PARKER*

Australia seems to have remarkably little interchange with Canada. The mystic bonds of the Commonwealth seem to mean very little to either country. Australia has preferred to look to Britain for cultural and institutional paradigms. And in recent years, this country has relied more heavily on the United States for technology and investment. Perhaps Canada has always seemed too much of a derivative culture for Australia to bother about when the Anglophile Australian can derive inspiration from Westminster or Oxbridge and the local businessman can sell out to an American corporation, or advertise his wares in the Madison Avenue manner.

Yet, in many ways, the problems of Canada and Australia are very similar — increasing urban problems in federations with vast areas of inhospitable terrain, great mineral resources, economic dependence on overseas capital (particularly from the United States and Japan), ethnic groups demanding land rights or similar reparations, and the struggle to create a national cultural independence.

There has been little interest in Canadian law and legal institutions. Australians obviously do not realise that the Canadian legal and political systems are very like their own. The Australians tend to see the United States and Canada as America rather than two very different systems. Until very recently, the influence of United States law in Canada has been very slight and, even now, the United States has affected legal education rather than the law itself.

In most Canadian provinces, the teaching of law has been very much like the Australian system. There has been a university law school which graduated men who then had a period in articles (usually one year) which completed their formal legal education. Bar admission examinations, which are as common in the United States as articles of clerkship are rare, have not been used very much in Canada.

Ontario, the most populous and powerful province, has had a unique legal educational history. An examination of that province's experiences in training lawyers may be instructive for Australia at a time when there is much re-thinking about education and a great expansion in legal education.

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Ontario has seen a revolution in legal education in the past twenty-five years. That province has gone from a 'trade-school' system to one which is as radical as any found in the United States. In 1949, the Law Society of Upper Canada had total control over and a practical monopoly in legal education in Ontario. Twenty one years later, a report on legal education was prepared for the Commission on Post-Secondary Education in Ontario; this report recommends changes which would, if implemented, abolish articles of clerkship and the much-vaunted Bar Admission Course and impose many reforms on university law schools as well. The most surprising aspect of this report, *Legal Education in Ontario, 1970*[1] is that its author, Andrew Roman, was, at the time, a final year student at Osgoode Hall Law School.

The Law Society of Upper Canada was founded in 1797 but it took more than ninety years for a Law School to be formally and permanently established. In those years, Osgoode Hall had sometimes resembled the Inns of Courts offering general classical education to young gentlemen who spent their days learning the law in barristers' chambers and solicitors' offices. There were also half-hearted attempts to have a few weekly law lectures. Finally in 1889 a law school was established — the students were all part-time and for the next thirty years, there was only one full-time teacher who took the title of Principal of Osgoode Hall Law School.

In the nineteenth century, the Law Society of Canada had adamantly refused to recognise or encourage academic law studies at the University of Toronto. When the law school was successfully inaugurated in 1889, after many false starts, university legal education had been established in the United States for more than fifty years.

Osgoode Hall Law School did not make a promising start; it stagnated under the benign leadership of Principal Hoyles from 1894 to 1923. Before taking up his duties, Hoyles had visited the well-established law schools at Harvard, Columbia and Yale but he was unimpressed by Langdell's case-method and uninspired by their academic approach to law. The Law Society also obviously approved of the part-time lecture and full-time articles system of legal education. The Canadian Bar Association's 1920 call for a standard three year curriculum went unheeded in Ontario. Others demanded full-time legal education with similar lack of success.

Under Dean Falconbridge, the curriculum was expanded, the case-method introduced, and more full-time teachers were appointed. The law school became more academic but legal education remained part-

1 Roman, *Legal Education in Ontario, 1970, A Study Prepared for the Commission on Post-Secondary Education in Ontario,* The Queen's Printer, Toronto, 1972.

time until 1949. The Law Society of Upper Canada, and, in particular, its Legal Education Committee which laid down policy and governed legal education in Ontario, had ignored the voices of reform on all sides. In 1923 and again in 1934, progressive elements had pleaded for a full-time law school. It took the extraordinary disruptions surrounding the resignation of Falconbridge's successor, Dean Cecil Wright, to bring the issue to a head. Wright and three of his colleagues resigned and moved to the Faculty of Law at University of Toronto. Only then, did the Law Society introduce full-time law studies. This was not the end of the struggle. In 1952, the Law Society was finally persuaded to upgrade admission standards so that a law school applicant was thenceforward required to be a university graduate. One other anomaly remained; the Law Society still retained one very tight control on legal education. All students who graduated from university law schools had, in effect, to repeat third year by enrolling in the third year at Osgoode Hall Law School. This inequitable situation continued until 1957 when the Law Society finally recognised any Canadian LL.B. as full qualification for admission to articles. By this time, law schools were being established in other Ontario universities. Today there are six academic law schools. The Law Society, in cooperation with a committee of six deans still maintains some control over the policy of legal education, and, in particular, administers the Bar Admission Course which was one of the fruits of the 1957 negotiations recognising LL.B. degrees from other law schools. All students graduating with an LL.B. who wish to practise must serve in articles for twelve months and then attend the Bar Admission Course which is a full-time six months' course of instruction in 'practical' law upon which they are examined.

In 1968, the Law Society relinquished control of Osgoode Hall Law School which is now affiliated with York University. Its history since 1957 is typical of the evolution of legal education in Ontario. Under Dean Leal, and his successors, it has lost its trade school image. This law school, along with most of those in Ontario, now have most of the teaching done by full-time academics. Some courses best taught by practising lawyers are given by lawyers but these teachers are often young lawyers with post-graduate legal education and are very different from the elderly practitioners who used to drone through lecture notes first drafted in 1935 and left unchanged in the intervening years.

The bigger law schools offer post-graduate degrees in law. Legal research is booming not only because of the many students pursuing higher degrees but also because of specialist research units in the law schools and studies being carried out for royal commissions, judicial enquiries, and government departments.

The legal academic has changed too. There are nowadays fewer men who can only teach; a growing number of law professors have spent several successful years in practice. In the last decade, for the first time, the majority of law teachers have received their post-graduate training

in the United States rather than in England. The English content of Canadian legal education has also diminished because Canada has been able to produce a greater percentage of its own law teachers. These influences have resulted in a greater emphasis on the functional approach and much less concern with and adulation of English law and institutions. The social revolution wrought by the United States Supreme Court has sparked a demand for similar innovations in Canada. For most of the nineteen-sixties, the law faculties have been bottom-heavy with young teachers who have outvoted the few middle-aged and more conservative law teachers. This has not been a bad thing overall. These young teachers have not been inhibited by memories of the past disputes with the omnipotent Law Society and they have been more able to handle the demands of the law students for a greater say in legal education. (In fact, for a few years in the early nineteen-sixties, the young professors were more radical than the students).

These developments have caused many changes in the law school curriculum. In most law schools, there are no compulsory courses after first year although there are some pre-requisites which a student must take if he wants to pursue a particular course of study. Trial by examination has frequently been replaced by an essay-requirement. Even where final examinations have been retained, the results are not as crucial because teachers award some of the grade on term and class work. While there are ample courses in taxation law, company law and commercial law, the larger law schools have scores of optional courses which include such exotic offerings as natural resources law, transportation law, poverty law, urban legal studies and law and psychiatry. These schools have started appointing (or seconding) economists, sociologists and psychologists to their teaching faculties.

Not all the innovations have been purely academic or interdisciplinary. The functional approach to the law and the teaching of law has, in the last two or three years, encouraged some law teachers to give more thought to 'clinical training'. Consequently there are such courses as Trial Practice, often taught by practitioners who have become teachers. The moot court programme has fallen into disfavour because of its pre-occupation with formalism and appellate law. Instead, the students have initiated legal aid programmes which offer legal advice and representation in neighbourhood law offices established in low-income housing areas. Quite often course credit is given for work of this kind which is supervised by a full-time member of the teaching staff.

Yet there is growing dissatisfaction with legal education in Ontario. Some students and many practitioners have been very critical of the law schools because they teach too many 'frill' courses and not enough 'practical' courses which impart the 'basic skills'. A few practitioners

and many students complain that articling is a waste of time and should be abolished. Many students and law teachers have branded the Bar Admission Course a dull cram course which is badly taught. Almost everyone agrees that the training of a lawyer takes too long.

Andrew Roman has carried out a most comprehensive survey of the problems of legal education. In essence, he recommends that from the time a student enters law school, it should only take three years (instead of almost five as at present) to become a qualified legal practitioner. He advocates the abolition of articling and the Bar Admission Course. He suggests that the academic side of the LL.B. should be reduced to two years and six months and a final six months should be an 'integrated' training period where the academic and the practical would be combined.

If a criticism could be made of his findings, it would be that he is a little too gentle with the academic side of legal education, and a little too harsh on the profession. This is to be expected because he freely admits that he is not in sympathy with the way in which the profession presently caters for the legal needs of the community. This does not invalidate his findings or the objectivity of the questionnaire which was distributed to the profession or the statistical data which he collated from the responses. He lists the issues which he sees as crucial in legal education:—

First, he sees the most important functions of modern legal education as not the teaching of legal rules but (a) teaching methods of legal research and analysis, (b) improving techniques of writing and speaking, particularly about legal matters, and (c) conveying responsible attitudes about the legal profession and the lawyer's role in modern society.

He believes that the first two must be clearly the responsibility of the law schools. The third item, which he describes as 'socialization', is a much more difficult problem which he certainly does not answer except in the sense that his radical suggestions for reform may be taken to provide an answer.

Secondly, he faces the fact that young men who have been awarded an LL.B. have had little or no practical legal experience. Given the fact that articling and other methods of providing that experience are seriously questioned, Roman faces the issue of,

> what is the most efficient manner in which the LL.B. graduate can be brought to the minimum requisite standard of practical competence for lawyers, consistent with the protection of the public and the social utilization of the level of skills the LL.B. graduate has already attained?[2]

The inarticulate major premise, which is applicable to all forms of professional education, is the integration of the practical and the theoretical.

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2 *Ibid.*, at 3-4.

Other issues of legal education arise from the previous two; they are very likely to be raised in Australia in the very near future. What is the profession going to do about specialization by lawyers — in terms of education and licensing? What can be done, in terms of legal education and licensing, about a shortage of lawyers outside the cities? On the first question, Roman points out that it is rather late in the day to debate the fact of specialization because it has already happened. The sole practitioner is becoming a rarity (only 7 *per cent* of the most recently admitted lawyers have set up sole practices). The economics of law practice, particularly the high outlay for overheads, is very likely to continue and intensify this trend. Furthermore, the complexity of the law will add to the need for specialization.

The basic question which is still very much open to debate (and more so after Roman's recommendations) is in what manner, and by whom shall decisions about legal education be made? Roman restates this question more specifically:—

> The formulation of a new legal education curriculum for contemporary needs clearly involves a highly-complex series of weightings — benefits against costs — of educational values, economic considerations (social and private), specialization, and the need for legal services of various segments of the public.[3]

The last part of that statement is the most controversial. He expands on the theme, 'The quality of our social inter-action in the future will be in considerable measure influenced by the extent to which the newly-graduated, as yet uncommitted lawyers become advocates for all the now under-serviced interests'.[4] At first sight, this appears to be a baldly ideological statement which envisages radical social change engineered by idealistic, radical young lawyers. This is a distortion of what the author has in mind. Admittedly, some critics of the present system point out, with some justification, that the law schools teach property law as seen through the eyes of the property owner. These critics want community-supported 'neighbourhood law offices' established in low-income areas to help the poor use the law to enforce their rights. Roman is not only thinking of 'poverty law' or the provision of subsidized legal aid. He is also envisaging the education of young men who will work for governments at all levels and also private lawyers who are dedicated to social justice who will work for community-interest groups fighting consumer fraud, organized crime, pollution, and much that is now considered the sole province of the politician or, perhaps, of an ombudsman. Instead of the lawyers being purely a 'mandarin class', he wants the law to be active and preventive rather than passive and remedial. At the moment, many law graduates who have an interest in social justice find this stifled if the best articling jobs are with large firms which are mostly interested in company or taxation law. Roman

3 *Ibid.*, at 81.
4 *Ibid.*, at 8.

would like to see the students permitted to article with domestic and juvenile courts, welfare boards, housing agencies, consumer protection agencies, tenants' organizations, labor unions. We might add magistrates courts, police departments, parole boards, hospitals and drug clinics.

There is nothing terribly new in these demands. McDougal and Lasswell had laid the framework in their famous article 'Legal Education and Public Policy'[5] where they called for a 'conscious, efficient and systematic training for policy-making'. The focus may have changed a little in thirty years so that Roman is influenced by the consumerism of Ralph Nader and the legal revolution in civil rights as interpreted by the United States Supreme Court, but the demand is the same — to use the law as an instrument of social policy.

The predominantly business orientation of the articling year is reinforced by the present curriculum of the Ontario Bar Admission Course. In the Course's twenty-two weeks programme, three weeks are devoted to real estate law, five weeks to civil procedure, three weeks to corporation law, three weeks to estate planning but only one *day* to legal aid. There is no doubt, however, that this apportionment of time reflects the actual work presently done by many articled clerks and the large law firms for which they work.

The Bar Admission Course is seen by practising lawyers as an antidote to the highly theoretical (and heretical) courses now being taught in Ontario's academic law schools. The lawyers are critical of this preoccupation with policy. They worry, says Roman, that 'future law graduates may make fine legislators-to-be, if such an opening were to be offered to them, but could not draft a simple contract, interview a client, or fill out the elementary forms necessary to move an action through the courts'.[6]

There is some merit in these criticisms. Perhaps it was inevitable, and poetic justice, that the Law Society should reap a severe reaction from the academics for the ignorant and sometimes arrogant way in which the profession impeded good legal education of any kind for so long. The relations between the profession and academia have improved greatly but almost all deans are unrelenting when suggestions are made that they do not need three years for academic legal education and that some of that time could be used for integrated practical training.

Many law teachers in Ontario today are not lawyers with practical experience; 90 *per cent* do not carry on any outside practice, 42 *per cent* have never articled anywhere, 74 *per cent* have never taken a Bar Admission Course and 76 *per cent* are under forty years of age. Roman suggests that this type of teacher tends 'to appear in some ways more,

5 'Legal Education and Public Policy', (1943) 52 *Yale L.J.* 203.
6 Roman, at 21.

but somehow in total, less than a full lawyer'.[7] A law professor, who has been one of the architects of the New Legal Education, also confesses that the law teacher is 'neither intellectual nor practitioner, but yearning to be both, he tends to take solace in being "effective" as a teacher or a reformer'.[8]

Roman also casts a critical eye over the way in which this teacher-reformer moulds the student in his own image. The case method is the first weapon used. Some see it as a destructive force because, as Ralph Nader has said, it is 'a game at which only one (the professor) can play, the students are conditioned to react to questions and issues which they have no role in forming or stimulating'.[9] Roman accuses many teachers of deliberate bullying which he sees as 'hardly conducive to the growth of self-confidence'.[10] Few will deny that very often under the case system 'the aggressive student becomes more glib, the shy student more inarticulate'.[11]

The second shock for the new law student is the contemptuous attitude of law teachers toward the judges and courts. In Canada, this practice is not only more common than in Australia, but also more justified. The Canadian courts have frequently not attracted the best lawyers available. Many law teachers have had some of their training in the United States and have become great admirers of the United States Supreme Court and various federal administrative agencies which promote and prosecute social policy and, it is said, social justice in ways and with an expertise which is unknown and unfamiliar to Canadians. Frequently, students at Ontario's law schools find themselves being taught by young men who have been indoctrinated at Yale Law School or some similar institution. Consequently, as Roman says, 'the American "is" is too often depicted as the Canadian "ought" ' and he believes that this can have 'a stultifying effect on both students' imaginations and legal scholarship'.[12]

Finally, the animosity between the academy and the profession continues and is indeed nurtured by the law teachers who often speak disparagingly of the practising lawyers, accusing them of featherbedding, of only doing menial clerical work or being unimaginative and anti-intellectual. Unfortunately, most of these accusations are true but, the law professor forgets sometimes that he is in a professional school and that he is not intellectually trained to deal with the law in anything but a practical fashion unless he has been trained in and teaches jurisprudence or legal history.

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7 *Ibid.*, at 88.

8 Arthurs, 'A Study of the Legal Profession in the Law School', 8 *Osgoode Hall L.J.* 183 at 188.

9 Nader, 'Law Schools and the Law Firms', *The New Republic*, Oct 11, 1969, cited by Roman at 156.

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*, at 91-92.

Yet, it would be unfair to lay all the blame at the feet of the professors. The political climate, at least in Canada, and the attitudes of the students themselves foster an iconoclastic and 'disrespectful' attitude toward the law. In the nineteen-fifties, when the law students wore three-piece suits and a much greater percentage of them were sons of practitioners, the teacher would not have been as critical. He would have lectured on the 'black-letter' law and the students would have dutifully made pages of notes and the law would have remained safely at rest.

Today, the social critics of the law are in full cry. One of these is a lawyer who is a member of Prime Minister Trudeau's Cabinet. It is difficult to imagine any Australian lawyer or cabinet minister of any party making a speech which included the following:

> Some of us seem to be deliberately seeking profit from human misery. Just think of the routine everyday tasks that many of us perform ... such as figuring ways to discover loopholes, and to get around the corporate tax laws, or drawing up contracts that protect the sale of shoddy sub-standard goods, or pocketing brokerage fees on second mortgages at usurer's rates ... Do we really feel good about these things? ... it's about time our profession changed a little and concentrated more on relieving human suffering than causing it ... I suggest that the law in Canada, for many of today's lawyers, has become a sham — as well as a shame to those outside the profession. I contend that instead of practising law to defend the weaker members of our society from exploitation, instead of conceiving of the law as a bulwark against the rule of the jungle, many of us are using law to enable the rich to get richer, and the corrupt to become more powerful.[13]

Law students were relatively slow to become radicalized but many of them today would agree with these remarks.[14] Of course, those who have opted out of taxation or corporation law in Ontario and have sought more 'meaningful' and 'relevant' work have been helped by the comprehensive legal aid scheme in that province.[15] This scheme, which pays 70 *per cent* of the scheduled fees for indigent clients, has changed the complexion of the law, and the way it is practised.

The irony is that the law school curriculum today, with one exception, does not help the student become the practical, 'fighting' lawyer he yearns to be. (He does get some in-service training through the establishment of neighbourhood law offices which are set up in low-income

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13 The Honourable John Munro, in a speech quoted by Roman, at 93.

14 At least one Australian law student has done so. Morris, 'Oh Law'd' in *Woroni*, April 29, 1972 at 24 called the law 'one of the all-time classic rip-offs'. He added, 'So the carefully institutionalised anachronistic language, procedure and modes of dress all serve to present the image of the law as a sort of forbidden garden which can only yield its delights to those who are prepared to pay one of the gardeners to let them in. The vastness and complexity of the legal superstructure make exposure of the fraud a formidable and intimidating assignment.'

15 Parker, 'Legal Aid — Canadian Style', (1968) 14 *Wayne L. Rev.* 471.

areas under the supervision of practitioners who have become full-time teachers). The articles which students enter for a year are usually in firms who do not have clients who are welfare recipients, charged with criminal offences, or who have problems with hire-purchase contracts.

Roman's study, with its revolutionary proposals, is weakest when it presents the evidence against the articling system. It is weakest because Roman's findings show that the consumers do not dislike articling. Of those admitted to practice between 1957 and 1966, 51 *per cent* rated the articling system as excellent to good. 64 *per cent* of the present clerks and bar admission students approved of the system as excellent to good. Roman also lists some obvious findings such as the fact that articled clerks who were permanently hired by their articling firms were more approving than those who were not so hired. Those practitioners admitted before 1957 were overwhelmingly convinced that the articling was the right length while almost the same percentage of students thought articling was too long. Perhaps not quite so patently obvious is the finding that the firms with the highest ratings from every age group for the quality of articling were those with only one to four lawyers.

Perhaps Roman might rejoin that these assessments do not mean very much because they are the subjective judgments of students who had no choice but to complete articles. At no place in Roman's study is there an assessment by the present-day students of the three alternative schemes he put in the questionnaires submitted to the practitioners. These alternatives were (a) no change (b) LL.B., no articling but a bar examination (c) LL.B. and one year's combined 'practical' training and articling. If change was favoured, (c) was the overwhelming choice (of all groups — articled clerks, Bar Admission Course students, and all practitioners surveyed) but, as stated above, this did not include a canvass of the students.

What are the disadvantages of articling as seen by Roman and his respondents? (These responses came from all groups and the opinions were remarkably similar for each group). The most common complaint was that there were 'too many menial tasks' in the articling year. The other complaints, in order of stated importance, were: 'principal gave inadequate time and guidance', 'narrow and inadequate exposure', 'the period is too long' and 'insufficient responsibility'. The system also had its supporters who negated most of the disadvantages listed above and considered the 'practical experience' of articling its most important asset.

Roman suggests other reasons for the profession favouring the retention of articles (other than the avowed one that it is an essential part of legal training). Articled clerks provide a cheap work force for routine legal tasks. This may be true in the latter half of articling but before that, students are not as useful as the experienced clerks in the office

and certainly not as profitable, particularly in a busy real estate practice. The large law firms also find the articling year a useful testing year; they might take in as many as ten clerks, says Roman, and keep the best three.

In Australia, and the same has applied in Canada, there have been strong opposing forces at work in the assessment of articles. When students (or their fathers) paid a premium for the privilege of serving articles of clerkship with a law firm, there was a strong flavour of the master-craftsman-apprentice about the relationship. At that time, too, legal education was very formal and very black letter and, allegedly, practical. The student-at-law was, supposedly, taught the art and craft of the law. (Using craft in a non-sinister sense). When the law firm was obliged to pay the articled clerk, then the lawyer expected some return for his outlay. In due course, when the articled clerk grew tired of title searches, or stamping and registering documents, he demanded a clerk's salary for a clerk's work. In most jurisdictions, the law firms are now paying a basic clerk's salary and the education element in articles has diminished, although there will be always students who are fortunate to have principals who will teach and guide the beginner in the law. The position has been further aggravated, at least in the eyes of the profession, because law school education has diverged so far from trade-training. The practitioners in Ontario did not make up this educational gap during the articling year but have tacked on a six-month Bar Admission Course. Roman is very critical of this approach and says:

> Given the large number of complaints about the assignment of menial tasks... and given the relatively insignificant bargaining power of the student and his inability to have any meaningful control over his articling environment, it may appear somewhat less than consistent to talk about the Law Society's concern that future lawyers 'maintain its high standards and integrity' in one breath, and to tell the student that 'the sort of training a student receives is largely his own responsibility' in another.[16]

In Australia, the same complaint could be made, although academic legal education may not yet be as radical as Ontario's and the profession may not yet feel that the practical law is being totally neglected. On the other hand, the revolution in legal education is very likely to come and law societies must decide on the feasibility of a bar admission course. There has been a serious strain on the law societies in trying to find articling positions for students and this is one of the reasons for the establishment of the Legal Workshop in the Australian Capital Territory.

Roman discovered that there was a unanimous belief that articling was too long. He examined the compromise solution of shortening the articling period. The American experience, particularly in Pennsylvania, of six months articles has not worked well. Roman agrees with this

16 Roman, at 99.

because lawyers would not be so prepared to take articled clerks if it meant that office space and secretarial assistance was unused for half of every year. There is also the economics of articling; if practitioners outlay money to train students in the hope of recouping some or all of those losses in the second half of the year, they would be most reluctant to lose three to six months of the more productive period. Practitioners are perhaps justified in this because, as Roman points out, no other profession expects its members to subsidize so directly the education of their successors.

Roman therefore believes that articling cannot be shortened. He does not like the Ontario system of legal education with American academic grafted on to English trade-training, but if articling is going to continue, then he suggests, quite rightly, that uniform minimum standards must be imposed on the law firms which accept articled clerks.

The sample of responses to Roman's questionnaires showed very deep criticism of the Bar Admission Course. Yet the overall statistics show that a majority, even a majority of bar admission students, approve of the course. The approval seems to be based on the very narrow criterion that the Course provides an excellent set of notes, precedents and documents which will help the student when in practice. It is looked upon as a boring, poorly taught cram course — but essential either as an antidote or an addendum to the law school years.

It would be foolhardy in legal education (or in most other spheres of social activity) to treat the consumers (or victims) of a system as its ultimate judges. On its face, it hardly seems worthwhile to continue a Bar Admission Course for the sake of collecting a good set of notes (which could be merely published in loose leaf format and sold and kept current on a commercial basis).

In assessing the present Bar Admission Course, Roman made one rather surprising discovery. Both professors of law and instructors in the Bar Admission Course agreed on the curriculum changes which should be made. In a very one-sided vote, both groups wanted more on legal aid, professional conduct and domestic relations and less on estate planning, real estate and civil procedure. The irony of this is that if the Law Society, which is responsible for the Bar Admission Course, adopted these recommendations there would be an additional academic-social action ingredient in the lawyers' education.

Another problem which arises from the New Legal Education in the Universities is that many students have not taken some of the courses in the Bar Admission Course which consists of nothing but obligatory subjects. Therefore it seems essential that the Bar Admission Course subjects be made completely comprehensive of legal practice (which is

impossible) or very rudimentary and introductory (which would be pedogogically undesirable). Therefore optional subjects in the Bar Admission Course (if it is to continue) seem inevitable because, otherwise, the instructors in the Bar Admission Course will be trying to lecture to some who have, for example, never taken a course in Estate Planning, some who took the introductory course and some who have taken three courses in the subject.

The concerns mentioned in the last few paragraphs raise some very difficult problems. We could ignore the financial hardships on married men of twenty-six years or more who are still completing their professional qualifications after seven or eight years of study. We do not need to consider (or even solve) the logistical problem of organising six months a Bar Admission Course for five hundred or more law students who come from all over a province the size of Queensland to the city of Toronto. The Bar Admission Course is focussing on property law in the broad sense (tax, estates, corporation law, landlord and tenant). Yet those who plan that Course, and the law schools for that matter, have little or no idea of what lawyers are doing every day or what professional role lawyers will fill in the future. There has been little thought given to the short- or long-term community needs for legal services. Roman makes an unscientific effort to describe the skills which the present-day lawyer needs:

> The four activities, fighting, negotiation, securing and counselling, would seem to be aided by the personal traits of self-confidence, shrewdness, imagination and empathy, all of which can be developed and improved. The relevant skills might be: the ability to communicate persuasively in speech and writing; and independence and originality in thinking. The working knowledge of the law and procedure in the area of specialization is also essential, but it has often been said that 99 *per cent* of the things a lawyer handles are fact situations. In dealing with people and facts, the personal qualities and skills of the lawyer tend to be more important than his technical knowledge.
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> Much of the training a law student receives seems almost calculated to prevent him from acquiring these skills.[17]

Furthermore, the Bar Admission Course is made of compulsory 'practical' subjects and the articling system is not subjected to minimum standards of conditions and instruction. The profession seems content to ignore the fact that specialization has already arrived in legal practice in many law firms. The profession also ignores the fact that very few lawyers now enter solo practice. The bright young man who does well in law school and articles in one of the law 'factories' (of fifty or more lawyers) is a specialist from the start. Many others become specialized

17 *Ibid.*, at 155.

or would like to do so. The Bar Admission Course is a waste for these men. Yet, on the other hand, the more modest or modestly endowed lawyer who practises in the suburbs or in a small country town requires very different skills and training.

Even if we ignore this very difficult problem of elitism or specialist *versus* G.P. for the moment, there is another problem about the Bar Admission Course. If it is meant to be a final test of academic skills, it is a waste of time as less than 2 *per cent* fail (and they have a right to repeat the course). If it is meant to inculcate professional standards of behaviour, there is little evidence it is successful or even that legal ethics and professional standards receive much attention. (This assumes, of course, the very doubtful premise that ethics can be effectively taught). Ralph Nader, admittedly not an unbiased observer, takes a slightly different view of the ethics of the profession:—

> ... [the curriculum] reflected with remarkable fidelity the commercial demands of law firm practice. Law firm determinants of the contents of courses nurtured a colossal distortion of priorities, both as to the type of subject matter and the dimension of its treatment. What determined the curriculum was the legal interest that came with retainers... Courses tracking the lucre and the prevailing ethos did not embrace any concept of professional sacrifice and service to the unrepresented poor or to public interests being crushed by a proper concern of legal charity, to be dispensed by starved legal aid societies.
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> The generations of lawyers shaped by these schools in turn shaped the direction and quality of the legal system.
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> Possibly the greatest failure... was not to articulate a theory and practice of a just deployment of legal manpower... Law firms were not even considered appropriate subjects of discussion and study in the curriculum. The legal profession — its organization, priorities and responsibilities — were taken as given. Rather, it serviced and supplied the firms with fresh manpower...[18]

The Honourable John Turner, when Minister of Justice, addressed himself to the same problem in addressing the Convocation of Osgoode Hall Law School:—

> The lawyer must not cast himself as hired gun, or dart thrower, for the privileged class. Law schools must be more than conveyor belts graduating students into the corporate structure. There is of course nothing wrong with the lawyer as an advisor to business. That is an essential legitimate function. But the lawyer should also envisage himself as public servant, professional administrator, advocate of special minority interests, and public interest pleader... Decision-makers in all branches of law continue to follow rules, change rules, or make new rules in what is essentially a *factual* vacuum. It is time, as Professor Kalven of Yale has intoned, to 'empiricize jurisprudence, and intellectualize fact-finding'. We surely don't want law schools that are social vacuums — where

18 Nader, *op. cit., supra,* cited by Roman, at 111.

> brilliant, but somewhat ostrich-like, law professors alternate between sitting in their offices, endlessly sifting through the morgue of appellate judicial opinions, and standing in their classrooms where they endlessly ask uninformed students unanswerable questions about irrelevant matters.
>
> Finally, how do our law schools qualify in providing an apparatus of *community legal services?* Do our law students receive the clinical training necessary to equip them as professional men and women involved in the urgent problems of our world? Law is not something in the abstract. A lawyer needs more than a well-furnished legal mind and specialized technical skills. He needs the clinical experience that comes from participation in the urgent, urban issues of our age.[19]

Roman also discusses the socialization problem which was included in his initial list of issues in legal education. He questions the advisability of one protaganist in legal education — professor or Bar Admission Course instructor — having the last word in training students. The Course gets the last word and therefore, in his opinion, is likely to be the stronger socializing influence. He says:—

> In the law schools, the argument could be made that the negative feeling toward the Bench and the Bar are offset by the sense of idealism and justice conveyed; in any case, some of the negative attitudes, as well as the Americanization, can be largely 'cured' during the Bar Ad Course. It would be more difficult to determine whether the attitudinal benefits of post-LL.B. training — thoroughness, pragmatism and legal ethics — offset the costs: reduced respect for 'law school values' such as candour, idealism, public service, or law reform, and a diminished sense of self-respect and confidence.[20]

The law deans have clearly shown that they do not want to be responsible for practical training. There also seems little indication that there has been any responsible, cooperative attempts at curriculum planning. (In the light of the Cold War in Legal Education in the last few years, this is not surprising). The options programme has liberated the law schools from a curriculum strait-jacket but it has not been an educational success. Too often, young idealistic, impractical professors have taught sociology in the guise of law to students who knew far more about sociology, psychology, political science or history than their teachers. Frequently time-table problems and limited sizes of classes in optional subjects have prevented students from taking their first or even their second preferences. These subjects are frequently not specialist courses in the professional sense. Instead they often present 'the sociological aspects of . . .' some subject which was still basically legal.

What then is the solution? As stated earlier, Roman wants to abolish articles and the Bar Admission Course. He wants to substitute a final six months in the LL.B. which would be the best possible integration of

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19 Cited by Roman, at 105, 106-107.

20 *Ibid.*, at 112.

the academic and the practical. He wants to break down the barriers between the academics and practitioners which have proved such a hindrance to legal education in Ontario (and elsewhere). Instead of 'two attitudinally divergent bodies administering discrete portions of legal education', he suggests that two new bodies be formed to administer and advise on this programme. First, a Council on Legal Education, made up of lawyers, professors, law students and members of the public would be responsible for the management of legal education in much the same way as a Board of Governors of a University operates. There would also be an Office of the Director of Legal Education (similar to the Vice-Chancellor of a University) who would be responsible for the administration of all phases of legal education and co-ordination of the academic and practical segments of the curriculum. In summarising this scheme, Roman says:—

> Working in close liaison with the law schools, the Director would supervise the implementation of policies and plans approved by the Council, including admission and licensing examination standards, both phases of law school curricula, specialists' training and examination, province-wide placement, and continuing education of the Bar.
>
> With the recommended management and administrative structure, each of the various interests in legal education would be represented at the policy-making level, while the Law Society would continue to have ultimate control over the whole process. More importantly, perhaps an integrated academic/practical curriculum could be properly planned, implemented, and improved as needed.[21]

Roman draws strong inspiration for his integrated programme from the blue-print for medical education which was recently drawn up by the University of Toronto Faculty of Medicine. The doctors see medical education as a life-long process and they realise the impossibility of conveying all medical skills and knowledge in the initial educational period. They also want the curriculum to be continually under review because of 'changes in the characteristics of incoming students, the development of scientific information and the needs of society'.[22]

The Faculty of Medicine wants to fashion a climate of learning which will

> (a) develop the full potential of each student;
>
> (b) endow the student with knowledge, skills, values, attitudes and professional and ethical principles basic to the furtherance of any career in medicine;
>
> (c) instill a desire and capacity for continuing self-education;
>
> (d) make the student constructively critical of all he sees, hears, or reads so that he may adapt the valid and discard the questionable;

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21 *Ibid.*, at 230.
22 *Ibid.*, at 197.

> (e) instill in the student a determination to provide conscientious care with scientific and clinical excellence without losing a sense of compassion and sympathetic understanding;
>
> (f) make the student aware of the function and the need for co-operation with other health-welfare and educational agencies in the community available to assist him in caring for his patients;
>
> (g) make the student aware of his responsibilities not only to the individual patient but also the community at large in terms of the socio-economic and cultural setting in which medical practice is carried on.[23]

This programme would be achieved by a curriculum which was 'an integrated unit and not a series of hurdles to be surmounted and left behind'[24] and, instead, there would be an orderly progression of information, knowledge and skills.

Roman believes that lawyers and professors should also be able to reach a compromise and to work out a programme of integrated law studies. There have been some successful attempts to teach trial practice and procedure in this way and there seems no reason why more of the practical side of the law could not be similarly treated. There is also strong evidence that students in the third year of the present programme are bored and alienated from legal study and there is every reason to believe that this combined curriculum would be an improvement. There would be no conscious attempt at this point to make specialist lawyers although, to some extent, it would naturally evolve from the choices made in the ordinary optional programme.

Roman's specific recommendations for the six months 'integrated' part of legal education are as follow:—

> The half-year of practical training... should consist of four elements:
>
> (a) The distribution of precedents, legal forms, texts of lectures and other useful materials, in looseleaf form. The cost of these could be financed by their sale to the profession as well as to students,....
>
> (b) The demonstration of well-conducted litigation by means of films, video-tape or closed circuit T.V.....
>
> (c) The opportunity to develop practical skills through exercises in document drafting, client interviewing, cross-examination, etc., with the assistance of local practitioners.
>
> (d) Familiarization with local legal and community services through visits to registry offices, welfare agencies and courts, and through the possibility of participation in legal clinics.
>
> A new position at the Associate or Assistant Dean level should be created at each law school. The persons appointed must have both academic and practical experience. Responsibilities would

23 *Ibid.*, at 197-198.
24 *Ibid.*, at 199.

include practical training, professional liaison, the administration of a student placement service, specialization, and continuing legal education programs for the local bar.

A fourth year could be offered at all law schools (either immediately upon graduation or at any later time) for those who want to specialize. This year should be heavily practice-oriented, and might be followed by the requirement of two years of practice with a recognized specialist prior to licensing in that speciality.[25]

This programme at least provides an answer to the objection most commonly voiced in Roman's survey: it will help solve the problem of legal education being too long. One wonders, however, if the six months integrated programme is long enough. It should be if we can accept Roman's belief that his two new bodies responsible for legal education will integrate the needs of academics and the profession at *all* stages of the educative process.

No doubt, one can also raise practical difficulties, such as the cost, in time and money, of providing practising aids such as videotapes and films. There may also be problems in finding lawyers with teaching skills and sufficient time to be part-time teachers. There will also, no doubt, be endless debates about the merits of specialisation.

Roman's plan is not flawless but it should provide a stimulus to discussion and, in the long run, better legal education, improved legal services for the community at large and, one hopes, a more effective legal system.

25 *Ibid.*, at 228.