

1-1-1984

The Search for Competence: Implications for Academe

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Recommended Citation

F. Murray Fraser, "The Search for Competence: Implications for Academe" (1984) 8:1 DLJ 70.

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I. Introduction

Professor Francis Allen states succinctly the problem which faces academic lawyers in these times of rapid and dramatic change:

. . . law schools in Canada and the United States are undergoing an identity crisis as they attempt to provide broad interdisciplinary and humanistic education and, at the same time, meet the demands for training in legal skills.¹

The problem is not new. The statement simply reflects the harsh reality of Canadian legal education: the natural tensions which result from the interdependence of university programs in law and the later processes of admission and continuing education under the jurisdiction of governing bodies. But in describing the situation as a "crisis" Professor Allen emphasizes the fact that a point has been reached where action is required.

It is my opinion that the crisis has been brought about, in large measure, by the increasing concern of members of the public, representatives of government and the leaders of the legal profession about the level of competence in the provision of legal services. This paper explores the development of this concern and the resulting actions and reactions with a view to determining some of the implications for university legal education and academic lawyers.

II. What is Competence?

One of the most difficult aspects of the problem is to define "competence." Although there have been numerous thoughtful attempts at a definition, there is, as yet, no agreement in the Canadian context on a concept of competence which might serve to

*Professor of Law and Vice-President (Academic), University of Victoria. This paper is based upon a presentation by Professor Fraser, in 1981 at a Conference on Professional Competence and the Law held at Dalhousie Law School as part of the Dalhousie Continuing Legal Education Series. The text was completed in the Spring of 1983.

1. Special lecture given upon the occasion of the official opening of the Begbie Law Building at the University of Victoria, October, 1980.

measure and determine the responsibilities of the individual lawyer, the university and the legal profession in the educational process.

It may be helpful to refer to some of the proposed definitions. In Manitoba, the legal profession agreed upon the following:

Competence is the demonstrated capacity to provide a quality of legal service at least equal to that which lawyers generally would reasonably expect of a lawyer providing the service in question.²

The Federation of Law Societies has played a major role in bringing together members of the legal profession to consider competence, its causes, the means of identification and a range of solutions. The Conference on the Quality of Legal Services,³ which was organized by the Federation, provided this statement:

. . . the Conference accepts the definition of 'competence' as the state of having the ability or qualities which are requisite or adequate for performing legal services undertaken, and it accepts the definition of 'incompetence' as the state of lacking the ability or qualities which are requisite or adequate for performing legal services. A lawyer is competent if he has the demonstrated capacity to provide a quality of legal service at least equal to that which lawyers generally would reasonably expect of a lawyer providing the service in question. The words 'demonstrated' and 'reasonably' must be liberally interpreted so that any review of competence will take into account all circumstances especially those of new graduates and of practitioners in small centres.⁴

A more detailed application of the definition was considered at the Workshop on Legal Services in 1980.⁵ Professor Neil Gold, in a paper delivered at that Workshop, drew upon the experience in the United States to provide a definition of competence in the context of the educational process. He proposed a classification of the elements of competence under the following categories:

1. *Abilities Necessary for Competence*

Herein the basic intellectual, emotional or physical capacities to learn, manage and carry out lawyering tasks.

2. Report of the Special Committee on Competence, The Law Society of Manitoba, 1977.

3. The Conference was sponsored by the Federation, the Canadian Bar Association and the Canadian Institute for the Administration of Justice.

4. *The Legal Profession and Quality of Service*, ed. W. H. Hurlburt (Ottawa: Canadian Institute for The Administration of Justice, 1979) at p. 29.

5. The Workshop brought together a smaller group to develop the work of the Conference.

2. Attitudes Necessary for Competence

Responsible, diligent, open-minded, considerate of others, committed to quality services and interested in the social, economic and human implications of his or her work.

The competent professional is keen to learn about the law and its related disciplines and is motivated to carry out continued self-education.

3. Values Necessary for Competence

A keen sense of personal and professional ethics including respect for other persons and their views and opinions is the hallmark of the competent professional. Incompetence has been described as a failure to meet the requisite ethical standard of professional responsibility. Integrity and honesty, conscious vigilance concerning the promotion of just laws, procedures, practices and results.

4. Knowledge Necessary for Competence

In this context, knowledge includes substantive knowledge, comprehension, application, analysis, synthesis and evaluation. To quote Professor Gold:

The competent lawyer must not only know rules, theories, practices and procedures, he must most often understand their meaning and their derivation. He must be able to apply knowledge to new, similar or analogous situations. The lawyer must be able to analyze problems, doctrine, theory and concepts and reduce them into their individual elements and see patterns in structure apparent only after the analysis is complete. He must also be able to carry out the reverse process so that he can combine individual elements in such a way as to be able to create a pattern not clearly visible before. Finally, the lawyer must exercise effective evaluative powers. This includes making judgments about the usefulness of certain rules, practices or procedures. It also includes being able to test the logic of arguments and reasons for judgment. The lawyer must be able to compare alternative approaches and choose among them. Included, of course, is the concept of predictive judgment.

5. Skills Necessary for Competence

The development of a myriad of organizational, management, writing, oral and research skills. Under this heading Professor Gold includes what he calls "complex interpersonal skills."⁶

6. Gold, 'Competence and Continuing Legal Education', paper delivered at workshop on legal services, 1980.

Professor Gold argues that this analytical framework gives a description of those elements which, when synthesized, provide a portrait of the competent lawyer.⁷

It is not within the scope of this paper to review the many studies on competence which have taken place recently in the United States.⁸ It is sufficient for our purposes to refer to a recent report of a Task Force chaired by Dean Roger Cramton⁹ which proposed that the components of lawyer competence are: (a) certain fundamental skills: abilities to analyze legal problems, perform legal research, collect and sort facts, write effectively, communicate orally with effectiveness in a variety of settings, perform important lawyer tasks calling on both communication and interpersonal skills in interviewing, counselling, and negotiation, and, organize and manage legal work; (b) knowledge about law and legal institutions; and (c) ability and motivation to apply both knowledge and skills to the task.

The Task Force also argues that the notion of competence

must be expanded to include elements of character and professional responsibility in order to comprehend most of the factors necessary to assure an adequate level of professional service. Technical virtuosity does not translate into the routine rendition of high quality professional service unless it is disciplined and controlled by proper attitudes, work habits, and values.

If the governing bodies and the universities can agree upon a framework such as that proposed by Professor Gold, I would suggest that the next step should be to use the framework and the constituent elements to determine at what stage and in what manner a lawyer should acquire the various components of competence.

7. See also, Reiter, *Discipline as a Means of Assuring Continuing Competence in the Professions*, 1978, a working paper prepared for the Professional Organizations Committee, Ontario, and, Code of Professional Conduct, The Canadian Bar Association, 1974.

8. See, for example, Law Schools and Professional Education: Report and Recommendations of the Special Committee for a Study of Legal Education of the A.B.A., 1980; Cramton, Lawyer Competence and the Law Schools, 4 U. Ark Little Rock L. J. 1 (1981); Conference papers on Enhancing The Competence of Lawyers, A.L.I. A.B.A. (1981); Allen, The Causes of Popular Dissatisfaction with Legal Education, 62 A.B.A.J. 447 (1976); Gellhorn, Preaching That Old Time Religion, 63 Va. L. Rev. 175 (1977).

9. The A.B.A. Section of Legal Education and Admissions to the Bar, Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools, 1979.

This would lead one directly to an examination of the educational process from the commencement of the first year of law studies to participation in advanced programs of continuing education.

III. *Identification of Incompetence*

Both the Federation and the Professional Organizations Committee considered the means by which incompetence may be identified. There is very little hard data to provide a profile of incompetence in the legal profession in this country. Some preliminary work has been done in analyzing information received from insurance carriers and the proceedings of disciplinary tribunals, but research must be undertaken to provide more useful information. Who is incompetent? In what areas of practice? With what educational and professional backgrounds? Over what period of time? These and other questions must be addressed.

The major sources, real and potential, for the identification of potentially incompetent situations are: Clients who make official complaints or launch lawsuits; disciplinary proceedings; insurance carriers; law office management consultants, practice advisory services, and persons involved in peer review; partners, associates and other lawyers; members of other professions who work with lawyers, for example, accountants; and members of the judiciary and administrative tribunals.¹⁰

The Federation Workshop considered a range of strategies for "policing incompetence" but for the purposes of this paper, it may be useful to refer to two recommendations in particular:

1. it is recommended that, to supplement the deficiencies of a system based entirely on clients' complaints, the law societies advise their members that there is a responsibility upon a lawyer to notify the law society of circumstances which indicate serious incompetence upon the part of another lawyer;
2. without suggesting that an attempt should be made to impose an obligation upon judges and without recommending that judges should be asked to testify in proceedings relating to lawyers' competence, the Workshop suggests that the law societies ask the Bench to assist as follows:

10. See Swan, *Continuing Education and Continuing Competence*, 1979, a working paper prepared for the Professional Organizations Committee, Ontario.

- (a) by directing that transcripts of trials and hearings and copies of documents embodying inadequate legal work be sent to the appropriate law societies;
- (b) by participating in joint committees relating to lawyers' competence, which committees might be a channel for communication about cases which show a pattern of incompetent behaviour on the part of particular lawyers, and;
- (c) by advising the law societies in general terms about practices which they observe which result in inadequate legal services.

The objectives are clear: to assist the governing bodies in dealing with cases of apparent or actual incompetence. However, the recommendations themselves raise the serious questions of professional responsibility and, in particular, the proper role to be played by judges in these matters.¹¹

IV. *Causes of Inadequate Service*

Although the Workshop emphasized the need for further detailed research on the causes of incompetence, two sets of causes of inadequate services were identified.

It was agreed that the *immediate* causes of inadequate services in particular matters are the lack of competence of the lawyer who renders the service, and in particular: the lawyer's lack of knowledge of law or procedure; the lawyer's lack of sound professional judgment (i.e., his inability to arrive at a proper decision); the lawyer's lack of skill (e.g., lack of skills of research, drafting, negotiation and advocacy); the lawyer's lack of proper support systems (e.g., the lack of systems of delegation, supervision and office systems generally); and the lawyer's lack of diligence.

The Workshop considered lack of sound professional judgment to be an important cause of inadequate service and it considered lack of ability to recognize the limits of competence to be an important example of lack of sound professional judgment.

The Workshop agreed that the following are more fundamental causes: the lawyer's lack of diligence; the lawyer's lack of capacity (e.g., lack of the capacity to learn and understand the law, lack of the capacity to acquire skills, or the lack of capacity to acquire

11. There is considerable debate among judges with respect to this issue.

sound professional judgment); the lawyer's lack of education, training, or information; the lawyer's lack of experience; and, the lawyer's lack of intellectual, emotional, or physical capability (e.g., disablement due to addiction to alcohol or drugs or due to age).

Lack of diligence appears in both the list of immediate causes of inadequate service and the list of more fundamental causes.

In more general terms, the Workshop identified some other major factors which were the root causes of existing problems:

1. *Economic pressures*

The failure of some lawyers to resist economic pressure upon them is an important cause of inadequate legal services. Some lawyers undertake more work than they can properly do, or undertake work which they are not competent to do; some act for more than one party in a transaction thus raising a conflict of interest situation; some engage in business enterprises which conflict with the proper discharge of their responsibilities; and some work at a fee which is so low that they cannot afford to spend the time needed to do the work properly. Some are also reluctant, due to economic pressures, to refer clients to more experienced lawyers.

2. *Changing law*

The rapidity of change in and proliferation of statutes and regulations is another cause of incompetency.

3. *Representation of conflicting interests*

The workshop concluded that acting for more than one interest is a cause of poor legal service and recommended that law societies undertake institutional advertising to inform prospective clients of the reasons why each party adverse in interests should have independent legal advice and representation.

4. *Professional attitudes*

The workshop concluded that the continued development of proper professional attitudes is essential if lawyers are to cope with economic pressures and with the state of the law.

V. *Competence: A Public and Professional Concern*

Why has competence become an issue? What has caused members of the public, lawyers, judges, law societies and governments to place considerable emphasis upon an examination of the ways in which a self-governing profession is discharging its

responsibilities?¹² An enumeration of the major factors may be appropriate.

1. Members of the public, the individual consumers of legal services, are well educated and expect a very good quality of professional service.
2. Legal services are now available to a larger segment of the public than ever before. The lawyer participates in an ever-increasing range of professional tasks.
3. The legal profession does not suffer from a conspiracy of silence. Lawyers are prepared to advise clients to sue in malpractice actions and to take disciplinary proceedings where such are appropriate.
4. Competence has become a topic of increasing interest to academics with the result that there has been an increase in scholarly writing on the problems and possible solutions.
5. The courts have responded to individual instances of incompetence by expanding or developing the concepts of law which are applicable. The judicial hand has opened the door to increase the liability of professionals who make mistakes.¹³
6. The private citizen and the politician have been encouraged to examine professional incompetency by the press and the electronic media in reporting upon similar developments in the United States.
7. In the eyes of many members of the public, the legal profession has failed, at least until recently, to deal effectively with cases of malpractice, incompetence, fraud and related matters. This perception has encouraged politicians and governments to investigate and inquire into affairs of the self-governing

12. A major study on four professions in Ontario is found in The Report of the Professional Organizations Committee, 1980 and the Staff Study commissioned by that committee, Trebilcock, Tuohy and Wolfson, *Professional Regulation* (Toronto: Ministry of the Attorney General, 1979).

13. Examples may be found regularly in the major report series. Two important decisions for the purpose of illustration are: *De Marco v. Ungaro et al.* (1979), 95 D.L.R. (3d) 385, 8 C.C.L.T. 207 (O.H.C.) and *Whittingham v. Crease & Co.* (1978), 88 D.L.R. (3d) 353 (B.C.S.C.).

professions. The principle of public accountability of the professions has acquired a political dimension.¹⁴

8. The increase in numbers in the practising bar has sharpened competition and has caused, according to some, a lowering of professional standards.¹⁵
9. Judges comment publicly and more frequently about the performance of counsel. These comments are frequently given prominence in press reports.
10. The increasing complexity of the law and the demands of practice pose major problems for professionals who must keep abreast of developments.
11. Access to lawyers, knowledge of rights, the existence of insurance coverage, changing and more negative attitudes towards the professions, and the general economic circumstances (mistakes are more costly!) have combined to produce a more litigious society in which resort to legal proceedings is no longer an extraordinary measure.

Part Two

I. The Response

Professional organizations and individual lawyers have responded with creativity and energy to demands for increased competence and better procedures to identify and deal with the incompetent.

Whether motivated by the threat of government involvement in the legal profession, economic survival, competition, apprehension of loss of earnings, pride in one's profession and one's work, or a sense of accountability to the public, the results have been impressive. Research has been undertaken, committees have been established, procedures have changed, legislation has been passed and a host of specific measures implemented.¹⁶

Within the legal profession, the work of the Federation of Law Societies in Canada is noteworthy. With the assistance of the

14. See note 12 for the Ontario response; see also, Alberta, Report on the Professions and Occupations, 1973, a report of a Select Committee of the legislative Assembly.

15. The number of practising lawyers in British Columbia has doubled in less than eight years.

16. For example, peer review systems, law office management systems, legal ethics committees, practice advisory services, legislation to deal with incompetence, have been considered and, in some jurisdictions, implemented.

Canadian Bar Association and other institutions, the Federation convened a National Conference on the Quality of Legal Services and followed up with a Workshop on Legal Services.¹⁷ These proceedings brought together representatives from all parts of the profession to study and make recommendations with respect to the maintenance and improvement of competence. The research papers prepared for these meetings are in themselves remarkable in quality and perspective.

As a result of these deliberations, proposals were circulated to law societies and, in many instances, concrete action was taken by the individual governing bodies.

The Federation referred to the Directors of Continuing Legal Education a series of questions. The Continuing Legal Education agencies were asked to advise the Federation of Law Societies at its next meeting:

- (a) whether continuing legal education could do more to improve the competence and diligence of lawyers without losing its attractiveness to lawyers and without undue increase in cost;
- (b) if so, what steps might be taken to achieve that objective;
- (c) whether research and analysis could provide guidance for the future organization and operation of continuing legal education and, if so, who should undertake the responsibility for it.

The workshop asked the agencies to consider and report to the Federation on what continuing legal education agencies might contribute to remedial programs for lawyers who had provided incompetent service and whose incompetence might be remedied by continuing legal education and requested that the report also consider the aspect of incompetence that has to do with attitude and motivation.

The Directors responded thoughtfully and swiftly. In thirty recommendations, they outlined programs of education and research which are designed to deal with competence/incompetence in the immediate future and over the long term.

For our purposes, the recommendations may be grouped as follows:

1. *Research Proposals* — the Directors proposed that funding be sought for a number of major research projects including: a project to define the standards against which lawyers' activities may be

17. *Supra* notes 3 and 4.

measured to determine competency; a project to provide direction in new methods of teaching and the development of programs to train instructors; an analysis of information from insurance carriers, loss prevention offices and discipline and conduct committees; a profile of the Bar; research on the ongoing educational needs with a view to designing an overall educational curriculum; consideration of means by which other professions deal with remedial continuing legal education; development of self-study methodologies; evaluation of CLE programs; etc.

2. *New Emphasis and New Courses* — the Directors recommended that more consideration be given in CLE programming to professional responsibility, a deeper understanding of the policy issues and values inherent in the law, working habits and personal habits which affect competency, and further development of skills.

3. *Methods of Delivery* — a series of recommendations concerned the manner in which CLE programs should be developed and delivered in the next few years.

The Federation and individual law societies are now responding to these recommendations.

The activity has not been restricted to the legal profession. In 1980, the Attorney-General of Ontario received the Report of the Professional Organizations Committee (The Leal Committee) which had been appointed in 1976 to conduct a review of the statutes governing the professions of public accounting, architecture, engineering and law. In addition to bringing forward specific recommendations, the very existence of the Committee generated interest in the roles and responsibilities of these professions in the 1980's. The research team under the direction of Professor Trebilcock produced a wealth of extremely valuable material which has stimulated writing and research.¹⁸

We have examined the responses of the legal profession and government. Let us now turn to the academic world.

II. *Canadian Law Teachers — Who Are We?*

We know little about ourselves in a professional sense. We number approximately 600 full-time teachers of law and we teach in

18. *Supra* note 12.

twenty-two law faculties and departments.¹⁹ Ideally, our faculties should include persons with a broad range of philosophies, educational backgrounds and professional experiences to produce an environment in which there is a constant clash of intellectual opinion. In reality, we continue to lose experienced and promising colleagues to practice, government service and corporate positions.²⁰

We are appointed, reappointed, promoted, given tenure and awarded salary increments by an evaluation process which is based primarily upon peer assessment, with limited involvement of students and others. Our competence is judged by the application of criteria which normally apply to all academics in our universities; these criteria seek to promote and assess scholarship, teaching, administration, professional, university and community contributions. Few of us have been fired for incompetency and there are no reported cases in which law professors have been held responsible in suits for educational malpractice.

Our scholarship has increased in quantity and quality in recent years. Although there have always been among us those who are committed to the teaching and learning process, more of us see exciting opportunities and challenges in discharging our responsibilities as educators in the true sense of the word.

We are *prima donnas* with large egos and great gobs of sensitivity. We live to disagree and we love to disagree. The corners of our office contain unlimited supplies of swords and shields upon which are emblazoned "academic freedom."

Within months, we should know a great deal more about ourselves. In September, 1980, the Social Sciences and Humanities Research Council of Canada established a Consultative Group on Research and Education in Law.²¹ Its mandate is to make an independent, nation-wide study of the state of research and education in law. Its appointment was recommended in the Report of the Commission on Canadian Studies where Canadian legal scholarship was described as seriously underdeveloped.²² The

19. Directory of Law Teachers, 1980-81, the Canadian Association of Law Teachers.

20. Arthurs, 'Paradoxes of Canadian Legal Education', 3 Dal. L. J. 639 (1977).

21. The chairman is Professor H.W. Arthurs of Osgoode Hall Law School. The chairman of the Advisory Committee is the Rt. Hon. Bora Laskin, P.C., Chief Justice of Canada.

22. Symons, 'To Know Ourselves', The Report of the Commission on Canadian Studies, A.U.C.C., 1975.

Canadian Association of Law Teachers and the Committee of Canadian Law Deans expressed their support of an inquiry that would take account of the development of legal education in Canada over the past twenty years. Similarly, law societies, law foundations, law reform commissions and other legal organizations are seeking perspectives on legal education and research which would enable them to better define their roles and discharge their respective responsibilities. Obviously, the work of the Committee will bear directly upon a great number of issues, including competency.

The Terms of Reference of the Consultative Group are:

To examine and advise upon legal research and education in Canada, especially in relation to:

1. the discharge by law faculties of both their academic and professional responsibilities, and especially the relationship between those responsibilities;
2. the purpose, nature and quality of research in law, including its theoretical perspectives, interdisciplinary aspects, the various institutions and agencies in which it is conducted and the infrastructures (e.g., libraries) and sources of funding that support it;
3. the extent and quality of graduate education in law, including its relationship to advanced research;
4. the means by which the legal profession, university faculties and administrations, legal scholars, governments and granting institutions may encourage and improve scholarship, research and education in law in the Canadian context; and
5. any other matters which in the opinion of the Consultative Group may be necessary to discharge its mandate, or to identify for the Council more general issues which may relate to other professional disciplines.

Members of the Consultative Group and the Advisory Panel are drawn from the bench, the bar, university law faculties, government and several related academic disciplines including philosophy, history, education and political science.

The Study is not a royal commission. It is limited in resources, financial and otherwise, and its work will serve only to identify the strengths and weaknesses in legal education, research and

scholarship, and to recommend strategies by which improvements and development may take place.

One of the research projects of the Study will provide what Professor Arthurs describes as "the first accurate portrait of Canadian law teachers, their work and their aspirations."

All full-time Canadian law teachers were asked to complete a questionnaire, the results of which should be available within the next twelve months. Included will be an analysis of the work experience and professional backgrounds of law professors, their academic qualifications, their research activities and techniques, assessments of available financial and library resources, research methodologies and the audience to which research is directed. There will also be information concerning attitudes towards scholarship, teaching and curriculum development.

III. *Whom Do We Teach?*

Although some data are available on a provincial basis, I do not have access to admissions statistics on a national scale. Recognizing the limitations, it might be useful to provide a snapshot of the admissions situation at the University of Victoria.²³

The following points may be of interests:

1. There are approximately eight applicants for each available position.
2. Although many applicants apply to a number of law schools, it is apparent that students with good academic qualifications are rejected. This is borne out by the fact that the entering grade point average over a five year period is 3.65 on 4.00 scale with an LSAT average of 600+.
3. Of the total applicant pool, about twenty-five per cent are female; of those who accept positions, approximately thirty-five percent are female.
4. Almost ninety percent of accepted applicants have already completed a degree and, in some cases, postgraduate work prior to coming to law school. Of those with degrees, sixty-five percent have received bachelor of arts degrees.

23. Reports of the Admissions Committees, 1975-81, Faculty of Law, University of Victoria.

5. The average age of the entering class is twenty-seven to twenty-eight years of age.

The information is much too limited to provide a base from which deductions of a statistically significant nature may be made. My personal impressions of students in recent years are that they are bright, rich in worldly experience, mature, strongly motivated, competitive, serious, very concerned about the job market, conservative in course selection but critical of the educational methodologies employed in legal education.

One might suggest that the law school curricula and law school teaching methods do not come close to matching the expectations of a mature and sophisticated group of first year students. Very little research has been done to determine the impact on professional practice which will be made by graduation of older students including a large percentage of women.

The increasing tuition fees and general costs of education and the corresponding diminution of financial assistance combine to make the study of law even less accessible to certain groups in society than was the case ten years ago.

IV. *Accreditation*

The governing bodies do not conduct a formal, ongoing accreditation of academic programs in law. The provincial law societies have adopted, with minor variations, the requirements of the Law Society of Upper Canada pertaining to the approval of law faculties for the purpose of admission of their graduates to the bar admission course. The regulations were agreed upon in 1957 and were renegotiated in 1969 to permit the development of optional and elective programs.²⁴ The arrangements permit law faculties the freedom to develop, with some flexibility, programs of legal education in the university setting.

It may be helpful to review the major regulations:

1. There are minimum academic requirements for applicants.
2. The program is to be of three years duration and students are required to attend on a full time basis, although there are some exceptions to this rule.

24. Lederman, 'Canadian Legal Education in the Second Half of the Twentieth Century', 27 U.T.L.J. 141 (1971).

3. Instruction shall be offered regularly for approximately thirty teaching weeks each year and a student shall be under instruction for approximately fifteen hours per week.
4. Instruction must be offered regularly in twenty-five subject areas and all students must take the major basic courses in seven subject areas. Individual law societies recommend that certain courses be taken by students who intend to practice in particular jurisdictions.
5. There are also statements with respect to teaching loads, facilities and library resources.

These arrangements were the result of protracted and difficult negotiations. When agreement was reached, the terms were not received with great enthusiasm by many members of the practising profession. However, the agreement recognizes that the first segment of legal education is the responsibility of the university and that in order to provide a rich and deep understanding of concept and theory the universities must be given great latitude in developing their programs. The agreement also reflects the trust which must exist between the practising side and the academic side. For example, there is no attempt to monitor in detail the content of courses, the hours assigned to them, the order in which they are given, the organization of a program or the qualifications of faculty members.

From the point of view of the universities, the arrangements have worked reasonably well. In the late 60's and early 70's, elective and optional programs flourished, providing students with a broad range of topics to study and encouraging professors to pursue research and scholarly writing in important and developing subject areas.

In recent years, however, the storm clouds have gathered. The increasing concern about incompetency and the search for competency have brought about a renewed interest in and debate concerning the quality of legal education in Canadian universities.

V. Competency: Implications for Academe

What are the implications for those who teach law and for law faculties as corporate entities? How can the concern about competency be used as a positive force to enrich and develop legal education? What are the responsibilities of the academic lawyer in this context? And what are the negative aspects of which one must be aware?

I suggest that the efforts of the legal profession to deal with competency can have a very positive impact on legal education. There are dangers, and I shall refer to them shortly, but I believe that the search for a higher level of competence has already been of benefit and offers tremendous potential for the future.

First, however, let me state some concerns.

There is a growing interest in the mind of the practitioner about what is going on at the law schools. This manifests itself in several ways and at different levels. It includes admissions, curriculum and the qualifications of law teachers. I shall give specific examples in a moment.

Law teachers should not be surprised to learn of these concerns. In fact the concerns are always there, creating what is described as the natural tension between the academic and the practitioner.²⁵ The tension comes and goes. It develops in a cyclical pattern. It is natural and right, I suggest, that as we as lawyers seek to improve competence, there should be a deepening interest in the first phase of legal education.

I should add that I do not see this concern as being limited to those who might be classified as members of the "black letter, fill-in-the-blanks, I-didn't-learn-a-damn-thing-in-law-school" group. It is shared by thoughtful, experienced practitioners who are as sensitive as any academic to the absolute necessity that a university education in law be a broad, rich and challenging intellectual experience — a voyage of discovery and not a packaged tour.

And, of course, law professors should welcome and respond to, indeed participate fully in, the inquiries and discussions about legal education at all levels.

I come to some specific examples which illustrate my concern. At the outset, let me emphasize that the inquiries and concerns are legitimate and should be welcomed. It is the procedures which give cause for alarm.

1. A law society has recently issued a preliminary report on a survey of its membership. There are some interesting responses:

- (a) seventy-two percent believe that controls on the numbers entering the legal profession would be beneficial *to the public*;

25. Slayton, 'Practitioners and Professors: The Two Solitudes of Canadian Legal Education', 14 Gazette 429 (1980).

- (b) eighty-five percent believe that controls would benefit *the profession*; and
- (c) seventy-three percent feel that controls, if imposed, should be imposed by the law society and not the universities.

The Treasurer, in remarks accompanying the results, advises that in his recent trip about the province, opinions were expressed that the growing numbers in the legal profession would cause a lowering of the standard of professional services. The Treasurer noted that further research was being undertaken and that a committee on numbers in the profession had been appointed.²⁶

No one disputes the right of the society to survey its members. However, I understand that little, if any, consultation took place with the Deans of the Law faculties of that province. The implications of limiting the numbers, presumably to a level less than the number of students currently graduating or applying for admission to the bar, hold very grave consequences not only for the law schools in one province, but for those in all common law jurisdictions. The implications for students and prospective students are equally important. Is there no appreciation of the ripple effect which may be triggered by unilateral action of this nature?

One might pose other questions. Is there evidence to show that the quality of service is reduced by the influx of recent graduates? Is it the recent graduates who provide services of lower standards or are there more experienced practitioners whose services may be affected by competition? The insurance claims, at least, would not support the assertion that it is younger graduates who are offering lower quality services.

Will the public interest be served by such a limitation? Is the "public" to be surveyed to determine its interest? By what means is control to be enforced? How is the quality of service affected? By slipshod work in a scramble for clients in tough economic times? Are lawyers' incomes a factor in these considerations? Are there data on the need for legal services?

2. In another province, a committee is considering the implementation of a standard examination which may be administered to all students prior to their admission to the articling program. A good idea, perhaps, but, once again, it is being considered without

26. Letter from the Treasurer to members of The Law Society of Upper Canada, April, 1981.

reference to the academic participants in the process and, probably, without a clear understanding of the possible impact upon the curriculum in a law school.

3. Another proposal emanating from the profession is that there be a review of admissions standards and policies in law schools. There are three specific suggestions:

- (a) to interview all candidates for admission with a view to reducing the number of persons who are likely to be incompetent and/or dishonest;
- (b) to develop a test which would seek to assess "judgment, integrity and strength of character"; and
- (c) to employ a literacy test to eliminate those who do not possess adequate writing skills.

4. In many jurisdictions, there is a belief among many benchers that the core curriculum and compulsory courses must be expanded and, I fear, there is a likelihood of unilateral action by provincial law societies which will damage not only their relationships with law schools but will damage or destroy the concept of portability of degrees which has been a feature of the agreements over the years. In other words, the opportunities for law graduates to move across the country will be seriously affected.

These proposals are put forward as legitimate concerns by experienced practitioners who believe that such moves would increase the competency level of the practising profession and serve the interest of the public.

How are we, as academics, to respond?

First, I would suggest that we must ensure that we are full participants in discussions which may lead to policy decisions affecting legal education. For a period of time, we thought the point had been made. Apparently, this is not the case, at least in some places. We must be seen as partners in the deliberations, not as junior associates.

Second, we should be prepared to illustrate the tremendous advances that have taken place in legal education in recent years — improved scholarship, increased research, the development of university law libraries, and changes in curriculum and teaching methods — but we should also be the first to admit that we have not achieved perfection and that we require advice, assistance and support from our practicing colleagues.

The establishment of the Canadian Law Teaching Clinic occurred three years ago through the initiative of the Committee of Canadian Law Deans with the support of the Canadian Association of Law Teachers. Financial support has come from all law faculties, several law foundations and the Bar of Québec.

In each of the past three years, a ten-day program has been conducted and over this period more than seventy-five law teachers have attended.

Time does not permit me to describe in detail the intensive program which has been designed by the directors of the clinic. However, its very existence and its continuing success indicate the commitment of law teachers to the development of competence in educational matters.

One of the benefits has been the leadership of participants in the clinic who return to their faculties to organize workshops and seminars on legal education. The impact cannot yet be judged but there is an increased volume of activity with respect to legal education and its methodologies in most faculties in the country.²⁷

This major commitment to increasing the quality of teaching is simply one illustration of the many beneficial changes which have occurred recently. As I study the reports and recommendations with respect to competency, I am struck by the number of references to the educational process — the appreciation of the contribution which can be made by the professional educator. This recognition of the fact that we as teachers possess or should possess expertise to which the practitioner will look for assistance is extremely encouraging. It is recognition, in effect, that legal education is a lifetime process and that we, as teachers, have a role to play and a responsibility to discharge in the entire process.

In the concluding part of this paper, I wish to consider some specific suggestions which are designed to improve the entire process of legal education, thereby seeking to raise the level of competence of the lawyer in society. Most of the suggestions are not new. They have been raised, aired, debated, deferred or dismissed over the years. What may be important, however, is that the present concern about competency may have developed a climate in which at least some of these proposals might be implemented.²⁸

27. Report of The Director, The Canadian Law Teaching Clinic, 1981.

28. There is a wealth of writing on Canadian legal education. Let me acknowledge my debt to colleagues who have considered many of these solutions in their

VI. *The Grand Design*

Writing about the evolution of the system of legal education in Ontario, Mr. Justice Horace Krever states:

. . . The gulf between what are perceived to be academic concerns, i.e., those of the university, and practical concerns, i.e., those that are not the university's business, continues to widen — to the disservice of the students and of society at large.

And,

. . . It is my belief that the university law schools . . . are becoming less concerned about the needs of their students as future lawyers and totally uninterested, or at least uninvolved, in the process of legal education after the point at which the LL.B. degree is granted.

And, concluding his remarks on this point:

My principal criticism lies in the absence of any integration of, or even recognition of, the need to think of integrating, the various periods of legal education as parts of a continuum or a single process, rather than as a sequence of discrete interests each having its own *raison d'être* and, in its performance, unconcerned with the role or performance of the other interests or parts.²⁹

Mr. Justice Krever goes on to comment that the present benchers may be excellent lawyers but they do not have expertise in educational theory or practice. There follows an implicit criticism of the bar admission course and a recognition of the unevenness of the articling experience, both in quality and time. He concludes that "the institutions with the greatest potential for the acquisition of expertise in educational matters involved in professional preparation for certification are the universities."

This call for university law faculties to play a significantly increased role in legal education beyond the three-year LL.B. program may come at the right time. In the context of the discussions about competency, I suggest it is appropriate for law faculties to consider with law societies the acceptance by law faculties of major responsibility for the entire educational process. I

writings over the years. Recent contributions may be found in 44 Sask. L. Rev. (1979). See also, Gibson, 'Legal Education — Past and Future', 6 Man. L. J. 21 (1974).

29. Krever, A Comparative Examination of Professional Education, The W.K. Kellogg Lecture, 1979.

recognize, of course, that certain policy matters would have to remain the prerogative of the law societies but the time may be ripe for serious discussion along these lines.

There are various models one might consider. A project of The Continuing Legal Education Society of British Columbia is an example of cooperative planning and action among all the organizations of the profession which have a responsibility for legal education within the province.

Three years ago Professor Donovan Waters, a senior scholar with teaching experience in a number of jurisdictions, produced an internal working paper which ultimately was adopted as policy by the Board of Continuing Legal Education Society. His basic premise was not new — that legal education should be seen as a whole from the time of entering law school to retirement from practice — but the thrust of his proposal was that the CLES should take the initiative in developing a program of legal education in which there would be substantial coordination and integration. There should be a progression from concept to practical application over the period from year one of law school to the completion of the bar admission course. Throughout a lifetime of practice, the lawyer would seek further opportunities for legal education which would increase his knowledge and skills. The proposal was designed to focus attention on the logical developments in legal education and to move away from the controversial debate over practice and academic theories.

Although there is no talk at this stage of delegating to the universities major responsibilities for the entire program of legal education, the guidelines adopted by the Society indicate the need for participation and coordination by all parties. The plan includes:

- (a) The provision of one or more refresher courses in basic law school subjects, such as contract, tort or criminal law;
- (b) the development of a procedure for common course material for CLE and bar admission by way of a pilot project in one or more subject areas;
- (c) drawing upon the experience with the pilot project, there should be a closer examination of the opportunities for integrating the educational roles of the bar admission and CLE programs through joint planning, courses and materials;
- (d) consideration of the desirability and feasibility of standardizing training and articles;

- (e) extending the first pilot project to include law school teaching materials with a view to determining the possibility of integrating teaching techniques and materials and;
- (f) examination of the role of the legal profession in the training of paraprofessionals and in providing public legal education and a component of legal education in the training of other professionals.

It is too early to determine whether these proposals are realistic, but a start has been made.

Recently, the Benchers of the Law Society of British Columbia entered into an agreement with the Continuing Legal Education Society under which the Bar Admission Program will be administered by the Society, subject to the determination of policy by the Benchers. To round out the cooperative aspect of this exercise, the first full-time Director of the Bar Admission Program has been selected from the academic ranks, recognition of the fact that the educational program requires the expertise of an educator.³⁰

Another model is to pursue the proposal that the universities themselves be given responsibility, again subject to direction on policy matters by the Law Society or other appropriate body, for the development and implementation of a program of legal education which would span what is now law school training, bar admission, CLE, and remedial CLE: the entire educational spectrum. The process of medical education is founded upon a university-based centre directing education from "cradle to the grave." The recognition that continuing education in law requires the involvement of professional educators adds force to the argument that serious consideration should be given to adapting the medical model.

Regardless of the model, the potential for development of increased competence through a planned and coordinated program is considerable. Serious consideration must also be given to the development of a bridge between the law school academic program and practice through the concept of clinical teaching as it is presently used in the medical profession, modified to meet the situation.

I realize that cooperative arrangements exist in many provinces but what I wish to stress is that we may now be at the point where

30. Academic law teachers have held or hold similar positions in Manitoba and Ontario.

the universities can offer leadership in providing some of the solutions to some of the major problems facing the legal profession by accepting a major responsibility in the legal education process.

What benefits might accrue to the universities and to individual professors? The development of strategies which are designed to reduce and combat incompetence offers tremendous potential for substantial contributions and participation by law professors. There will be increasing demands to contribute in a scholarly way to programs of legal education outside the law school. This should be regarded as a professional responsibility by academics but we must be careful to concentrate upon scholarly papers.

On the research side, the entire range of problems facing the legal profession — from competency to advertising to specialization — offers the academic almost unlimited opportunities to pursue scholarly writing. To take but one example, there is a growing concern, as we have seen, about problems of professional responsibility, many of which require the time and approach that an academic can devote in producing tentative solutions.

I expect that in the next few years many law societies in Canada will establish research and policy departments which will permit the members of the governing body to be prepared adequately to deal with major policy issues. It is likely that research assistance will be required from university personnel.³¹

VII. *Proposed Program in Professional Education*

A recurrent theme in the studies into and solutions proposed to increase competence is a very deep concern about the apparent failure of the practising lawyer to recognize and deal with problems of professional responsibility. It seems quite clear that an obvious result will be the implementation of a range of programs which are designed to increase knowledge and understanding of professional responsibility. What is equally obvious is the need for thoughtful research in the area: research which will serve not only the immediate purpose but will raise fundamental issues about the roles of the lawyer and the legal profession in the next twenty years.

31. A law professor has been named Director of Professional Development for a large international law firm with headquarters in Chicago. The professor will be on a two-year leave of absence and will assist in the development of a variety of educational and training programs for members of the firm.

As an example of cooperative planning, let me refer once again to developments in British Columbia. With the support of the Deans of the two law faculties, the Benchers have approved in principle the development of a program of professional education which will be designed, initially, to span the period from the first year of law school to the completion of the Bar Admission Program. Eventually, it is expected to lead to a more concentrated consideration of professional responsibility problems in continuing education programs. The program will enable students to appreciate, discuss, recognize and consider solutions to ethical issues and matters which touch upon the role of the legal profession in society. The fact that the program will stretch over an extended period of time will permit the development of issues in a more sophisticated manner and will enable the student to reflect upon changes in attitudes, increased knowledge and other factors which may become apparent as the student proceeds through the program.³²

VIII. *Curriculum and Teaching Methodologies*

Over the years, curriculum debates have tended to focus almost entirely upon the issue of knowledge of substantive law. Little, if any, attention has been given to defining the law graduate in terms of the criteria developed by the Cramton Committee³³ or as proposed by Professor Gold.³⁴

To apply the model adopted by the Cramton Committee, the graduate may be defined in terms of fundamental skills, knowledge, and ability and motivation.

Nor have we attempted to structure our three-year program to permit and challenge the student not only to develop a substantial body of knowledge but to acquire the whole host of abilities and attitudes, ranging from intellectual curiosity to interpersonal skills.

The curriculum, whatever its content and methodology, should permit and indeed should encourage intellectual growth and skill development progressively throughout the program. I believe we have not yet achieved this in the implementation of curriculum designs in Canadian law schools.

32. The Committee on Professional Education (British Columbia) is chaired by B.I. Cohen, Esq.

33. *Supra* note 9.

34. *Supra* note 6.

The move to the elective curriculum was right at the time. We should now assess its strengths and weaknesses with a view to determining what we can learn from this ten-year experience.

Dean Cramton's report suggests that there should be "greater coherence" in the curriculum. I agree. I do not suggest a standard curriculum — there are great strengths in diversity in programs across the country, but to use the language of the report, "the program should build in a structured way: to present students with problems of successively broader scope and challenge, to enable students to teach themselves, and to utilize skills and knowledge acquired earlier."

Why is it that the study of law under the direction of teachers who love the law cannot be a more rewarding, intellectually satisfying experience for more students? I do not seek a situation in which students would be totally comfortable, happy and without stress. Nor do I believe that we shall ever reach perfection as the process of education itself denies complete satisfaction with the experience of learning. Legal education requires that students become critical of their programs of study and their teachers. Fair enough! But what concerns me is that we have progressed very little in the development of teaching methods in response to boredom, repetition and lack of challenge. Or, to be more positive, we have failed to develop our methodologies to meet the expectations and abilities of the sophisticated, thoughtful students whom we teach. Are we ourselves involved in a process which breeds cynicism, assists in the development of sloppy habits, and discourages intellectual curiosity? I realize that much depends upon the student and the teacher but, as educators, I believe we have not yet discharged our responsibilities. I recognize the problems of numbers, time, and the competing commitments to other responsibilities including scholarship. But, as one reads the proposals to combat incompetency one is impressed by the emphasis on and expectation about the need for a great variety of effective educational techniques.

What do we as law teachers know about the learning process? What qualifications have we with respect to evaluation procedures? What concepts have we about education? Is there a touch of personal and corporate incompetency here?

What have we done? We have re-tuned and modified the Socratic method. Casebooks have become coursebooks. There are "interdisciplinary courses." Seminars are designed to relieve the boredom of

classes. There is the lecture on the one hand and the problem method on the other. But, have we devoted our intellectual resources to the development of these methods and the creation of others? What have we learned from clinical programs? Have we applied these lessons in other parts of our curriculum?

We are not surprised to learn that the intensive nature of the clinical program, limited in numbers and concentrated in time and subject area, produces an atmosphere extremely conducive to learning. We have applied that knowledge to a limited extent in the development of what we call term or semester programs. These, again, are expensive but also very effective. They permit fifteen to twenty students to take a single term in one subject area only — criminal law, family law, public law — where learning takes place effectively and permits the instructor great flexibility in designing the program. A functional or transactional approach can be adopted easily in these circumstances as can be shown in our program at the University of Victoria in Solicitors' Practice and in the Public Law Term.³⁵

We should move clinical teaching from its now traditional base in poverty law to other areas of our curriculum. In British Columbia, funding has recently been obtained to establish a Public Interest Advocacy Centre. The Centre will be staffed by lawyers who will carry out research, public legal education and appear in proceedings before courts and administrative tribunals. Arrangements will be made for law students at both universities to participate in this process which will likely involve a heavy emphasis on environmental law, administrative law, municipal law and land use planning.

There are modest moves in some law schools to develop computer-assisted teaching and learning programs. What is required is a major allocation of resources to explore the potential for the computer not as a data bank but as process of learning for the professional person.³⁶ The Ministry of Education in British Columbia has provided a telecommunications network which links the Vancouver courthouse to the faculties of law in Vancouver and Victoria. The potential for cooperative programming is now being explored but the very existence of the network challenges educators who are interested in new methodologies and efficient use of faculty

35. Waldron and Ellis, 'Report on the University of Victoria Solicitors' Practice Clinic', 37 *Advocate* 531 (1979).

36. There are several successful programs of computer-assisted learning in law in the United States.

resources. The faculties are already actively involved in the continuing legal education programs which are carried by satellite to a large number of towns throughout the province.

Other questions should be addressed. Have we examined the possibility of streaming students and courses in law schools? Do we pay attention to the impressive academic and professional backgrounds brought by our students to their law studies? Some of us are engaged in breaking away from the traditional timetable in which subjects are offered two or three hours per week for fifteen weeks. What do we know about the learning processes in, for example, a seminar of a month's duration? At the University of Victoria, we have adopted a program in Legal Process,³⁷ which is the only course taken by first year students for three weeks in the Fall term and then again for one week in the Spring. The success of this program over a six year period indicates the potential for similar ventures in other subject areas.

Are we making any progress in our oft-quoted goals to increase learning in skills of interviewing, counselling, negotiating, drafting and advocacy? Or are we simply playing with the idea in a very limited fashion?

Should we be, or indeed are we in fact, turning to our graduates to seek assessments of our programs? It seemed to me when we first established our law school that it would be logical to request assessments as the graduates progressed in their careers. Although changes do occur over the years, it is sensible to attempt an evaluation on a regular basis for a period of time to determine the strengths and weaknesses of a program as seen by graduates. In a more formal manner, should we seek assessments of the "products" of our law school by requesting employers, principals, partners, judges and others to provide assessments of our students?

I believe it would be appropriate for at least one faculty in this country to consider the implementation of a limited or modified trimester system. I do not propose, necessarily, that law students would spend forty-five weeks a year in the classroom. But I see the possibility of offering, for example, a summer program in which students might enrol and receive credit towards their degree. There are logistical and budgetary factors. It would require, perhaps, the graduation of students at different times throughout the year but this

37. Fraser, 'Recent Developments in Legal Education: The Victoria Experience', 13 U.B.C. Law Rev. 221 (1979).

might ease an apparently difficult articling system. It might provide us with an opportunity to teach in small groups whilst maintaining the enrolment over the full year at the present level. If the summer program were staged, it could well be that visitors could provide some of the teaching required in the courses. I would use the clinical or term program as a starting point. A most attractive feature of a summer program would be the participation of students from all common law faculties. The potential for an enriched educational experience and an opportunity to better understand the problems facing the country are obvious.

IX. Grading and Evaluation

We have made progress in devising a variety of evaluation techniques — exams, tests, orals, simulations, moots and papers. However, are we not obliged to take this a step further by providing more in the form of critical evaluation of the work of a student, not simply in a post-examination conversation? Students who enrol in clinical and some of the term programs receive a formal, written evaluation from the instructor which has proven useful not only to the student but to representatives of law firms who are interested in assessing the strengths and weakness of the candidate. At the University of Victoria, we are in the process of considering a more structured arrangement whereby professors would, in the context of the objectives of an examination or other evaluation procedure, provide a written analysis of the performance of the student. I realize the numbers problem and the demands on the time but there may be some modifications which could be adopted in larger schools.

X. Financial Resources

Legal education in its university phase has never received adequate funding. It has always been done “on the cheap”. The Faculty of Law is often regarded by senior university administrators as high in status and low in cost compared with other major professional programs. A response to any of the opportunities to which I refer will require a reallocation of financial resources within university budgets which are already hard pressed in today’s economic circumstances. Therefore, if progress and improvement in legal education is to occur, the leadership of the profession is absolutely essential if legal academicians are to be successful in obtaining

additional funding not only from within the university but from foundations, corporations and private donors including individual members of the practicing bar.

In spite of the economic situation, we must establish our priorities and make our case for adequate funding from a position of strength.

XI. Faculty Resources

If we are to move to another level of sophistication in research and teaching, we should pursue with real commitment the idea of appointing non-lawyers to our faculties. I realize that this is an old chestnut but it has been achieved in only one or two faculties. If we view the study of law in a broad perspective, it is obvious that the expertise of others must be applied in teaching and research. I am aware of the arguments about priorities on the one hand and the apparent lack of qualified candidates on the other. I suspect, however, that our lack of action is caused more by a reluctance to hurdle that barrier which still exists between law and the social sciences.

The practitioner-in-residence is now a feature in a number of law schools and I commend it as a valuable addition to faculty resources. Grants are provided by law foundations to permit practitioners to spend a full academic year at a law school. The practitioner may teach one or two courses but the major function is to participate in a selection of teaching activities, to pursue research, discuss issues with students and faculty and act as a bridge with the practicing profession.

At the University of Victoria during the past year, we adopted a variation on this theme by inviting eight senior Vancouver practitioners to participate in our Solicitors' Practice Program. Each lawyer prepared materials in advance which were coordinated by the professor in charge of the program. The enrolment is restricted to fifteen third year students and this is the only program in which they are enrolled for a fifteen-week period. Every second week a practitioner spent the five day period immersed in the program: lecturing, conducting seminars, involving students in simulations, providing individual instruction, and marking assignments. The program was extremely successful and permitted a major contribution by each person in a limited period of time. It made available expertise which could not have been obtained over a longer period of time or through one or two individuals. It was

labour intensive and required a great deal of planning to be successful. The program permitted students at a small school to reach a level of sophistication in a subject area which would not have been possible in normal conditions.

XII. Legal Writing and Research

Most law schools have very good programs in legal writing and research in the first year curricula. However, we seem to be stuck in first gear. There is a great need for an integrated program, probably compulsory, which would permit a student to progress in acquiring skills and knowledge over the three-year period.

I realize that in most schools "paper courses" are available and are sometimes compulsory in senior years. But, for the most part, this is a scatter-shot, hit-and-miss approach which lacks the integrity of a coordinated program.

With a little imagination, this could be made an attractive feature of a curriculum and one which would encourage students in a research direction. One other failing, in my opinion, is our general neglect in the area of instruction in social science research methodology. It is within a coordinated writing and research program that one should develop an appreciation of the research methodologies and techniques which are employed in other disciplines. This would be a valuable investment in future research and scholarly writing.

XIII. Centre for Studies in Canadian Legal Education

There is a proposal to establish a Centre for Studies in Canadian Legal Education. Attached to a university, a Centre would initiate and foster research and writing on legal education, act as a consultative and resource centre to legal education programs, coordinate and develop workshops, seminars, conferences and training clinics and act as liaison with various national and international bodies concerned with education.³⁸

XIV. Conclusion

The search for ways in which to increase the competency of the practising lawyer has generated a range of imaginative responses. In

38. A joint proposal of Dean John McLaren, University of Calgary and Professor Neil Gold, University of Victoria.

the initial phase, considerable action has taken place primarily within the institutions of the practising Bar. Programs have been instituted. Procedures have changed. Research has been undertaken.

The second phase, which is now upon us, will involve an intense and critical examination of university based programs of legal education.

To respond to the public interest and to meet the needs of the profession, the faculties of law and the individual law professor will be required to place a much higher priority upon the processes and methodologies of learning and teaching.

It is appropriate to conclude, as I began, with a comment from Professor Allen:

Educational policy in the law schools during the closing years of this century is likely to become increasingly pragmatic, consciously experimental. We shall have to distribute our eggs among many baskets.

It seems likely, therefore, that if the law school is to flourish as part of the university, the law school must become an even more pluralistic community than it has yet become.³⁹

39. *Supra* note 1.