

# Towards a Manifesto:

## Anchoring the Legal Education Continuum in a Vision of the J.D



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### TIMELINE

2007 Federation of Canadian Law Societies mandates a Task Force to review academic requirements for admission to the Bar across Canada

2008 Canadian Council of Law Deans responds to the FLSC Consultation paper on the Canadian Common Law Degree

2009 Federation of Law Societies of Canada Task Force Releases Final Report on the Canadian Common Law Degree, providing and recommending the adoption of a single national academic requirement

November 2009 Council of Canadian Law Dean's releases an Open Letter to the FLSC, critical of the process of consultation, engagement with the Law Schools, and the content of the Final Report.

2012 FLSC Council adopts the National Standard and offers the Entry to Practice Competency Profile Validation Survey which details a national survey of "new" practitioners used to "test" the Competency Profile developed by the Task Force.

2014 FLSC develops proposal to implement the uniform national requirement for entry to law society admission programs in Canadian common law jurisdictions

2015 National Requirement comes into force in all common law jurisdictions.

The framing questions for this Friday session at CALT/ACCLE are on pp 2-3. Additional information and resources listed below for those interested., some in downloadable full text at: <http://bit.ly/TAMLEJune9>

#### Reports

Federation of Canadian Law Societies. Task Force on the Canadian Common Law Degree: Final Report (2009). See also: Cdn Council of Law Deans. CCLD letter to Provincial & Territorial Law Societies regarding the Report (2012).

Federation of Law Societies of Canada. Briefing Note: Defensibility in Admission Standards (undated).

Gerkman, Alli & Logan Cornett. Foundations for Practice: The Whole Lawyer and the Character Quotient (Institute for the Advancement of the American Legal System, 2016).

National Admission Standards Project Steering Committee. Assessing Candidates to Ensure They Meet the National Standard: A Proposal for Moving Forward (Federation of Canadian Law Societies, 2015).

National Entry to Practice Competency Profile Validation Survey Report (Federation of Canadian Law Societies, 2012).

Report from the National Requirement Review Committee (Federation of Canadian Law Societies, 2017).

"Dialogue on Licensing - Law Society of Upper Canada's discussion on law licensing". (2 June 2017), online: <<https://lsucdialogue.ca/>>.

#### Scholarly Works

Gerald P Lopez, "Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education" (1988) 91 W Va L Rev 305.

Barbara L Bezdek, "To Forge New Hammers of Justice: Deep-Six the Doing-Teaching Dichotomy and Embrace the Dialectic of Doing Theory" (2004) 4 U Md LJ Race, Religion, Gender & Class 301. online <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1067&context=rrgc>

Kristen Holmquist, "Challenging Carnegie" (2012) 61:3 Journal of Legal Education 353.

Harry Arthurs, "'Valour Rather than Prudence': Hard Times and Hard Choices for Canada's Legal Academy" (2013) Saskatchewan Law Review Volume 76, Issue 1 (2013), p 73-94, online: <[http://digitalcommons.osgoode.yorku.ca/scholarly\\_works/791](http://digitalcommons.osgoode.yorku.ca/scholarly_works/791)>.

Robin West, Teaching Law: Justice, Politics, and the Demands of Professionalism (Cambridge University Press, 2013).

Mari J Matsuda, "Admit That the Waters Around You Have Grown: Change and Legal Education" (2014) 89 Ind LJ 1381, ONLINE <http://ilj.law.indiana.edu/articles/8-Matsuda.pdf>

"Special Issue: The Future of Law School" (2014) 51:4 Alberta Law Review, online: <<https://www.albertalawreview.com/index.php/ALR/issue/view/4>>.

Robert Condlin, "'Practice Ready Graduates': A Millennialist Fantasy" (2015) 31:1 Touro Law Review,

## Question 1: The Relationship between the Profession & The Schools

In his 2014 contribution to the *Alberta Law Review* special issue on “The Future of the Law School,” Harry Arthurs offered three visions of the future of law schools. Two of them imagined law schools as centrally engaged in a project of responding to the needs of the profession. The first, found in much of the current language offered by regulators and some advocates for change in legal education, imagines law schools as producing “practice ready lawyers.” The second vision, found in putatively more ambitious postures — postures reflected in the title of the project that produced the *Whole Lawyer* report (“*Educating Tomorrow’s Lawyers*”) — suggests that the goal should be to ‘train’ “tomorrow’s lawyers.”



namely graduates who are equipped to respond to a rapidly changing social world and the shifting demands of legal professionals. Both of these share an underlying assumption that the role of legal education is to serve the needs of the profession, whether found in the form of a snapshot (vision 1) or a fast-paced changing movie (vision 2).

Arthurs suggested a third vision, one of law schools as “knowledge communities” whose central role is the “*creation and transformation* of legal knowledge, legal practice, and the legal system” [emphasis added].

**In imagining a ‘manifesto’ for legal education generated from within the academy, how ought we to imagine the relationship between legal education and the profession — and the social and political economy — of lawyering? As between *servicing the needs* of the profession and *servicing as an agent of change or transformation* within the profession, are we clear on what role we envision — and we desire — for legal education?**

## Question 2: Methods & Methodology

Here we want to explore the question of methodology, aligning method to the three visions from Arthurs. This is not to suggest that Arthurs’ articulation of these three visions is exhaustive of the landscape of visions for legal education, but rather simply to highlight the central importance of the choice of methodology used to derive each vision’s content. Both the Foundations for Practice report, “The Whole Lawyer and the Character Quotient,” and in the Canadian context, the “National Entry to Practice Competency Profile for Lawyers and Quebec Notaries”—reports that we situate within visions 2 and 1 respectively—employed large scale surveys of practising lawyers. And both

sought to discern the constituent elements of entry-level competence—of what it is that lawyers need to know—in the Whole Lawyer, for new lawyers to be successful, and in the competency profile, to protect clients from harm. Assumptions about the relationship between the profession and legal education are reflected in the choice to survey practising lawyers, and in the questions that populate the surveys themselves. The Whole Lawyer report is very explicit in its conclusion that the survey findings ought to be generative of the content of JD programs; that is, that legal education ought to serve the profession. The national competency profile’s impact on the JD is both direct and



indirect; direct in the framing of accreditation standards for law schools, and indirect in generating anxiety and consequent demands among students for law schools to deliver what they will be examined on for admission to the bar.

**What is missing when the content of the JD is derived from methodologies that survey large numbers or practising lawyers? What alternate methodologies might we employ to flesh out the detail of the transformative (or 3<sup>rd</sup>) vision of legal education?**

### Question 3: The Character Quotient

The Foundations for Practice report emphasizes the “character quotient,” pointing specifically to characteristics like integrity, work ethic, common sense, and resilience, and to the need to look at a much broader range of things rather than confining our inquiry and approach to technical knowledge and cognitive skills.

The Report also identifies professional competencies (i.e. attentive listening, speaking, writing and arriving on time) that will help new lawyers succeed in their careers right out of the gate, as well as the skills lawyers identified as important to be developed over time



and by implication, skills that need to be supported and nurtured in the profession itself rather than solely in law schools.

If indeed these character traits are an important foundation for practice, should they be considered during the admissions process, as the Whole Lawyer report suggests? Can these characteris-

tics be incorporated into the law school curriculum; in other words, is the law school applicant capable of change in the areas described as “characteristics” in the report?

If so, what pedagogic approaches are required to build these foundations? What other character traits might we identify if we went beyond surveying practicing lawyers if we engaged different methodologies and looked at other ways in which the legal profession plays a role in contemporary society?

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A ‘competencies’ approach confirms the legal profession’s confidence in our law schools, and in our ability to fashion programs that can meet our educational objective of delivering a rigorous academic education for our students while at the same time providing us with the flexibility and imagination to design a curriculum that will ensure that the legal profession’s expected competencies are learned by our students.

Canadian Council of Law Deans November 2009

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### Question 4: Technology, Pedagogy, Ethics

Technology offers a really interesting entry point into questions about methodology; given that technological change is not merely rapid but often develops in unexpected directions and can defy powers of prediction, asking practising lawyers about the technology needs of the next generation of lawyers strikes us as unlikely to provide much illumination. Moreover, surveys of practising lawyers may offer little insight into some of the deeper sociological and ethical questions about technology’s functions and purposes. These questions include how emerging technologies—products like LegalZoom



and ROSS Intelligence, for example—could be understood both as a threat to lawyers’ paid work and as enablers of access to justice. It will be crucial to consider ways to ensure that the time-tested fundamentals which have defined legal education for years are not rashly discarded in the race to keep up with emerging technology-related

trends in both legal practice and pedagogy. The pressures to make immediate—and potentially knee-jerk—changes to make legal education conform to current dominant visions of the technological present and future of legal practice are great, and will only get sharper with time.

What methodological approaches might help us in developing approaches to technology in the context of legal education that illuminate its instrumental roles, its potential to enable access to justice, and its role in transforming social relations of power in both positive and negative ways?

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## The Federation of Law Societies of Canada Task Force 2009 Final Report

This Report recounts the way that “recent events” have converged to “focus particular attention on the need for transparent processes and national regulatory requirements”.

This environment led to the convening of the Task Force, in 2007, with a mandate to : “review the existing academic requirements for entry to bar admission programs and to recommend any modifications that might be necessary.”

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### Foundations for Practice Report 2016

The Foundations for Practice project of the Institution for the Improvement of the American Legal System conducted a survey of lawyers in 2014-15.

Their analysis of 24000 responses centres the idea of a “Character Quotient”. Beyond intelligence and beyond skills, they argue for a vision of The Whole Lawyer. The Report also points to the need for law schools and legal employers to work together, since “if the profession wants law schools to prioritize these foundations in legal education, legal employers must prioritize them at every stage of hiring”

In the Report, the Appendices of which include letters from the Canadian Council of Law Deans, the Task Force rejected both a national examination and a list of required courses, instead proposing :

“a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.”

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### Arthurs: “Valour Rather than Prudence”: Hard Times & Hard Choices for Canada's Legal Academy

In this 2013 Article, Harry Arthurs describes the development of Canada’s common law legal academy and its current situation between two “relevant others” - the University and the Profession. At this juncture, he argues, the legal academy is increasingly squeezed between these two differently oriented institutions.

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### Report of the National Requirement Review Committee, April 2017

Released on April 7, this 33 page report covers a number of issues, but ultimately recommends only two. The Report reviews the approach to approval of law school programs, which relies on reports from the schools rather than more “intrusive measures”.

As the most recent report released by the FLSC and its Committees, this one may be a useful read for those interested but new to this ongoing engagement between the profession and the law schools.

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*...we need to revive the notion of lawyer as professional problem solver, social critic, leader, and thinker. “Lawyer” is the person you call when a problem is too big to handle yourself.*

Mari J Matsuda

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